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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

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

**PART 3**

Amendment of primary legislation

**Control of Pollution (Amendment) Act 1989**

4. Section 1(3) of the Control of Pollution (Amendment) Act 1989<sup>(1)</sup> is amended as follows—
- (a) after paragraph (a), omit the final “or”;
  - (b) omit paragraph (b).

**Environmental Protection Act 1990**

- 5.—(1) The Environmental Protection Act 1990 is amended as follows.
- (2) In section 57(8), as it extends to England and Wales, in the definition of “waste”, after “Waste Framework Directive” (as substituted by regulation 2(4)), insert “, as read with Articles 5 and 6 of that Directive,”.
- (3) In section 75(1A) (as inserted by regulation 2(6)(a)), at the end insert “, and read in accordance with section 75A”.
- (4) After section 75 insert—

**“75A. Modification of the Waste Framework Directive**

(1) For the purposes of this Part, the Waste Framework Directive is to be read in accordance with this section.

(2) A reference to one or more member States in a provision of the Waste Framework Directive imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, waste regulation 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 in respect of England, Wales or Scotland.

- (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”;

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(1) 1989 c. 14.

- (iii) in point (d), as it extends to England and Wales, for the words from “[Directive 2006/21/EC\(2\)](#)” 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 ([S.S.I. 2010/60](#))(3).”;
- (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
- (c) paragraph 4 were omitted.
- (4) Article 5 is to be read as if paragraph 2 were omitted.
- (5) 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.
- (6) 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 ([S.I. 2005/894](#))(4), or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 ([S.I. 2005/1806 \(W.138\)](#))(5), 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, 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, or regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;

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(2) OJ No L 102, 11.4.2006, p 15, as last amended by Regulation ([EC](#)) No 596/2009 of the European Parliament and of the Council (OJ No L 188, 18.7.2009, p 14).

(3) [S.S.I. 2010/60](#).

(4) [S.I. 2005/894](#); relevant amending instruments are [S.I. 2011/988](#) and [2015/1360](#).

(5) [S.I. 2005/1806 \(W. 138\)](#); relevant amending instruments are [S.I. 2011/971 \(W. 141\)](#) and [2015/1417 \(W. 141\)](#). The functions of the National Assembly for Wales under these Regulations were transferred to the Welsh Ministers by virtue of paragraph 30(1) of Schedule 11 to the Government of Wales Act 2006 (c. 32).

- (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<sup>(6)</sup> (lists of waste displaying hazardous properties);
- (e) a determination by the Scottish Ministers that a specific batch or type of waste—
  - (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.
- (7) Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
- (8) In subsection (2)—

“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 Ministers;

“local authority” means—

  - (a) in England outside Greater London—
    - (i) a district council,
    - (ii) a county council, or
    - (iii) the Council of the Isles of Scilly;
  - (b) in Greater London—
    - (i) the council of a London borough,
    - (ii) the Common Council of the City of London,
    - (iii) the Sub-Treasurer of the Inner Temple, or
    - (iv) the Under-Treasurer of the Middle Temple;
  - (c) in Wales—
    - (i) a county council, or
    - (ii) a county borough council;
  - (d) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(7)</sup>.”.

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<sup>(6)</sup> The functions of the National Assembly for Wales under section 62A(2) were transferred to the Welsh Ministers by virtue of paragraph 30(1) of Schedule 11 to the Government of Wales Act 2006.

<sup>(7)</sup> [1994 c. 39](#).

## Waste and Emissions Trading Act 2003

6.—(1) The Waste and Emissions Trading Act 2003 is amended as follows.

(2) In section 1—

- (a) in subsection (1), for “must” substitute “may”;
- (b) omit subsection (2);
- (c) for subsection (4) substitute—

“(4) The power under subsection (1)(a) is exercisable only with the agreement of the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

(4A) The power under subsection (1)(c) is exercisable only with the agreement of the Scottish Ministers.

(4B) The power under subsection (1)(d) is exercisable only with the agreement of the Welsh Ministers.

(4C) The power under subsection (1)(e) is exercisable only with the agreement of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.”;

(d) omit subsection (5).

(3) In section 23, for subsection (3) substitute—

“(3) The power under subsection (2) is exercisable only with the agreement of the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.”.

(4) In section 37—

(a) in subsection (2)—

(i) after “section” insert “and section 37A”;

(ii) at the end (and, in that subsection as it extends to England and Wales and Scotland, after the insertion made by regulation 3(2)) insert “, and read in accordance with subsections (3) to (9)”;

(b) after subsection (2) insert—

“(3) A reference to one or more member States in a provision of the Waste Directive imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency 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 in respect of England, Wales, Scotland or Northern Ireland.

(4) 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” (see section 37A);

(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 (S.S.I. 2010/60).”;
- (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 (S.R. 2015 No. 85)(8).”;
- (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
- (c) paragraph 4 were omitted.
- (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 (S.I. 2005/894), or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W.138)), 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 (S.R. 2005 No. 300)(9), 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;

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(8) S.R. 2015 No. 85.

(9) S.R. 2005 No. 300; relevant amending instruments are [S.R. 2005 No. 301](#), [S.R. 2011 No. 127](#) and [S.R. 2015 No. 288](#).

- (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—
    - (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 this section—
- “appropriate agency” means—
- (a) in relation to England, the Environment Agency;
  - (b) in relation to Wales, the Natural Resources Body for Wales;
  - (c) in relation to Scotland, the Scottish Environment Protection Agency;
  - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
- “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 Ministers;
  - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
- “local authority” means—
- (a) in England outside Greater London—
    - (i) a district council,
    - (ii) a county council, or
    - (iii) the Council of the Isles of Scilly;
  - (b) in Greater London—

- (i) the council of a London borough,
  - (ii) the Common Council of the City of London,
  - (iii) the Sub-Treasurer of the Inner Temple, or
  - (iv) the Under-Treasurer of the Middle Temple;
  - (c) in Wales—
    - (i) a county council, or
    - (ii) a county borough council;
  - (d) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
  - (e) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972<sup>(10)</sup>.
- (5) After section 37 insert—

**“37A. Meaning of “the Mining Waste Directive” in section 37: England and Wales**

(1) In section 37(4)(a)(iii), “the Mining Waste Directive” means [Directive 2006/21/EC](#) of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries, read in accordance with subsections (2) to (5).

(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](#)<sup>(11)</sup> were a reference to that Article read in accordance with subsection (4);
- (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/EC](#)<sup>(12)</sup>” there were substituted “Article 3(1) of the Waste Directive, as read with Articles 5 and 6 of that Directive”.

(4) For the purposes of subsection (2)(a), Article 11(3)(j) of [Directive 2000/60/EC](#) of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy is to be read as if—

- (a) the reference to “Member States” were a reference to the appropriate authority or appropriate agency;
- (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 ([S.I. 2003/3245](#))<sup>(13)</sup>;
  - (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 ([S.I. 2004/99](#))<sup>(14)</sup>;
  - (iii) in relation to a river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations.

<sup>(10)</sup> [1972. c. 9 \(N.I.\)](#); section 1 was amended by the Local Government (Boundaries) Act (Northern Ireland) 2008 ([c. 7 \(N.I.\)](#)), section 3(1) and [S.I. 1985/454](#).

<sup>(11)</sup> OJ No L 327, 22.12.2000, p 1, as last amended by Commission [Directive 2014/101/EU](#) (OJ No L 311, 31.10.2014, p 32).

<sup>(12)</sup> OJ No L 194, 25.7.1975, p 47, repealed by [Directive 2006/12/EC](#) of the European Parliament and of the Council (OJ No L 114, 27.4.2006, p 9).

<sup>(13)</sup> [S.I. 2003/3245](#), amended by [S.I. 2016/139](#) and [2017/407](#).

<sup>(14)</sup> [S.I. 2004/99](#), amended by [S.I. 2016/139](#); there are other amending instruments but none is relevant.

(5) In subsection (4)—

“appropriate agency” and “appropriate authority” have the meanings given in section 37(9);

“the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407)(15).”.

**Saving: regulations under section 1(1) or 23(2) of the Waste and Emissions Trading Act 2003**

7. The amendments made by regulation 6(2) or 6(3) do not affect any regulations made under section 1(1) or 23(2) of the Waste and Emissions Trading Act 2003 before the coming into force of this Part.

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(15) S.I. 2017/407.