

**2020 No. 284**

**EXITING THE EUROPEAN UNION**

**ENVIRONMENTAL PROTECTION**

**The Waste (Amendment) (EU Exit) Regulations (Northern Ireland) 2020**

*Made* - - - - *26th November 2020*

*Coming into operation in accordance with regulation 1*

The Department of Agriculture, Environment and Rural Affairs(**a**) makes these Regulations in exercise of the powers conferred by sections 11 and 22 of, and paragraph 1 of Part 1 and paragraph 11M of Part 1C of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018(**b**).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Waste (Amendment) (EU Exit) Regulations (Northern Ireland) 2020 and come into operation immediately before IP completion day.

(2) In these Regulations—

- (a) “the appropriate authority” means the Northern Ireland department which, immediately before IP completion day, was responsible for compliance with an obligation or exercise of a discretion in Northern Ireland; and
- (b) “the Waste Framework Directive” means Directive 2008/98/EC(**c**) of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851(**d**).

(3) The Interpretation Act (Northern Ireland) 1954(**e**) applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

**Amendment of the Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011**

2.—(1) The Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011(**a**) is amended as follows.

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- (a) Formerly the Department of Agriculture and Rural Development (DARD see Article 3(4) of the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I.1)). DARD was renamed the Department of Agriculture, Environment and Rural Affairs (DAERA) by Article 1(2) of the Departments Act (Northern Ireland) 2016 (2016 c.5 (N.I)). The Department of the Environment was dissolved by section 1(9) of the Departments Act (Northern Ireland) 2016 and, by virtue of Article 8(1)(c) of the Departments (Transfer of Functions) Order (Northern Ireland) 2016, its functions for the purpose of these Regulations were transferred to the Department of Agriculture, Environment and Rural Affairs.
  - (b) 2018 c.16; paragraph 21(b) of Schedule 7 was amended by paragraph 53(2)(b) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).
  - (c) OJ No. L312, 22.11.2008, p. 3
  - (d) OJ No. L150, 14.6.2018, p. 109-140
  - (e) 1954 c.33

(2) In Article 3(1)—

(a) in the definition of “waste”, at the end insert—

“,

for this purpose Article 5(1) of that Directive is to be read as if the words “Member States shall take appropriate measures to ensure that” were omitted; and”;

(b) for the definition of “the Waste Directive” substitute—

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

### **Amendment of the Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019**

3. —(1) The Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019**(d)** are amended as follows.

(2) In these Regulations, for the words “exit day”, wherever they occur, substitute “IP completion day”.

(3) For regulation 5 substitute—

“**5.** Schedule 3 modifies specified EU Directives for the purposes of these Regulations; and for the purpose of—

- (a) the Pollution Control and Local Government (Northern Ireland) Order 1978**(e)**
- (b) the Waste and Contaminated Land (Northern Ireland) Order 1997**(f)**;
- (c) the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999**(g)**;
- (d) the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) Regulations (Northern Ireland) 2000**(h)**
- (e) the Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002**(i)**;
- (f) the Environment (Northern Ireland) Order 2002**(j)**;
- (g) the Waste Management Licensing Regulations (Northern Ireland) 2003**(k)**;
- (h) the Landfill Regulations (Northern Ireland) 2003**(l)**;
- (i) the Landfill Allowances Scheme (Northern Ireland) Regulations 2004**(m)**;
- (j) the Renewables Obligation Order (Northern Ireland) 2009**(n)**;
- (k) the Waste Batteries and Accumulators (Treatment and Disposal) Regulations (Northern Ireland) 2009**(a)**;

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**(a)** S.R. 2011 No.78; relevant amendments are S.R. 2016 No.95 and S.R. 2018 No.200

**(b)** OJ No. L312, 22.11.2008, p. 3

**(c)** OJ No. L150, 14.6.2018, p. 109-140

**(d)** S.I. 2019/289 as amended by S.I. 2019/1443, Also see correction slip dated July 2019 (ISBN 978-0-11-118166-9) which made a minor correction to this S.I and S.I. 2019/1443

**(e)** S.I. 1978/1049 (N.I. 19); relevant amendments are S.I. 1997/2778 (N.I. 19)

**(f)** S.I. 1997/2778 (N.I. 19); relevant amendments are S.R. 2006 No.280, S.R. 2009 No.178, S.R. 2011 No.127, S.R. 2015 No.14, S.R. 2016 No.95, S.R. 2016 No.380 and S.R. 2019 No.240

**(g)** S.R. 1999 No. 362; relevant amendments are S.R. 2003 No.46, S.R. 2003 No.493, S.R. 2005 No.300, S.R. 2006 No.280, S.R. 2011 No.127, S.R. 2013 No.260, S.R. 2015 No.386 and S.R. 2018 No.200

**(h)** S.R. 2000 No. 232; relevant amendments are S.R. 2011 No.127 and S.R. 2018 No.215

**(i)** S.R. 2002 No. 271 to which there are no relevant amendments

**(j)** S.I. 2002/3153 (N.I. 7); relevant amendments are S.R. 2011 No.127 and S.R. 2018 No.215. Schedule 1 is prospectively amended from IP completion day by S.I. 2019/584

**(k)** S.R. 2003 No. 493; relevant amendments are S.R. 2006 No. 519, S.R. 2009 No. 159, S.R. 2011 No. 127, S.R. 2014 No.137, S.R. 2016 No. 95 and S.R. 2018 No.200

**(l)** S.R. 2003 No. 496; relevant amendments are S.R. 2006 No.280, S.R. 2011 No.101, S.R. 2011 No.127, S.R. 2013 No.161 and S.R. 2018 No.200

**(m)** S.R. 2004 No. 416; relevant amendments are S.R. 2011 No.127 and S.R. 2018 No.200

**(n)** S.R. 2009 No. 154; relevant amendments are S.R. 2011 No.127

- (l) the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009**(b)**;
  - (m) the Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011**(c)**;
  - (n) the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013**(d)**.”
- (4) In Schedule 1 (Amendment of the Waste Provisions)—
- (a) in paragraph 3 (Amendment of the Waste Management Licensing Regulations (Northern Ireland) 2003) for sub-paragraph (14) substitute—
 

“(14) In Schedule 3 Part III, in the N.B. for “In accordance with Articles 4 and 13 of the Directive” substitute “All”.”;
  - (b) in the inserted Schedule 1A (Definition of “relevant waste”)—
    - (i) in head (c)—
      - (aa) after “other retained EU law” insert “or EU law which applies by virtue of the Northern Ireland Protocol”;
      - (bb) in sub-head (ii) for “1774/2002” substitute “1069/2009**(e)**”;
      - (cc) in sub-head (iii) for “1774/2002” substitute “1069/2009”;
      - (dd) after sub-head (iv) insert—
 

“(v) substances that are destined for use as feed materials as defined in point (g) of Article 3(2) of Regulation (EC) No 767/2009**(f)** of the European Parliament and of the Council and that do not consist of or contain animal by-products;”;
    - (ii) in head (f)—
      - (aa) for the words “recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions” substitute “recycling or other recovery operation if it complies with the following conditions”;
      - (bb) for sub-head (i) substitute—
 

“(i) the substance or object is to be used for specific purposes;”;
  - (c) in paragraph 6 (Amendment of the Hazardous Waste Regulations (Northern Ireland) 2005) omit sub-paragraphs (5) and (6); and
  - (d) in paragraph 7 (Amendment of the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007) omit sub-paragraphs (2) and (3).
- (5) In Schedule 3 (Modifications of the Directives)—
- (a) in paragraph 4 (Modification of the Asbestos Directive), in sub-paragraph (1) after “Regulations” insert “and the legislation specified in regulation 5”;
  - (b) in paragraph 5 (Modification of the Basic Safety Standards Directive), in sub-paragraph (1) after “Regulations” insert “and the legislation specified in regulation 5”;
  - (c) in paragraph 6 (Modification of the Batteries Directive)—
    - (i) in sub-paragraph (1) after “Regulations” insert “and the legislation specified in regulation 5”;
    - (ii) for sub-paragraph (2) substitute—

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(a) S.R. 2009 No. 159 as amended by S.R. 2011 No.127  
 (b) S.R. 2009 No. 252; relevant amendments are S.R. 2009 No.361, S.R. 2011 No.127, S.R. 2018 No.200, Regulation 2 is prospectively amended from IP completion day by S.I. 2019/584 and S.I. 2019/1101  
 (c) S.R. 2011 No. 78; relevant amendments are S.R. 2016 No.95 and S.R. 2018 No.200  
 (d) S.R. 2013 No. 160; relevant amendments are S.R. 2016 No.95, S.R. 2018 No.33 and S.R. 2018 No.200  
 (e) OJ No. L300, 14.11.2009, p.1-33  
 (f) OJ No. L229, 1.9.2009, p. 1–28

“(2) Article 2(2)(a) is to be read as for the words “Member States’ essential security interests” there were substituted “the essential security interests of the United Kingdom and Member States”.”;

(d) in paragraph 7 (Modification of the End-of-Life Vehicles Directive)—

(i) in sub-paragraph (1) after “Regulations” insert “and the legislation specified in regulation 5”;

(ii) for sub-paragraph (5)(a)(i), substitute—

“(i) for “Directive 2008/98/EC of the European Parliament and of the Council” there were substituted “the Waste Framework Directive”.”;

(e) in paragraph 8 (Modification of the Industrial Emissions Directive), in sub-paragraph (1) after “Regulations” insert “and the legislation specified in regulation 5”;

(f) in paragraph 9 (Modification of the Landfill Directive)—

(i) in sub-paragraph (1) after “Regulations” insert “and the legislation specified in regulation 5”;

(ii) for sub-paragraph (4)(a) substitute—

“(a) in point (a)—

(i) “‘waste’, ‘hazardous waste’, ‘non-hazardous waste’” were omitted; and

(ii) for the words “Directive 2008/98/EC” there were substituted “the Waste Framework Directive”.”;

(iii) for sub-paragraph (4)(b) substitute—

“(b) after point (a) there were inserted—

“(aa) ‘waste’ has the meaning given by regulation 1(3) of the Waste Management Licensing Regulations (Northern Ireland) 2003;

(bb) ‘hazardous waste’ and ‘non-hazardous waste’ have the meaning given in regulation 2(1) of the Hazardous Waste Regulations (Northern Ireland) 2005.”; and”;

(iv) in sub-paragraph (6)—

(aa) at the end of sub-head (c)(ii) omit “.” and insert “; and”; and

(bb) after head (c) insert—

“(d) in point (f)—

(i) after “waste”, in the first place it occurs, there were inserted “paper, metal, plastic and glass”;

(ii) the words from “pursuant” to “Article 22 of that Directive” were omitted; and;

(iii) for the words “Article 4 of that Directive” there were substituted “Article 4 of the Waste Framework Directive”.”;

(v) for sub-paragraph (7) substitute—

“(7) In Article 6, point (a) is to be read as if—

(a) in the first paragraph, in the second sentence, for “may” there were substituted “does”;

(b) in the second paragraph, for the words from “of Directive 2008/98/EC” to the end, there were substituted “set out in Part 1, Schedule 3 of the Waste and Contaminated Land (Northern Ireland) Order 1997, or any objectives in retained EU law relating to the increase of preparing for re-use and recycling.”.”;

(vi) sub-paragraph (15)(d) were omitted;

(vii) sub-paragraph (16)(d) were omitted; and

(viii) for sub-paragraph (17) substitute—

“(17) Annex 3 is to be read as if—

- (a) in Section 2, in the second paragraph, in the table, in the first column, for the words “14.00 h CET” in both places it occurs there were substituted “1 p.m.”;
- (b) in Section 3, in the fourth paragraph, in the table, in table note 7, the words from “, and will report” to the end were omitted.”
- (g) in paragraph 10 (Modification of the Medium Combustion Plant Directive), in sub-paragraph (1) after “Regulations” insert “and the legislation specified in regulation 5”;
- (h) in paragraph 11 (Modification of the Waste Framework Directive)—
  - (i) for sub-paragraph (2) substitute—
 

“(2) When interpreting the Waste Framework Directive for the purposes of these Regulations and the legislation specified in regulation 5—

    - (a) a “permit” or exemption from waste management licensing means a waste management licence under Article 6 of the Waste and Contaminated Land (Northern Ireland) Order 1997, a licence or exemption from waste management licensing under the Waste Management Licensing Regulations (Northern Ireland) 2003(a), a resolution or a licence under Part II of the Food and Environment Protection Act 1985(b), a licence under Part 4 of the Marine and Coastal Access Act 2009(c), a consent under Schedule 1 to the Water (Northern Ireland) Order 1999(d) or a permit under Part 2 of the Pollution, Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(e);
    - (b) 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 appropriate authority, or local authority which, immediately before IP completion day, was responsible for Northern Ireland’s compliance with that obligation or able to exercise that discretion so far as it related to Northern Ireland;
    - (c) the appropriate authority is the Northern Ireland department which, immediately before IP completion day, was responsible for compliance with that obligation or exercise of that discretion in Northern Ireland; and
    - (d) “local authority” in Northern Ireland means a district council within the meaning of section 1 of the Local Government Act (Northern Ireland) 1972.”;
  - (ii) for sub-paragraphs (6) and (7), substitute—
 

“(6) Article 5 is to be read as if—

    - (a) in paragraph 1, the words “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

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(a) S.R. 2003 No. 493; relevant amendments are S.R. 2005 No. 300, S.R. 2006 No. 280, S.R. 2006 No. 519, S.R. 2007 No. 258, S.R. 2008 No. 18, S.R. 2009 No.76, S.R. 2009 No. 159, S.R. 2011 No. 78, S.R. 2011, S.R. 2014 No. 137, S.R. 2014 No. 253, S.R. 2015 No. 14, S.R. 2015 No. 229, S.R. 2015 No. 301, S.R. 2015 No. 386, S.R. 2016 No. 95, S.R. 2018 No. 200.

(b) 1985 c. 48; relevant amendments are the Water Act 1989 (c. 15), the Pesticides (Fees and Enforcement) Act 1989 (c. 27), the Petroleum Act 1998 (c. 17), S.I. 1999/669, the Food Standards Act 1999 (c. 28), the Statute Law (Repeals) Act 2004 (c. 14), the Energy Act 2008 (c. 32), the Marine and Coastal Access Act 2009 (c. 23), the Digital Economy Act 2017 (c. 30)

(c) 2009 c. 23; relevant amendments are SI 2011/405, the Marine (Northern Ireland) Act 2013 (c. 10), the Energy Act 2016 (c. 20), S.I. 2016/738, S.I. 2018/942, S.I. 2018/1399

(d) S.I. 1999/662 (N.I. 6); relevant amendments are S.I. 2002/3153, S.I. 2006/1946, S.I. 2006/3336 and S.R. 2016 No.76

(e) S.R. 2013 No.160; relevant amendments are S.R. 2014 No.304, S.R. 2015 No.14, S.R. 2016 No.95, S.R. 2018 No.33 S.R. 2018 No.200 and S.I. 2019 No.289

- (b) having regard to any guidance published by the appropriate authority for the purposes of this Article.”;
  - (c) paragraphs 2 and 3 were omitted.
- (7) Article 6 is to be read as if—
- (a) in paragraph 1, the words “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 for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first sub-paragraph were omitted;
    - (ii) in the second sub-paragraph, for the words “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth sub-paragraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first sub-paragraph—
      - (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 authority”;
      - (bb) the second sentence were omitted;
    - (ii) in the second sub-paragraph—
      - (aa) for “Member States” there were substituted “The appropriate authority”;
      - (bb) “by competent authorities” were omitted.”
  - (iii) for sub-paragraph (8) substitute—
- “(8) 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(a), as that list applies in Northern Ireland.”;
  - (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.”;
  - (iv) after sub-paragraph (11) insert—

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(a) OJ No. L226, 6.9.2000, p. 3–24

“(11A) Article 35(1) is to be read as if, for the second paragraph, there were substituted—

“They shall make that data available to the appropriate authority through any electronic registry established for the reporting of such data or, if no such registry is in operation, in such form and manner as the appropriate authority may specify.”; and

(v) for sub-paragraph (13) substitute—

“(13) Annex 4a is to be read as if, in point 6, “including through Union funds” were omitted.”; and

(i) in paragraph 12 (Modification of the WEEE Directive), in sub-paragraph (1) after “Regulations” insert “and the legislation specified in regulation 5”.

### **Amendment of the Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019**

4. —(1) The Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019(a) are amended as follows.

(2) In these Regulations for the words “exit day”, wherever they occur, substitute “IP completion day”.

(3) In regulation 3 (The Hazardous Waste Regulations (Northern Ireland) 2005)—

(a) for paragraph (2) substitute—

“(2) In regulation 2(1)—

(a) after the definition of “the 1997 Order” insert—

““appropriate authority” means the Department of Agriculture, Environment and Rural Affairs”; and

(b) after the definition of “industrial battery or accumulator” insert—

““Landfill Directive” means Council Directive 1999/31/EC(b) on the landfill of waste, as last amended by Directive (EU) 2018/850(c), and read as if—

(a) in Article 2—

(i) in point (a), “‘waste’, ‘hazardous waste’, ‘non-hazardous waste’” were omitted; and

(ii) after point (a), there were inserted—

“(aa) “waste” has the meaning given by regulation 3(1)(b) of the Hazardous Waste Regulations (Northern Ireland) 2005(d);

(bb) “hazardous waste” and “non-hazardous waste” have the meaning given by regulation 2(1) of the Hazardous Waste Regulations (Northern Ireland) 2005;”; and

(b) in Article 3(2), “Without prejudice to existing Community legislation,” were omitted.”;”;

(b) in paragraph (4), in the inserted regulation 3A—

(i) omit paragraph (4);

(ii) for paragraphs (5), (6) and (7) substitute—

“(5) Article 5 is to be read as if—

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(a) S.I. 2019/271 as amended by S.I. 2019/1443. See correction slip dated June 2019 (ISBN 978-0-11-118149-2) which made minor corrections to this S.I.

(b) OJ No. L182, 16.7.1999, p. 1–19

(c) OJ No. L150, 14.6.2018, p. 100–108

(d) S.R. 2005 No. 300; relevant amendments are S.R. 2011 No. 127 and S.R. 2018 No. 200

- (a) in paragraph 1, the words “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 for the purposes of this Article.”;
    - (c) paragraphs 2 and 3 were omitted.
- (6) Article 6 is to read as if—
- (a) in paragraph 1, the words “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 for the purposes of this Article.”;
    - (c) in paragraph 2—
      - (i) the first sub-paragraph were omitted;
      - (ii) in the second subparagraph, for the words “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
      - (iii) the third and fourth sub-paragraphs 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 authority”;
        - (bb) the second sentence were omitted;
      - (ii) in the second subparagraph—
        - (aa) for the words “Member States” there were substituted “The appropriate authority”;
        - (bb) “by competent authorities” were omitted.
- (7) Article 7 is to 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 Northern Ireland.”;
  - (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.”;

(c) for paragraph (5) substitute—

“(5) In regulation 9—

(a) in paragraph (2), for the words “Article 7(2) of the Waste Directive” substitute “paragraph (3)”; and

(b) after paragraph (2) insert—

“(3) For the purposes of paragraph (2), a specific waste may be determined to be hazardous—

(a) in relation to Wales by the Welsh Ministers under regulation 8 of the Hazardous Waste (Wales) Regulations 2005(a);

(b) in relation to England by the Secretary of State under regulation 8 of the Hazardous Waste (England and Wales) Regulations 2005(b);

(c) in relation to Scotland, by the Scottish Ministers, because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex III”.

(4) In regulation 4 (the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007), in paragraph (3)—

(a) in the inserted regulation 2A—

(i) for paragraph (3) substitute—

“(3) Article 3 is to be read as if—

(a) in paragraph 2, for the words “Article 3 of Directive 2008/98/EC” there were substituted “Article 3(1) of the Waste Directive, as read with Articles 5 and 6 of that Directive;

(b) in paragraph 2c, for the words “Directive 2008/98/EC” there were substituted “the Waste Directive”.”;

(ii) omit paragraph (4);

(b) in the inserted regulation 2B—

(i) for paragraphs (3) and (4) substitute—

“(3) Article 5 is to read as if—

(a) in paragraph 1, the words “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 for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

(4) Article 6 is to be read as if—

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(a) S.I. 2005/1806 (W. 138); relevant amendments are S.I. 2011/971 (W. 141) and 2015/1417 (W. 141)

(b) S.I. 2005/894

- (a) in paragraph 1, the words “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 for the purposes of this Article.”;
- (c) in paragraph 2—
  - (i) the first sub-paragraph were omitted;
  - (ii) in the second subparagraph, for the words “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 sub-paragraph—
    - (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 authority”;
    - (bb) the second sentence were omitted;
  - (ii) in the second sub-paragraph—
    - (aa) for the words “Member States” there were substituted “The appropriate authority”;
    - (bb) “by competent authorities” were omitted.”
- (c) for paragraph (4) substitute—
  - “(4) In regulation 24—
    - (a) in paragraph (3)(b)—
      - (i) in paragraph (i)—
        - (aa) for the words “European Community” substitute “United Kingdom or a Member State”;
        - (bb) for the words from “Article 6(2) of” to the end, substitute “any recovery or recycling operations taking place in each such site take place under conditions that are broadly equivalent to requirements applicable to reprocessing sites in the United Kingdom”;
      - (ii) in paragraph (ii)—
        - (aa) for the words “European Community” substitute “United Kingdom or a Member State”;
        - (bb) for the words “of Article 6(2) of that Directive” substitute “applicable to the shipment of waste from the United Kingdom”;
    - (b) in paragraph (8) for the words “the European Community” substitute “a Member State”;
    - (c) in paragraph (9)—
      - (i) for the words “European Community” substitute “United Kingdom or a Member State”;

- (ii) for the words “the requirements of Article 6(2) of the Packaging Waste Directive” substitute “conditions that are broadly equivalent to requirements applicable to reprocessing sites in the United Kingdom”.”;
- (d) for paragraph (5) substitute—  
“(5) For regulation 26(2) substitute—

“(2) Where the appropriate authority has granted an accreditation to an exporter, and is no longer satisfied that the requirements in regulation 24(3)(b) or (9), which applied to that grant of accreditation, are met in relation to the export of one or more specified recyclable materials for reprocessing at one or more reprocessing sites outside the United Kingdom, the appropriate authority shall cancel the accreditation of an exporter to the extent that it relates to any such export which does not meet those requirements.”.”.

(5) In regulation 5 (the Waste Regulations (Northern Ireland) 2011)—

- (a) in paragraph (2)(d), in the definition of “Landfill Directive” for the words “Council Directive 2011/97/EU” substitute “Directive (EU) 2018/850”;

- (b) in paragraph (3)—

- (i) in the inserted regulation 9B, for paragraph (2) substitute—

- “(2) In Article 2—

- (a) in point (a)—

- (i) “‘waste’, ‘hazardous waste’, ‘non-hazardous waste’” were omitted; and

- (ii) for the words “Directive 2008/98/EC” there were substituted “the Waste Framework Directive”;

- (b) after point (a) there were inserted—

- “(aa) ‘waste’ has the meaning given by regulation 1(3) of the Waste Management Licensing Regulations (Northern Ireland) 2003;

- (bb) ‘hazardous waste’ and ‘non-hazardous waste’ have the meaning given in regulation 2(1) of the Hazardous Waste Regulations (Northern Ireland) 2005;”;

- (ii) in the inserted regulation 9D, for paragraphs (5), (6) and (7) substitute—

- “(5) Article 5 is to be read as if—

- (a) in paragraph 1, the words “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 for the purposes of this Article.”;

- (c) paragraphs 2 and 3 were omitted.

- (6) Article 6 is to be read as if—

- (a) in paragraph 1, the words “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 for the purposes of this Article.”;
- (c) in paragraph 2—
  - (i) the first sub-paragraph were omitted;
  - (ii) in the second subparagraph, for the words “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 sub-paragraph—
    - (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 authority”;
    - (bb) the second sentence were omitted;
  - (ii) in the second subparagraph—
    - (aa) for the words “Member States” there were substituted “The appropriate authority”;
    - (bb) “by competent authorities” were omitted.
- (7) 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(a), as that list has effect in Northern Ireland.”;
  - (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.”;
  - (iii) for paragraph (10) substitute—
 

“(10) Article 35(1) is to be read as if, for the second paragraph, there were substituted—

“They shall make that data available to the appropriate authority through any electronic registry established for the reporting of such data or, if no such registry is in operation, in such form and manner the appropriate authority may specify.”;
  - (iv) in paragraph (13) for the words “(11)(c)” substitute “(12)(c)”;
  - (v) after paragraph (13) insert—
 

“(14) Annex 4a is to be read as if, in point 6, “including through Union funds” were omitted.”

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(a) OJ No. L226, 6.9.2000, p. 3–24

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 26th November 2020.



*Owen Lyttle*

A senior officer of the Department of Agriculture, Environment and Rural Affairs

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in sections 11 and 22 of, and paragraph 1 of Part 1, of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In particular the Regulations update previous EU Exit amendments made in 2019 to take account of changes which have been made to various EU Directives by the EU Circular Economy Package. This includes updating cross-references which existing EU Exit SIs insert into legislation, where the cross-references have become out of date due to recent legislative changes and updating modifications to Directives which no longer work because the Directives have been amended by the Circular Economy Package. The Regulations also amend references to ‘exit day’ in existing EU Exit SIs, to refer instead to IP completion day. In addition, the Regulations take into account recent Department for Environment, Food & Rural Affairs (Defra) EU exit legislation changes made through the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020.

The Regulations are also made in exercise of powers in paragraph 11M of Part 1C of Schedule 2 to the European Union (Withdrawal) Act 2018 and contain minor amendments to the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 (via amendments to the Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019) to implement the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.

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£6.90

NI202011261013 12/2020 19585

<http://www.legislation.gov.uk/id/nisr/2020/284>

ISBN 978-0-33-801437-5



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