

DRAFT STATUTORY INSTRUMENTS

2020 No.

The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020

PART 5

Amendment and revocation of retained direct EU legislation

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

16.—(1) 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 is amended as follows.

(2) Omit Articles 4, 5 and 6.

(3) In the Annex, in the “Definitions” section, before point 1 insert—

“**A1.** ‘the Waste Framework Directive’ means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851, and read as if, in Annex 3, in entry HP 9, in the second sentence, “in the Member States” were omitted;

A2. ‘waste’, ‘hazardous waste’ and ‘non-hazardous waste’ have the meanings given in the Waste Framework Directive;”.

(4) In the Annex, in the “Assessment and Classification” section—

(a) for “Directive 2008/98/EC”, in each place that it occurs, substitute “the Waste Framework Directive”;

(b) in paragraph 2 (classification of waste as hazardous)—

(i) in the first subparagraph, for the words from “pursuant” to the end, substitute “for the purposes of any legislation relating to hazardous waste”;

(ii) after that subparagraph, insert—

“This is subject to any legislation which provides, or gives a person power to determine, that—

(a) waste of a kind which is listed as hazardous waste in the list of wastes is to be treated as non-hazardous waste in particular cases or circumstances (including in the case of a particular batch or consignment of waste); or

(b) waste of a kind which is listed as non-hazardous waste in the list of wastes is to be treated as hazardous waste in particular cases or circumstances (including in the case of a particular batch or consignment of waste).”;

- (iii) in the second subparagraph (commencing “For those wastes”), in the first indent, in the second sentence, omit “in the Member States”.

Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC of the European Parliament and of the Council

17.—(1) Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC of the European Parliament and of the Council is amended as follows.

(2) In Article 1—

- (a) the existing text is numbered paragraph 1;
- (b) in paragraph 1, for “waste facilities in accordance with Article 17 of Directive 2006/21/EC” substitute “mining waste facilities”;
- (c) after paragraph 1 insert—

“2. In this Decision—

“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⁽¹⁾, read with the modifications in Article 1A;

“the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851;

“Category A facility” or “Category A waste facility” means a mining waste facility classified as Category A in accordance with the criteria in Annex 3 to the Mining Waste Directive;

“competent authority” means an authority responsible for carrying out inspections of mining waste facilities under the inspection provisions;

“the inspection provisions” means the provisions of the relevant mining waste legislation which, immediately before IP completion day, implemented Article 17 of the Mining Waste Directive;

“mining waste facility” or “waste facility”—

- (a) in relation to England and Wales, has the meaning given to “mining waste facility” by paragraph 2(1) of Schedule 20 to the Environmental Permitting (England and Wales) Regulations 2016;
- (b) in relation to Scotland, has the meaning given to “waste facility” by regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010⁽²⁾;
- (c) in relation to Northern Ireland, has the meaning given to “waste facility” by regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015⁽³⁾;

“the relevant mining waste legislation” means—

- (a) in relation to England and Wales, Schedule 20 to the Environmental Permitting (England and Wales) Regulations 2016;

(1) OJ L 102, 11.4.2006, p. 15.

(2) S.S.I. 2010/60, to which there are amendments not relevant to these Regulations.

(3) S.R. 2015 No. 85, to which there are amendments not relevant to these Regulations.

(b) in relation to Scotland, the Management of Extractive Waste (Scotland) Regulations 2010;

(c) in relation to Northern Ireland, the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015;

“waste management plan” has the meaning given in the relevant mining waste legislation.

3. Other expressions used in this Decision which are defined in the Mining Waste Directive have the meanings given in that Directive.”

(3) After Article 1 insert—

“Article 1A

1. For the purposes of Article 1(2) and (3), the Mining Waste Directive is to be read with the modifications in paragraphs 2 and 3.

2. Article 3 is to be read as if—

(a) in point (1), for “Article 1(a) of [Directive 75/442/EEC](#)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;

(b) in point (2), for “Article 1(4) of Council [Directive 91/689/EEC](#) of 12 December 1991 on hazardous waste” there were substituted “Article 3(2) of the Waste Framework Directive”;

(c) in point (24), the words from “in accordance” to “takes place,” were omitted;

(d) point (27) were omitted.

3. Annex 3 is to be read as if—

(a) in the second indent, for “[Directive 91/689/EEC](#)” there were substituted “the Waste Framework Directive”;

(b) in the third indent, for “Directives [67/548/EEC](#) or [1999/45/EC](#)” there were substituted “Regulation [\(EC\) 1272/2008](#) of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures”.

Article 1B

1. For the purposes of Article 1A, “the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851, and read with the modifications in paragraphs 2 to 4.

2. Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

- (c) paragraphs 2 and 3 were omitted.
3. Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
4. Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
 - “A1. In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted
5. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.”.
- (4) Omit Article 2.
- (5) In Part A of the Annex, in the first paragraph—

- (a) for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
 - (b) for “Article 17 of that Directive” substitute “the inspection provisions”.
- (6) In Part B of the Annex, in the first paragraph, for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”.
- (7) In Part C of the Annex—
- (a) in paragraph 1, in the first sub-paragraph—
 - (i) in point (a)—
 - (aa) for “the entire territory of the Member State” substitute “each part of the United Kingdom”;
 - (bb) for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
 - (ii) in point (e)—
 - (aa) omit “national or Union”;
 - (bb) for “facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
 - (iii) in point (h), for “Article 17 of [Directive 2006/21/EC](#)” substitute “the inspection provisions”;
 - (b) in paragraph 2.1—
 - (i) in point (c), for “waste facility under Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facility”;
 - (ii) in point (d)(iv), for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
 - (iii) in point (d)(viii)—
 - (aa) omit “national or Union”;
 - (bb) for “the waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
 - (c) in paragraph 2.2, in point (d), omit “Union”;
 - (d) in paragraph 2.3—
 - (i) in point (a), omit “according to Article 11(3) or Article 12(6) of [Directive 2006/21/EC](#)”;
 - (ii) in point (b), omit “Union”;
 - (e) in paragraph 3.1, in point (f), for “[Directive 2003/4/EC](#) of the European Parliament and of the Council” substitute “the Environmental Information Regulations 2004(4) or the Environmental Information (Scotland) Regulations 2004(5)”.
- (8) In Part D of the Annex—
- (a) in paragraph 1—
 - (i) in point (f), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
 - (ii) in point (h), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”;

(4) [S.I. 2004/3391](#).

(5) [S.S.I. 2004/520](#), amended by [S.S.I. 2013/127](#).

- (b) in paragraph 2—
 - (i) in point (l), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
 - (ii) in point (o), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”;
- (c) in paragraph 3—
 - (i) in the heading, omit “in accordance with Article 12(3) of [Directive 2006/21/EC](#)”;
 - (ii) in point (b), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
 - (iii) in point (g), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”;
- (d) in paragraph 4—
 - (i) in point (d), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
 - (ii) in point (e), omit “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)”;
 - (iii) in point (j), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”.

Revocations

18. The instruments listed in the Schedule are revoked.