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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 26**

**The Environment (EU Exit) (Scotland)  
(Amendment etc.) Regulations 2019**

**PART 4**

Amendments to legislation concerning waste

**The Special Waste Regulations 1996**

- 7.—(1) The Special Waste Regulations 1996(1) are amended as follows.
- (2) In regulation 1(4) (interpretation)—
- (a) in the definition of “European Waste Catalogue” for “set out in” to the end substitute “as defined in regulation 1B,”,
  - (b) for the definition of “waste”, substitute—  
““waste” has the same meaning as in section 75(2) of the Environmental Protection Act 1990(2) as read with section 75A of that Act.”.
- (3) After Regulation 1 insert—

**“Annex III to the Waste Directive**

- 1A.** A reference in these Regulations to—
- (a) Annex III is a reference to Annex III (properties of waste which render it hazardous) to the Waste Directive, and
  - (b) hazardous properties is a reference to the properties in Annex III, as read in accordance with regulation 2ZF.

**The List of Wastes**

- 1B.**—(1) In these Regulations, “the List of Wastes” means the list of wastes established by Commission [Decision 2000/532/EC](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of Council [Directive 75/442/EEC](#) on waste and Council [Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of Council [Directive 91/689/EEC](#) on hazardous waste(3), as last amended by Commission [Decision 2014/955/EU](#)(4).
- (2) A reference in these Regulations in relation to any waste—
- (a) being “listed as a waste” and “listed as a hazardous waste” refers to that waste being listed as a waste, or as a hazardous waste, as the case may be, in the List of Wastes,

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(1) [S.I. 1996/972](#), relevant amending instruments are [S.S.I. 2004/112](#), [S.S.I. 2011/226](#), [S.S.I. 2018/219](#) and [S.S.I. 2018/391](#).  
(2) [1990 c.43](#), relevant amending instrument is [S.S.I. 2011/226](#).  
(3) [OJ L 226](#), 6.9.2000, p.3.  
(4) [OJ L 370](#), 30.12.2014, p.44.

provided, in the case of a waste listed as a hazardous waste, it shall only be considered to be listed as a hazardous waste where any relevant limit value of concentration is met,

- (b) being “not listed as hazardous” refers to that waste being not listed as a hazardous waste in the List of Wastes, whether or not it is listed as a waste, and whether or not it is otherwise a hazardous or special waste pursuant to these Regulations,

and cognate expressions shall be construed accordingly.”

- (4) For regulation 2 (meaning of special waste) substitute—

**“Meaning of special waste**

2.—(1) Subject to paragraph (2), “special waste” is waste that, for the time being—

- (a) is listed as hazardous in the List of Wastes provided that any relevant limit value of concentration is met,
- (b) is determined to be hazardous waste pursuant to regulation 2ZA, or
- (c) is a specific batch of waste which is determined to be hazardous waste pursuant to regulation 2ZB.

(2) For the purposes of paragraph (1), where a determination pursuant to regulation 2ZC has been made in respect of a specific batch of waste, that waste is not “special waste” even where it is of a type listed as hazardous in the List of Wastes.”

- (5) After regulation 2 (meaning of special waste) insert—

**“Determination that a waste is hazardous waste**

2ZA.—(1) Subject to the following provisions of this regulation, where it appears to the Scottish Ministers that, having regard to the List of Wastes and the limit values of concentration set out in Annex III, there are reasonable grounds to suspect that a waste of a type listed, or falling within a type listed, in the List of Wastes as non-hazardous displays one or more hazardous properties, they may determine that, in Scotland, such waste is hazardous waste.

(2) The Scottish Ministers may revoke a determination made under paragraph (1).

(3) Before making a determination under paragraph (1) or revoking a determination under paragraph (2), the Scottish Ministers must consult the requisite bodies, except where they consider it inappropriate to do so in any case on account of the nature of an emergency or grave danger.

(4) In making a determination under paragraph (1) or revoking a determination under paragraph (2), the Scottish Ministers must take account of the relevant waste management objectives referred to in paragraphs 6(1)(a) and (b), (2) and (3) of schedule 4 of the Waste Management Licensing (Scotland) Regulations 2011(5).

(5) The Scottish Ministers must publish, in such manner as they consider appropriate for the purpose of informing persons likely to be affected, a notice of any determination made under paragraph (1) or revocation under paragraph (2), and the notice must include—

- (a) the date and time at which the determination or revocation, as the case may be, is to take effect (which may be immediately upon publication), and
- (b) a description of the waste sufficient to identify it,

and must send a copy of the notice to the requisite bodies.

(6) The notice must give reasons for the determination or revocation, as the case may be.

(5) S.S.I. 2011/228, relevant amending instruments are S.I. 2011/1043S.S.I. 2018/391.

(7) Where waste enters Scotland from England, Wales or Northern Ireland, a determination in force under this regulation shall apply to it notwithstanding that a determination to like effect is not in force in respect of England, Wales or Northern Ireland, as the case may be.

### **Specific waste to be treated as hazardous waste**

**2ZB.**—(1) The Scottish Ministers, having regard to the List of Wastes and the limit values of concentration set out in Annex III, may determine, in exceptional cases, that a specific batch of waste in Scotland which—

- (a) is not listed as hazardous in the List of Wastes, or
- (b) though of a type listed as hazardous waste in the List of Wastes, is treated as non-hazardous pursuant to regulation 2ZC,

displays one or more of the hazardous properties, and accordingly that it shall be treated for all purposes as hazardous waste.

(2) A specific batch of waste produced in Wales, England or Northern Ireland and not listed as hazardous in the List of Wastes, which is for the time being determined to be hazardous as referred to in paragraph (3) shall, subject to any determination made under regulation 2ZC, be treated for all purposes as hazardous waste in Scotland.

(3) For the purposes of paragraph (2), a specific batch of waste may be determined to be hazardous—

- (a) in relation to Wales—
  - (i) if listed in regulations made under section 62A(2) of the 1990 Act, or
  - (ii) if so determined by the Welsh Assembly under regulation 8 of the Hazardous Waste (Wales) Regulations 2005(6),
- (b) in relation to England—
  - (i) if listed in regulations made under section 62A(1) of the 1990 Act, or
  - (ii) if so determined by the Secretary of State under regulation 8 of the Hazardous Waste (England and Wales) Regulations 2005(7), or
- (c) in relation to Northern Ireland, if so determined by the Department of Agriculture, Environment and Rural Affairs under regulation 8 or 9 of the Hazardous Waste Regulations (Northern Ireland) 2005(8).

### **Specific waste to be treated as non-hazardous**

**2ZC.**—(1) The Scottish Ministers may determine, in exceptional cases, on the basis of documentary evidence provided by the holder, and having regard to the List of Wastes and the limit values of concentration set out in Annex III, that a specific batch of waste in Scotland which—

- (a) is listed as hazardous in the List of Wastes, or
- (b) though of a type not listed as hazardous waste in the List of Wastes, is treated as hazardous pursuant to regulation 2ZB(2),

does not display any of the hazardous properties listed in Annex III and accordingly that it shall be treated for all purposes as non-hazardous in Scotland.

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(6) S.I. 2005/1806 (W. 138), relevant amending instruments are S.I. 2011/971 (W. 141) and 2015/1417 (W. 141).

(7) S.I. 2005/894, amendments have been made by the Wales Act 2014 (c.29) and S.I. 2011/988, S.I. 2015/1360.

(8) S.R. 2005 No.300, relevant amending instruments are S.R (NI) 2011 No 127 and S.R (NI) 2015 No 288.

(2) The Scottish Ministers must not determine that waste shall be treated as non-hazardous under paragraph (1) if it has been diluted or mixed with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.

(3) A specific batch of waste produced in Wales, England or Northern Ireland and listed as a hazardous waste in the List of Wastes, and which is for the time being determined to be non-hazardous as referred to in paragraph (4) shall, subject to any determination made under regulation 2ZB, be treated for all purposes as non-hazardous in Scotland.

(4) For the purposes of paragraph (3), a specific batch of waste may be determined to be non-hazardous—

- (a) in relation to Wales, by the Welsh Ministers under regulation 9 of the Hazardous Waste (Wales) Regulations 2005,
- (b) in relation to England, by the Secretary of State under regulation 9 of the Hazardous Waste (England and Wales) Regulations 2005, or
- (c) in relation to Northern Ireland by the Department of Agriculture, Environment and Rural Affairs under regulation 10 of the Hazardous Waste Regulations (Northern Ireland) 2005.

#### **Provisions common to regulations 2ZB and 2ZC**

**2ZD.**—(1) The Scottish Ministers may revoke a determination made under regulation 2ZB or 2ZC.

(2) The Scottish Ministers must, before making a determination under regulation 2ZB or 2ZC or revoking such a determination, except where they consider it inappropriate to do so on account of the nature of any emergency or grave danger, consult—

- (a) the requisite bodies,
- (b) the holder of the specific batch of waste, and
- (c) any other person appearing to them—
  - (i) to have an interest in the specific waste, or
  - (ii) to be otherwise directly affected by the determination.

(3) In making a determination under regulation 2ZB or 2ZC or revoking such a determination, the Scottish Ministers must take account of the relevant waste management objectives referred to in paragraphs 6(1)(a) and (b), (2) and (3) of schedule 4 of the Waste Management Licensing (Scotland) Regulations 2011.

(4) The Scottish Ministers must give notice of any determination made under regulation 2ZB or 2ZC or revocation of such a determination to—

- (a) the requisite bodies,
- (b) the holder of the specific batch of waste concerned, and
- (c) any person they have consulted pursuant to paragraph (2)(c).

(5) The notice must give reasons for the determination or revocation, as the case may be.

#### **Requisite bodies**

**2ZE.** For the purposes of these regulations, the “requisite bodies” are—

- (a) the Scottish Environmental Protection Agency,
- (b) the Secretary of State,

- (c) the Environment Agency,
- (d) the National Assembly for Wales,
- (e) the Natural Resources Body for Wales,
- (f) the Department of Agriculture, Environment and Rural Affairs, Northern Ireland,
- (g) the Health and Safety Executive, and
- (h) any organisation appearing to the Scottish Ministers to be representative of persons likely to be affected by the relevant determination or revocation of a determination, as the case may be.

### **Modification of the Waste Directive**

**2ZF.**—(1) For the purposes of these regulations, the Waste Directive is to be read in accordance with this regulation.

- (2) Annex III (properties of waste which render it hazardous) is to be read as if—
  - (a) in entry HP 9, in the second sentence, “in the Member States” were omitted, and
  - (b) in entry HP 15, in the text following the table, for the words “Member States” there were substituted “the Scottish Ministers”.
- (6) In regulation 15(9)(registers), omit the words “having regard to” to the end.
- (7) In regulation 17 (restrictions on mixing special waste)—
  - (a) in paragraph (2)(b), for the words “Article 13 of the Waste Directive” substitute “the measures in paragraph (2A)”,
  - (b) after paragraph (2), insert—

“(2A) the measures referred to in paragraph 2(b) are the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular without—

    - (a) risk to water, air, soil, plants or animals,
    - (b) causing a nuisance through noise or odours,
    - (c) adversely affecting the countryside or places of special interest.”
- (8) In regulation 17A (duty to separate mixed wastes)—
  - (a) For paragraph (1)(b) substitute—

“(b) necessary in order to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular without—

    - (i) risk to water, air, soil, plants or animals,
    - (ii) causing a nuisance through noise or odours,
    - (iii) adversely affecting the countryside or places of special interest.”
  - (b) omit paragraph 2.

### **The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000**

**8.**—(1) The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000(9) are amended as follows.

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(9) [S.S.I. 2000/95](#), relevant amending instrument is [S.S.I. 2011/226](#).

- (2) In Regulation (2) (interpretation and notices)—
- (a) in paragraph (1)—
- (i) omit the definition of “the Directive”,
  - (ii) in the definition of “disposal” for “Annex I of [Directive 2008/98/EC](#) as amended” substitute “Part II of schedule 4 of the Waste Management Licensing (Scotland) Regulations 2011<sup>(10)</sup>”,
  - (iii) in the definition of “used PCBs” for “[Directive 2008/98/EC](#)” substitute “section 75(2)(a) of the Environmental Protection Act 1990<sup>(11)</sup> as read with section 75A of that Act”,
- (b) omit paragraph (2).
- (3) In the heading for schedule 1, for “Annex I of [Directive 2008/98/EC](#) on Waste” substitute “Part II of schedule 4 of the Waste Management Licensing (Scotland) Regulations 2011”.

### **The Landfill (Scotland) Regulations 2003**

- 9.—(1) The Landfill (Scotland) Regulations 2003<sup>(12)</sup> are amended as follows.
- (2) In regulation 2(1) (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—
- (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 “hazardous waste” substitute—
- ““hazardous waste” means any waste which is special waste in terms of regulation 2 of the Special Waste Regulations 1996<sup>(13)</sup>,”
- (c) for the definition of “waste” substitute—
- ““waste” has the same meaning as in section 75(2)(a) of the Environmental Protection Act 1990<sup>(14)</sup> as read with section 75A of that Act,”.
- (3) In regulation 10(3) (conditions to be included in landfill permits)—
- (a) omit sub-paragraph (aa),
  - (b) in sub-paragraph (b)(i), for “EU” substitute “retained EU law”.
- (4) In regulation 11(2A)(b)(prohibition of acceptance of certain wastes at landfills), for “EU legislation” substitute “retained EU law”.

<sup>(10)</sup> S.S.I. 2011/228, relevant amending instruments are S.I. 2011/1043S.S.I. 2018/391.

<sup>(11)</sup> 1990 c.43, relevant amending instrument is S.S.I. 2011/226.

<sup>(12)</sup> S.S.I. 2003/235, relevant amending instruments are S.S.I. 2009/247, S.S.I. 2011/226, S.S.I. 2012/360 and S.I. 2011/1043.

<sup>(13)</sup> S.I. 1996/972, amended by regulation 7 of these regulations. Previous relevant amending instrument is S.S.I. 2004/112.

<sup>(14)</sup> 1990 c.43, relevant amending instrument is S.S.I. 2011/226.

### **The End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003**

**10.**—(1) The End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003(**15**) are amended as follows.

- (2) In regulation 2 (interpretation)—
  - (a) the existing text becomes paragraph (1),
  - (b) before the definition of “depollution” insert—

““the 2011 Regulations” means the Waste Management Licensing (Scotland) Regulations 2011(**16**)
  - (c) omit the definition of “Directive”,
  - (d) in the definition of “end-of-life vehicle”, for “Article 3(1) of the Waste Directive” substitute “section 75(2)(a) of the Environmental Protection Act 1990(**17**) as read with section 75A of that Act”,
  - (e) omit the definition of “keeping”,
  - (f) in the definition of “recovery”, for “Annex II to the Waste Directive” substitute “Part III of schedule 4 of the 2011 Regulations”,
  - (g) omit the definition of “Waste Directive”,
  - (h) after paragraph (1) insert—

“(2) In these Regulations, references to “keeping or treatment” include, where appropriate, references to “keeping and treatment”.”.
- (3) In the schedule (conditions to be included in site licences)—
  - (a) in paragraph 1—
    - (i) the existing paragraph becomes sub-paragraph (1),
    - (ii) in that sub-paragraph for “Article 13 of the Waste Directive” substitute “sub-paragraph (2)”,
    - (iii) after that sub-paragraph insert—

“(2) The necessary measures must be taken to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular—

      - (a) without risk to water, air, soil, plants or animals,
      - (b) without causing a nuisance through noise or odours, and
      - (c) without adversely affecting the countryside or places of special interest.”.
  - (b) in paragraph 2, for “Article 13 of the Waste Directive” substitute “paragraph 1(2)”.

### **The Waste Management Licensing (Scotland) Regulations 2011**

**11.**—(1) The Waste Management Licensing (Scotland) Regulations 2011(**18**) are amended as follows.

- (2) In regulation 2 (interpretation)—
  - (a) in paragraph (1)—
    - (i) for the definition of “battery” substitute—

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(15) S.S.I. 2003/593, relevant amending instruments are S.S.I. 2011/226, S.S.I. 2015/438 and S.S.I. 2018/391.

(16) S.S.I. 2011/228, relevant amending instruments are S.I. 2011/1043S.S.I. 2018/391.

(17) 1990 c.43, relevant amending instrument is S.S.I. 2011/226.

(18) S.S.I. 2011/228, relevant amending instruments are S.I. 2011/1043S.S.I. 2018/391.

“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—

- (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,”

(ii) for the definition of “Directive waste” substitute—

“Directive waste” means anything that is waste within the meaning of section 75(2)(a) of the Environmental Protection Act 1990<sup>(19)</sup> as read with section 75A of that Act,”

(b) for paragraph (2)(c) substitute—

“(c) “the treatment conditions” are—

- (i) treatment shall, as a minimum, include removal of all fluids and acids, and
- (ii) treatment and any storage, including temporary storage, at treatment facilities shall take place in sites with impermeable surfaces and suitable weatherproof covering or in suitable containers, and”.

(3) For regulation 11 (conditions of site licences: treatment of WEEE) substitute—

**“Conditions of site licences: treatment of WEEE**

**11.—**(1) A site licence which is granted or varied by the waste regulation authority and which authorises the storage or treatment (or both) of WEEE must contain such conditions as it considers necessary to ensure that storage or treatment (or both) of WEEE is carried out in accordance with the requirements in paragraph (2).

(2) For the purposes of paragraph (1), the requirements are—

- (a) in relation to treatment other than preparation for re-use, all fluids are removed and further relevant treatment is carried out in accordance with Annex VII to the WEEE Directive,
- (b) best available treatment, recovery and recycling techniques are used,
- (c) the waste is stored in accordance with paragraph 1 of Annex VIII to the WEEE Directive,
- (d) the waste is treated in accordance with paragraph 2 of Annex VIII to the WEEE Directive, and
- (e) the minimum recovery targets set out in Annex V to the WEEE Directive are met.

(3) In this regulation, “best available treatment, recovery and recycling techniques” has the same meaning as in the document published jointly by the Department for Environment, Food and Rural Affairs, the Welsh Assembly Government and the Scottish Executive on 27th November 2006, entitled “Guidance on Best Available Treatment, Recovery and Recycling Techniques (BATRRT) and Treatment of Waste Electrical and Electronic Equipment (WEEE)<sup>(20)</sup>”.

(4) In regulation 13(2)(b) (conditions of site licences: incineration of waste industrial and automotive batteries), for “EU legislation” substitute “retained EU law”.

<sup>(19)</sup> 1990 c.43, relevant amending instrument is S.S.I 2011/226.

<sup>(20)</sup> See <http://archive.defra.gov.uk/environment/waste/producer/electrical/documents/weee-batrtrt-guidance.pdf>. Paper copies can be obtained from the SEPA National Waste Team, Strathallan House, Castle Business Park, Stirling, FK9 4TZ.



(5) In regulation 17 (exemptions from waste management licensing)—

(a) for paragraph (8) substitute—

“(8) In the case of a person carrying on an exempt activity which is a controlled activity, paragraph (1) applies only if that person—

(a) takes all reasonable steps to secure efficient and sustainable water use, and

(b) complies with the requirements of the retained EU law which implemented —

(i) [Directive 2006/118/EC](#) of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration<sup>(21)</sup> as last amended by Commission [Directive 2014/80/EU](#)<sup>(22)</sup> (“the Groundwater Directive”), and

(ii) [Directive 2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy<sup>(23)</sup> as last amended by Commission [Directive 2014/101/EU](#)<sup>(24)</sup> (“the Water Framework Directive”).”

(6) In regulation 23(2)(d) (register of exempt activities: requirements in respect of recovery and storage of scrap metal or waste motor vehicles), in the words after head (iv), for “referred to in” to the end substitute “set out in paragraph 6(1)(a) of schedule 4, and”.

(7) In regulation 29 (waste framework Directive), omit “(which implements certain provisions of the Directive)”.

(8) In schedule 4 (waste framework directive)—

(a) in Part I (general)—

(i) in paragraph 2 (duties of the waste regulation authority)—

(aa) in sub-paragraph (2)(b) at the end insert “and”,

(bb) in sub-paragraph (2)(c) omit “and”,

(cc) omit sub-paragraph (2)(d),

(dd) after sub-paragraph (3) insert—

“(4) The waste regulation authority must refuse to issue a permit where it considers that the intended method of treatment is unacceptable from the point of view of environmental protection and, in particular, when the method is not in accordance with paragraph 6(1)(a) of this schedule.”

(ii) for paragraph 6(3) (relevant objectives) substitute—

(a) “(3) The waste hierarchy is to be applied in a way which —

(i) delivers the best environmental outcome,

(ii) takes account of—

(aa) the environmental principles of precaution and sustainability,

(bb) technical feasibility,

(cc) economic viability,

(dd) the protection of resources, including reducing overall impacts of resource use and improving efficiency of such use,

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<sup>(21)</sup> OJ L 372, 27.12.2006, p.19.

<sup>(22)</sup> OJ L 182, 21.6.2014, p.52.

<sup>(23)</sup> OJ L 327, 22.12.2000, p.1.

<sup>(24)</sup> OJ L 311, 31.10.2014, p.32.

- (ee) the overall environmental, human health and social impacts,
- (b) the hierarchy may be departed from for particular types of waste where justified in order to ensure the best environmental outcome is delivered, and by reference to the overall impact of the generation and management of such types of waste.”
- (b) in Part II (waste disposal operations), in the text above the table, in the second sentence, for “In accordance with Article 13 of the Directive waste” substitute “Waste”,
- (c) in Part III (waste recovery operations), in the text above the table, in the second sentence, for “In accordance with Article 13 of the Directive waste” substitute “Waste”.