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DRAFT STATUTORY INSTRUMENTS

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**2022 No.**

The Waste and Agriculture (Legislative  
Functions) Regulations 2022

PART 2

Waste: retention of legislative functions

CHAPTER 4

Retention of functions from the Mining Waste Directive

**Power to modify non-essential elements**

- 10.—(1) The appropriate authority may, by regulations, make provision about—
- (a) technical guidelines for the establishment of the financial guarantee;
  - (b) technical guidelines for inspections of waste facilities in accordance with retained EU law that implemented Article 17 of the Mining Waste Directive;
  - (c) the completion of the technical requirements for waste characterisation set out in Annex 2 (waste characterisation) to the Mining Waste Directive;
  - (d) the interpretation of the definition of “inert waste” in Article 3(3) of the Mining Waste Directive;
  - (e) the definition of the criteria for the classification of waste facilities in accordance with Annex 3 (criteria for determining the classification of waste facilities) to the Mining Waste Directive;
  - (f) the determination of any standards for sampling and analysis methods required in connection with the technical implementation of the requirements of the Mining Waste Directive.
- (2) The provision which may be made under paragraph (1) includes modifying—
- (a) Commission [Decision 2009/335/EC](#) on the technical guidelines for the establishment of the financial guarantee in accordance with [Directive 2006/21/EC](#) of the European Parliament and of the Council concerning the management of waste from extractive industries<sup>(1)</sup>;
  - (b) Commission [Decision 2009/337/EC](#) on the definition of the criteria for the classification of waste facilities in accordance with Annex III of [Directive 2006/21/EC](#) of the European Parliament and of the Council concerning the management of waste from extractive industries<sup>(2)</sup>;

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(1) EUDN 2009/335, as amended by [S.I. 2019/620](#).

(2) EUDN 2009/337, as amended by [S.I. 2019/620](#).

- (c) Commission [Decision 2009/359/EC](#) completing the definition of inert waste in implementation of Article 22(1)(f) of [Directive 2006/21/EC](#) of the European Parliament and of the Council concerning the management of waste from extractive industries<sup>(3)</sup>;
  - (d) Commission [Decision 2009/360/EC](#) completing the technical requirements for waste characterisation laid down by [Directive 2006/21/EC](#) of the European Parliament and of the Council on the management of waste from extractive industries<sup>(4)</sup>;
  - (e) Commission Implementing [Decision \(EU\) 2020/248](#) laying down technical guidelines for inspections in accordance with Article 17 of [Directive 2006/21/EC](#) of [Directive 2006/21/EC](#) of the European Parliament and of the Council<sup>(5)</sup>.
- (3) Regulations under paragraph (1) may modify any subordinate legislation.
- (4) In this regulation—
- (a) in so far as it extends to England and Wales—
    - “financial guarantee” means the financial guarantee referred to in Article 14 of the Mining Waste Directive, as that Directive is read in accordance with paragraph 9 of Schedule 1A to the 2016 Regulations<sup>(6)</sup>;
    - “waste facility” has the meaning given to “mining waste facility” by paragraph 2(1) of Schedule 20 to the 2016 Regulations;
  - (b) in so far as it extends to Scotland, “financial guarantee” and “waste facility” have the meanings given by regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010<sup>(7)</sup>.

### **Power to update in light of scientific and technical progress**

- 11.**—(1) The appropriate authority may, by regulations—
- (a) modify any subordinate legislation which makes provision corresponding to an Annex to the Mining Waste Directive;
  - (b) make provision requiring (whether by modifying subordinate legislation, or otherwise) a reference to an Annex to the Mining Waste Directive (or a reference encompassing an Annex) to be read as a reference to that Annex with modifications.
- (2) The appropriate authority may only exercise the power in paragraph (1)—
- (a) to the extent that the authority considers that it is appropriate to do so as a result of scientific and technical progress, and
  - (b) with a view to achieving a high level of environmental protection.

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(3) EUDN 2009/359, as amended by [S.I. 2019/620](#).

(4) EUDN 2009/360, as amended by [S.I. 2019/620](#).

(5) EUDN 2020/248, as amended by [S.I. 2020/1540](#).

(6) [S.I. 2016/1154](#). Schedule 1A was inserted by [S.I. 2019/39](#).

(7) [S.S.I. 2010/60](#); relevant amending instruments are [S.S.I. 2011/226](#), [2019/273](#).