
DRAFT STATUTORY INSTRUMENTS

2021 No.

**The International Waste Shipments
(Amendment) (EU Exit) Regulations 2021**

PART 3

Amendments to retained direct EU legislation

Substitution of Article 2A

12. For Article 2A substitute—

“Article 2A

Meaning of “Directive 2008/98/EC”

1. In this Regulation, “[Directive 2008/98/EC\(1\)](#)” means (except in the expression “[Directive 2008/98/EC](#) as amended from time to time”) [Directive 2008/98/EC](#) as last amended by Directive (EU) 2018/851(**2**) and read in accordance with paragraphs 2 to 6.

2. Article 2 of [Directive 2008/98/EC](#) 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) for point (d), in relation 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(**3**).”;

(b) after paragraph 2 there were inserted—

“**2A.** In paragraph 2(d), as it relates to England and Wales, “[Directive 2006/21/EC](#) of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries(**4**)” means [Directive 2006/21/EC](#) read as if—

(a) in Article 2 of [Directive 2006/21/EC](#)—

(i) in paragraph 2(c), “Article 11(3)(j) of [Directive 2000/60/EC\(5\)](#)” had the meaning given by paragraph 2B;

(ii) paragraphs 3 and 4 were omitted;

(1) OJ No L 312, 22.11.2008, p. 3.

(2) OJ No L 150, 14.6.2018, p. 109.

(3) [S.S.I. 2010/60](#), amended by [S.S.I. 2011/226](#). There are other amending instruments but none is relevant.

(4) OJ No L 102, 11.4.2006, p. 15.

(5) OJ No L 327, 22.12.2000, p. 1.

- (b) in Article 3(1) of [Directive 2006/21/EC](#), for “Article 1(a) of [Directive 75/442/EC](#)” there were substituted “Article 3(1) of [Directive 2008/98/EC](#)”.

2B. For the purposes of paragraph 2A(a)(i), “Article 11(3)(j) of [Directive 2000/60/EC](#)” means Article 11(3)(j) of [Directive 2000/60/EC](#) read as if—

- (a) the first reference to “Member States” were a reference to—
 - (i) in relation to England, the Secretary of State or the Environment Agency;
 - (ii) in relation to Scotland, the Scottish Ministers or the Scottish Environment Protection Agency;
 - (iii) in relation to Wales, the Welsh Ministers or the Natural Resources Body for Wales;
- (b) in the words after the final indent, “environmental objectives”—
 - (i) in relation to the Northumbria River Basin District, means the objectives referred to in the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017⁽⁶⁾ as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003⁽⁷⁾;
 - (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⁽⁸⁾;
 - (iii) in relation to a river basin district within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, has the same meaning as in those regulations.”.

3. Article 5 of [Directive 2008/98/EC](#) 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 Secretary of State, in relation to England, the Welsh Ministers, in relation to Wales, or the Scottish Ministers, in relation to Scotland or the competent authority of dispatch (within the meaning of Article 2C(3) of Regulation [\(EC\) No 1013/2006](#)) for the purposes of this Article.”;

- (c) paragraphs 2 and 3 were omitted.

4. Article 6 of [Directive 2008/98/EC](#) is to be read as if—

⁽⁶⁾ S.I. 2017/407, amended by 2018/942, 2019/558, 2019/1290.

⁽⁷⁾ S.I. 2003/3245, amended by S.I. 2016/139, 2017/407, 2019/558.

⁽⁸⁾ S.I. 2004/99, amended by S.I. 2005/2035, 2008/1097, 2011/228, 2011/556, 2013/1675, 2016/139, 2016/1154, 2018/942, 2019/558, 2019/1290.

- (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 Secretary of State, in relation to England, the Welsh Ministers, in relation to Wales, or the Scottish Ministers, in relation to Scotland or the competent authority of dispatch (within the meaning of Article 2C(3) of Regulation (EC) No 1013/2006) 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 as referred to in paragraph 1A(a), the competent authority of dispatch (within the meaning of Article 2C(3) of Regulation (EC) No 1013/2006)”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The competent authority of dispatch (within the meaning of Article 2C(3) of Regulation (EC) No 1013/2006)”;
 - (bb) “by competent authorities” were omitted.
5. Article 7 of Directive 2008/98/EC 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.

6. Annex 3 to [Directive 2008/98/EC](#) is to be read as if—
- (a) in the entry for HP 9, in the second sentence, “in the Member States” were omitted;
 - (b) in the entry for HP 15, in the sentence immediately after Table 9, for “Member States” there were substituted “the competent authority of destination and dispatch determined in accordance with regulation 6 of the Transfrontier Shipment of Waste Regulations 2007”.”.