
DRAFT STATUTORY INSTRUMENTS

2019 No.

**The Waste (Miscellaneous Amendments)
(EU Exit) Regulations 2019**

PART 4

Amendment and revocation of retained direct EU legislation

CHAPTER 1

Regulations

Council Regulation (EU) No 333/2011 establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC of the European Parliament and of the Council

9.—(1) Council Regulation (EU) No 333/2011 establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC of the European Parliament and of the Council is amended as follows.

(2) In Article 2—

(a) the existing text becomes paragraph 1;

(b) in that paragraph—

(i) in point (e), in the definition of “importer”—

(aa) for “Union” in the first place it occurs substitute “United Kingdom”;

(bb) for “customs territory of the Union” substitute “United Kingdom”;

(ii) after point (h), insert—

“(i) “competent authority” means—

(i) in relation to England, the Environment Agency;

(ii) in relation to Wales, the Natural Resources Body for Wales;

(iii) in relation to Scotland, the Scottish Environment Protection Agency;

(iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

(j) “EU-derived domestic legislation” has the meaning given by section 2(2) of the European Union (Withdrawal) Act 2018;

(k) “local authority” means—

(i) in England outside Greater London—

— a district council,

— a county council, or

— the Council of the Isles of Scilly;

- (ii) in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - (iii) in Wales—
 - a county council, or
 - a county borough council;
 - (iv) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
 - (v) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972.”.
- (3) After Article 2 insert—

“Article 2A

Modification of Directive 2008/98/EC of the European Parliament and of the Council

1. For the purposes of this Regulation, a reference to [Directive 2008/98/EC](#) is a reference to [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with this Article.
2. 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 competent authority, appropriate authority or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion.
3. Article 2 is to be read as if—
 - (a) in paragraph 2—
 - (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
 - (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
 - (iii) in point (d), as it extends to England and Wales, for the words from “[Directive 2006/21/EC](#)” to the end there were substituted “the Mining Waste Directive”;
 - (iv) for point (d), as it extends to Scotland, there were substituted—
 - “(d) extractive waste, which has the same meaning as in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010.”;
 - (v) for point (d), as it extends to Northern Ireland, there were substituted—
 - “(d) extractive waste, which has the same meaning as in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.”;
 - (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
 - (c) paragraph 4 were omitted.

4. Article 3(20) is to be read as if for “Article 2(11) of [Directive 96/61/EC\(1\)](#)” there were substituted “Article 3(10) of the Industrial Emissions Directive”.
5. Article 5 is to be read as if paragraph 2 were omitted.
6. Article 6 is to be read as if—
 - (a) paragraphs 1 to 3 were omitted;
 - (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, [Commission Regulation \(EU\) No 1179/2012](#) or [Commission Regulation \(EU\) No 715/2013](#) applies”;
 - (ii) the second sentence were omitted.
7. Article 7 is to be read as if—
 - (a) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
 - (b) after paragraph 1, there were inserted—

“1A. Paragraph 1 is subject to—

 - (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 9(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as hazardous waste;
 - (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 10(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005 or regulation 9(2) or 10(2) of the Hazardous Waste Regulations (Northern Ireland) 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties);
 - (e) a determination by the Scottish Ministers that a specific batch or type of waste—

(1) OJ No L 257, 10.10.1996, p 26, repealed by [Directive 2008/1/EC](#) of the European Parliament and of the Council (OJ No L 24, 29.1.2008, p 8).

- (i) is to be treated as hazardous waste because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex 3;
 - (ii) is to be treated as non-hazardous waste because the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex 3.”;
 - (c) paragraphs 2, 3 and 5 were omitted;
 - (d) after paragraph 6 there were inserted—
 - “6A. In this Article, the “list of waste” means the list established by Commission [Decision 2000/532/EC](#).”;
 - (e) paragraph 7 were omitted.
8. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
9. In paragraph 2, “the appropriate authority” means—
- (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Environment Protection Agency;
 - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

Article 2B

Meaning of “the Mining Waste Directive” and “the Industrial Emissions Directive”

1. In Article 2A(3)(a)(iii), “the Mining Waste Directive” means [Directive 2006/21/EC](#) of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs 2 and 3.
2. Article 2 is to be read as if—
- (a) in paragraph 2(c), the reference to Article 11(3)(j) of [Directive 2000/60/EC](#) were a reference to that Article read in accordance with paragraph 7 of this Article;
 - (b) paragraphs 3 and 4 were omitted.
3. Article 3(1) is to be read as if, for “Article 1(a) of [Directive 75/442/EEC](#)” there were substituted “Article 3(1) of [Directive 2008/98/EC](#), as read with Articles 5 and 6 of that Directive”.
4. In Article 2A(4), “the Industrial Emissions Directive” means [Directive 2010/75/EU](#) of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control⁽²⁾), read in accordance with paragraphs 5 and 6.
5. Article 3 is to be read as if—
- (a) in point (1)(a), for the words from “Article 1” to the end there were substituted “Article 4(78) of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation⁽³⁾”;

(2) OJ L No. 334, 17.12.2010, p 17, as corrected by a corrigendum (OJ No L 158, 19.6.2012, p 25).

(3) OJ No L 13, 17.1.2014, p 1, as corrected by a corrigendum (OJ No L 72, 17.3.2016, p 69).

- (b) in point (10)(b), for “Member State in question” there were substituted “United Kingdom”;
 - (c) in point (23), for the words from “point 1” to the end there were substituted “point 1 of the second subparagraph of Article 2 of Council [Directive 2009/158/EC](#) on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs⁽⁴⁾”;
 - (d) in point (37), for the words from “of the European” to the end there were substituted “, read with Articles 5 and 6 of that Directive”.
6. Annex 1 is to be read as if—
- (a) in the words before point 1, the second paragraph were omitted;
 - (b) in point 5.3—
 - (i) in point (a), in the words before point (i), for “Council [Directive 91/271/EEC](#) of 21 May 1991 concerning urban waste-water treatment⁽⁵⁾” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994⁽⁶⁾”;
 - (ii) in point (b), in the words before point (i), for “[Directive 91/271/EEC](#)” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;
 - (c) in point 5.4, the reference to Council [Directive 1999/31/EC](#) of 26 April 1999 on the landfill of waste⁽⁷⁾ were a reference to the Landfill Directive;
 - (d) in point 6.9, for “[Directive 2009/31/EC](#)⁽⁸⁾” there were substituted “the EU-derived domestic legislation which transposed [Directive 2009/31/EC](#) in respect of England and Wales⁽⁹⁾”;
 - (e) in point 6.11, for “[Directive 91/271/EEC](#)” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”.
7. For the purposes of paragraph 2(a), Article 11(3)(j) of [Directive 2000/60/EC](#) is to be read as if—
- (a) the reference to “Member States” were a reference to the appropriate authority or the competent authority;
 - (b) in the words after the final indent, “environmental objectives”—
 - (i) in relation to the Northumbria River Basin District, means the environmental objectives referred to in the WFD Regulations as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
 - (ii) in relation to the Solway Tweed River Basin District, has the same meaning as in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;
 - (iii) in relation to a river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations.

(4) OJ No L 343, 22.12.2009, p 74, as last amended by Commission Implementing [Decision 2011/879/EU](#) (OJ No L 343, 23.12.2011, p 105).

(5) OJ No L 135, 30.5.1991, p 40, as last corrected by a corrigendum (OJ No L 189, 17.7.2015, p 41).

(6) [S.I. 1994/2841](#), amended by [S.I. 2003/1788](#), [2005/2035](#), [2010/675](#), [2011/556](#), [2013/755 \(W. 90\)](#) and [2016/1154](#).

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

(8) OJ No L 140, 5.6.2009, p 114, as last amended by Decision (EU) 2018/853 of the European Parliament and of the Council (OJ No L 150, 14.6.2018, p 155).

(9) See for example: [S.I. 2010/1513](#), [2221](#), [2011/1483](#), [2305](#), [2453](#), [2012/461](#), [2013/2696](#), [2016/1154](#), [2017/571](#).

8. In paragraph 6(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Council [Directive 2011/97/EU](#)(**10**), and read as if, in Article 2—

(a) for point (a) there were substituted—

“**(a)** “waste” means anything that—

(i) is waste within the meaning of Article 3(1) of [Directive 2008/98/EC](#), as read with Articles 5 and 6 of that Directive, and

(ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;

(b) for point (c) there were substituted—

“**(c)** “hazardous waste” has the meaning given in Article 3(2) of [Directive 2008/98/EC](#);”.

9. In paragraph 7—

(a) in point (a), “the appropriate authority” has the meaning given by Article 2A(9);

(b) in point (b), “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.”.

(4) In Article 6—

(a) in paragraph 5, in the first sentence, omit the words from “, or any other” to “(EMAS)”;

(b) after paragraph 6 insert—

“**6A.** In paragraph 6, “independent external verifier” means—

(a) a conformity assessment body as defined in Regulation ([EC](#)) No 765/2008;

(b) a conformity assessment body as defined in Regulation ([EC](#)) No 765/2008 as it has effect in EU law(**11**);

(c) any other environmental verifier as defined in Article 2(20)(b) of Regulation ([EC](#)) No 1221/2009 as it has effect in EU law(**12**).”.

(5) After Article 6, insert—

“Article 6A

EU exit: transitional provision

1. Paragraph 3 applies to verification obtained in compliance with Article 6 as it had effect immediately before exit day.

2. Paragraph 3 also applies where—

(a) before exit day, a producer or supplier has submitted a management system to a conformity assessment body or an environmental verifier for verification in compliance with Article 6 as it had effect immediately before exit day, and

(b) after exit day, the producer or supplier obtains that verification.

3. Where this paragraph applies, the verification obtained is deemed to be verification for the purposes of Article 6.

4. In paragraph 2, “supplier” means the supplier of a producer or of an importer.”.

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

(11) OJ No L 218, 13.8.2008, p 30.

(12) OJ No L 342, 22.12.2009, p 1, as last amended by Commission Regulation (EU) 2017/1505 (OJ No L 222, 29.8.2017, p 1).

- (6) Omit Article 7.
- (7) After Article 7, omit the words from “This Regulation shall” to “Member States”.
- (8) In Annexes 1 and 2, in the first column—
 - (a) in Section 1.5, omit the second sentence;
 - (b) in Section 3.3(a), for the words from “Article 6” in the first place it occurs to the end substitute—

“the EU-derived domestic legislation that transposed—

 - (i) Article 6 of [Directive 2000/53/EC](#) of the European Parliament and of the Council on end-of life vehicles⁽¹³⁾, as last amended by Commission Directive (EU) 2017/2096⁽¹⁴⁾, and
 - (ii) Article 8 of [Directive 2012/19/EU](#) of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE), as it had effect immediately before 4th July 2018⁽¹⁵⁾.”.
- (9) In Annex 3, in the sixth entry of the table, in the second column, for “customs territory of the Union” substitute “United Kingdom”.

⁽¹³⁾ OJ No L 269, 21.10.2000, p 34.

⁽¹⁴⁾ OJ No L 299, 16.11.2017, p 24. See for example: generally, [S.I. 2003/2635](#), [2005/263](#); in relation to England and Wales, [S.I. 2016/1154](#); in relation to Scotland, [S.S.I. 2003/593](#); in relation to Northern Ireland, [S.R. 2003 No. 493](#).

⁽¹⁵⁾ See for example [S.I. 2013/3113](#) and [S.R. 2014 No.202](#).