
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 276

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

PART 2

Amendments to the Environmental Liability (Scotland) Regulations 2009

- 2.—(1) The Environmental Liability (Scotland) Regulations 2009(1) 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](#)”(2) 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(3),”,
 - (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),

(1) [S.S.I. 2009/266](#), amended by [S.I. 2011/1043](#), [S.S.I. 2011/116](#) and [S.S.I. 2015/214](#).

(2) Definition inserted by [S.S.I. 2015/214](#).

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

- (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—
 - (a) Council [Directive 96/61/EC](#) of 24 September 1996 concerning the integrated pollution prevention and control(4) 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(5) 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)(6).
- 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(7),
 - (b) [Directive 2006/12/EC](#) of the European Parliament and of Council of 5 April 2006 on waste(8),
 - (c) [Directive 2008/98/EC](#) of the European Parliament and of the Council of 19 November 2008 on waste(9).
- (2) The operation of—
- (a) landfill sites under Council [Directive 1999/31/EC](#) of 26 April 1999 on the landfill of waste(10), 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(11), or

(4) 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).

(5) 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).

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

(7) 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).

(8) 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).

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

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

(11) 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).

- (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(12)).”
- (b) for paragraph 4 substitute—
- “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(13),
- (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(14).”
- (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(15),
- (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(16),
- (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(17),
- (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(18),
- (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(19) or as defined in Article 3(1)(a) of

(12) [S.I. 1989/1263](#).

(13) 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).

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

(15) 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).

(16) 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.).

(17) 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).

(18) 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).

(19) 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).

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⁽²⁰⁾.

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

- (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⁽²¹⁾,
 - (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⁽²²⁾,
 - (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⁽²³⁾,
 - (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⁽²⁴⁾,
 - (e) [Directive 2008/68/EC](#) of the European Parliament and of the Council of 24th September 2008 on the inland transport of dangerous goods⁽²⁵⁾,”
- (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⁽²⁶⁾”.

⁽²⁰⁾ OJ L 167, 27.6.2012, p.1, last amended by Regulation (EU) No. 334/2014 (OJ L 103, 5.4.2014, p.22).

⁽²¹⁾ 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).

⁽²²⁾ 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).

⁽²³⁾ 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).

⁽²⁴⁾ OJ L 208, 5.8.2002, p.10, last amended by Commission [Directive 2014/100/EU](#) (OJ L 308, 29.10.2014, p.82).

⁽²⁵⁾ OJ L 260, 30.9.2008, p.13, last amended by Commission [Directive \(EU\) 2018/1846](#) (OJ L 299, 26.11.2018, p.58).

⁽²⁶⁾ OJ L 125, 21.5.2009, p.75.