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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

PART 2

Amendments to retained direct EU legislation on the environment

**Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants**

2.—(1) Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants is amended as follows.

(2) After Article 2(1)(i)(1) insert—

“(j) ‘appropriate authority’ is to be read in accordance with Article 7(8) and (9).”.

(3) In Article 7—

(a) in paragraph 4(a)—

(i) in the first sentence—

(aa) for “Community legislation” substitute “retained EU law”;

(bb) omit “to be”;

(ii) for the second sentence substitute—

“The appropriate authority may, by regulations, amend Annex 4 so as to establish or modify a concentration limit for a substance listed in that Annex.”;

(iii) in the third sentence—

(aa) for “procedure” substitute “regulations”;

(bb) omit “of a Member State”;

(b) in paragraph 5, in the first subparagraph—

(i) in the first sentence, for “Commission” substitute “appropriate authority”;

(ii) for the second sentence substitute—

“The appropriate authority may, by regulations, amend Annex 5 so as to establish or modify a concentration limit for a substance listed in that Annex.”;

(c) in paragraph 6—

(i) in the first sentence—

(aa) for “Commission” substitute “appropriate authority”;

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(1) The existing paragraph in Article 2 became paragraph 1 of that Article by virtue of [S.I. 2018/1405](#). Article 2(1)(i) was inserted by that instrument.

- (bb) for the words from “a Member State” to “adopt” substitute “the competent authority, by regulations, prescribe”;
- (ii) in the second sentence—
  - (aa) for “Commission” substitute “appropriate authority”;
  - (bb) for “Member States” substitute “the competent authority”;
- (iii) omit the third sentence;
- (d) at the end insert—
  - “8.** In this Regulation, “appropriate authority” means—
    - (a) for regulations applying in relation to England, the Secretary of State;
    - (b) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
    - (c) for regulations applying in relation to Scotland, the Scottish Ministers;
    - (d) for regulations applying in relation to Wales, the Welsh Ministers.
  - 9.** But the appropriate authority is the Secretary of State if consent is given by —
    - (a) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
    - (b) for regulations applying in relation to Scotland, the Scottish Ministers;
    - (c) for regulations applying in relation to Wales, the Welsh Ministers.”.
- (4) In Article 14—
  - (a) in paragraphs 1 and 2—
    - (i) in the first subparagraph, for “Commission” substitute “appropriate authority”;
    - (ii) omit the second subparagraph;
  - (b) for paragraph 3 substitute—
    - “3.** The appropriate authority shall, where appropriate, amend the existing entries in Annexes 1, 2 and 3, including for the purpose of adapting to scientific and technical progress.”;
  - (c) for paragraph 4 substitute—
    - “4.** The appropriate authority shall, where appropriate, amend the existing entries in Annex 4 or amend Annex 5, including for the purpose of adapting to scientific and technical progress.”;
  - (d) after paragraph 4 insert—
    - “5.** In this Article, “amend” means amend by regulations.”.
- (5) For Articles 16 and 17 substitute—

*“Article 16*

*Regulations*

- 1.** Regulations made by the Secretary of State or the Welsh Ministers under Article 7 or 14 are to be made by statutory instrument.

2. For regulations made by the Scottish Ministers under Article 7 or 14, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010(2).

3. Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under Article 7 or 14 is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979(3).

4. A statutory instrument containing regulations made by the Secretary of State under Article 7 or 14 is subject to annulment in pursuance of a resolution of either House of Parliament.

5. A statutory instrument containing regulations made by the Welsh Ministers under Article 7 or 14 is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

6. Regulations made by the Scottish Ministers under Article 7 or 14 are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

7. Regulations made by the Department of Agriculture, Environment and Rural Affairs under Article 7 or 14 are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954(4) as if they were a statutory instrument within the meaning of that Act.

8. Regulations made under this Regulation may—

- (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
- (b) make different provision for different purposes.”.

### **Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community**

3.—(1) Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community is amended as follows.

(2) In Article 4(2)—

(a) in the first subparagraph—

- (i) for “Commission” substitute “Secretary of State”;
- (ii) for the words from “adopt” to the end substitute “by regulations approve any such scheme”;

(b) in the second subparagraph, for “Commission” substitute “Secretary of State”.

(3) For Article 5(9) substitute—

“9. The Secretary of State may, by regulations, make provision—

- (a) for the information to be produced in a licence,
- (b) for the form of such a licence, and
- (c) in relation to the acceptance and verification of licences, including in relation to the inspection of shipments(5).”.

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(2) 2010 asp 10.

(3) S.I. 1979/1573 (N.I. 12).

(4) 1954 c. 33 (N.I.). Section 41(6) was amended by S.I. 1999/663.

(5) Equivalent provision is set out in [Commission Regulation \(EC\) No 1024/2008](#) laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community.

- (4) In Article 10—
- (a) for paragraph 1 substitute—
- “1. The Secretary of State may, by regulations, insert an Annex 1 into this Regulation listing the partner countries and their designated licensing authorities.”;
- (b) in paragraphs 2 and 3—
- (i) in the first sentence, for the words from “Commission” to “11a to” substitute “Secretary of State may, by regulations.”;
- (ii) in the second sentence, for “In adopting those amendments, the Commission” substitute “When making regulations under this paragraph, the Secretary of State”.
- (5) Omit Article 11.
- (6) For Article 11a substitute—

*“Article 11a*

1. Regulations made under this Regulation are to be made by statutory instrument.
2. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
3. Such regulations may—
  - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
  - (b) make different provision for different purposes.”.

**Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register**

4.—(1) Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register is amended as follows.

- (2) In Article 8(3)—
- (a) in the first subparagraph—
- (i) for “Commission” substitute “appropriate authority”;
- (ii) for “measures to initiate” substitute “the appropriate authority may, by regulations, make provision for the purpose of this Regulation regarding”;
- (iii) omit “shall be taken”;
- (b) omit the second subparagraph.
- (3) In Article 9(4)—
- (a) in the first sentence—
- (i) for “Commission may adopt guidelines for” substitute “appropriate authority may, by regulations, make provision in respect of”;
- (ii) for the words “in accordance” to the end substitute “for the purpose of this Regulation”;
- (b) in the second sentence—
- (i) for “guidelines shall” substitute “regulations must”;
- (ii) omit “, and shall be consistent with other Community legislation”.

- (4) In Article 18—
- (a) in the first paragraph, in the words before point (a), for “Commission shall” substitute “Secretary of State may, by regulations,”;
  - (b) omit the second paragraph.
- (5) For Article 19 substitute—

*“Article 19  
Regulations*

1. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.
2. For regulations made by the Scottish Ministers under this Regulation, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010.
3. Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under this Regulation is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
4. A statutory instrument containing regulations made by the Secretary of State under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
5. A statutory instrument containing regulations made by the Welsh Ministers under this Regulation is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
6. Regulations made by the Scottish Ministers under this Regulation are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
7. Regulations made by the Department of Agriculture, Environment and Rural Affairs under this Regulation are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.
8. Such regulations may—
  - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
  - (b) make different provision for different purposes.
9. For the purposes of regulations made under Article 8(3) or 9(4), the Secretary of State is the appropriate authority if consent is given by—
  - (a) for regulations applying in relation to Wales, the Welsh Ministers;
  - (b) for regulations applying in relation to Scotland, the Scottish Ministers;
  - (c) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.
10. The Secretary of State may only make regulations for the purposes of Article 18 in relation to the whole of the United Kingdom.
11. The Secretary of State may not make regulations in accordance with paragraph 10 without the consent of—
  - (a) in relation to Wales, the Welsh Ministers;

- (b) in relation to Scotland, the Scottish Ministers;
- (c) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

12. Where any of the parties mentioned in paragraph 11(a) to (c) requests that the Secretary of State make regulations under this Regulation, the Secretary of State must have regard to that request.”.

### **Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste**

5.—(1) Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste is amended as follows.

(2) In Article 26(4), for the second subparagraph substitute—

“5. The Secretary of State may, if the condition in paragraph 6 is met, make regulations setting out the technical and organisational requirements for the practical implementation of electronic data interchange for the submission of documents and information with a view to facilitating the implementation of paragraph 4.

6. The condition is that the Secretary of State—

- (a) has taken into consideration any relevant international standards, and
- (b) is satisfied that the requirements set out in the regulations are in conformity with Regulation (EU) No 910/2014 or provide at least the same level of security as provided for under that Regulation.”.

(3) In Article 36(5)—

- (a) in the first sentence, for “Member State concerned” substitute “competent authority”;
- (b) in the second sentence, for the words from the beginning to “Commission” substitute “The competent authority shall notify any case to the Secretary of State”;
- (c) in the third sentence—
  - (i) for “Commission” substitute “Secretary of State”;
  - (ii) omit “to all Member States and”;
- (d) in the fourth sentence—
  - (i) for “Commission” substitute “Secretary of State”;
  - (ii) for “adapt” substitute “amend”.

(4) In Article 37(2)—

(a) for the first subparagraph substitute—

“The Secretary of State may, by regulations, amend [Commission Regulation \(EC\) No 1418/2007](#) in order to take into account any replies received pursuant to paragraph 1 on or after exit day.”;

(b) omit the third subparagraph.

(5) For Article 50(4e) substitute—

“4e. The Secretary of State may, by regulations, amend the correlation table in Commission Implementing Regulation (EU) 2016/1245 in order to—

- (a) reflect changes to the combined nomenclature provided for in [Council Regulation \(EEC\) No 2658/87](#);
- (b) reflect changes to the entries of waste listed in Annexes 3, 3A, 3B, 4, 4A and 5;

- (c) include any new waste-related codes of the Harmonised System Nomenclature that the World Customs Organisation may adopt.”.
- (6) In Article 58(1)—
  - (a) in the words before point (a), for the words from “Commission” to “Article 58a to” substitute “Secretary of State may, by regulations,”;
  - (b) in point (b), for the words from “agreed” to the end substitute “any amendments made to Commission [Decision 2000/532/EC](#)”.
- (7) For Article 59a substitute—

*“Article 59a  
Regulations*

- 1. Regulations made under this Regulation are to be made by statutory instrument.
- 2. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
- 3. Such regulations may—
  - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
  - (b) make different provision for different purposes.”.

**Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market**

6.—(1) Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market is amended as follows.

- (2) In Article 1, for “internal” substitute “UK”.
- (3) In Article 6—
  - (a) in paragraph 1(b), in the second subparagraph, after “including” insert “the following criteria (referred to in this Article as the “specified criteria”);
  - (b) for paragraph 3 substitute—
    - “3. The Secretary of State may, by regulations, amend the list of specified criteria in this Article to add further risk assessment criteria that the Secretary of State considers necessary for the purposes of ensuring the effectiveness of the due diligence system.”;
  - (c) after paragraph 3 insert—
    - “4. Before exercising the power in paragraph 3 to make regulations, the Secretary of State must take into account:
      - (a) market developments; and
      - (b) experience gained in the operation of this Regulation.”.
- (4) For Articles 14 and 15 substitute—

*“Article 14*

*Amendments to the Annex*

1. The Secretary of State may make regulations amending and supplementing the list of timber and timber products set out in the Annex.
2. In making regulations under paragraph 1 the Secretary of State must have regard to—
  - (a) the experience gained in the operation of this Regulation;
  - (b) developments with regard to technical characteristics, end users and production processes of timber and timber products; and
  - (c) the need to ensure that such regulations do not create a disproportionate burden on operators.

*Article 15*

*Regulations*

1. Regulations made under this Regulation are to be made by statutory instrument.
2. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
3. Such regulations may—
  - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018)); and
  - (b) make different provision for different purposes.”.

**Regulation (EU) No 511/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union**

7.—(1) Regulation (EU) No 511/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union is amended as follows.

- (2) In Article 5(5)—
  - (a) in the first sentence, for “Commission shall adopt implementing acts to” substitute “Secretary of State may, by regulations,”;
  - (b) omit the second sentence.
- (3) In Article 7(6)—
  - (a) in the first sentence, for “Commission shall adopt implementing acts to” substitute “Secretary of State may, by regulations,”;
  - (b) in the second sentence, for “In those implementing acts, the Commission shall” substitute “When making regulations under this paragraph, the Secretary of State must”;
  - (c) omit the third sentence.
- (4) In Article 8(7)—
  - (a) in the first sentence, for “Commission shall adopt implementing acts to” substitute “Secretary of State may, by regulations,”;
  - (b) omit the second sentence.



(5) For Article 14 substitute—

*“Article 14*

*Regulations*

1. Regulations made under this Regulation are to be made by statutory instrument.
2. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
3. Such regulations may—
  - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
  - (b) make different provision for different purposes.”

**Regulation EU 2017/852 of the European Parliament and of the Council on mercury**

8.—(1) Regulation EU 2017/852 of the European Parliament and of the Council on mercury is amended as follows.

(2) After Article 2(1)(12)(6) insert—

“(13) ‘appropriate authority’ is to be read in accordance with Article 6(2) and (3).”

(3) In Article 6—

- (a) the existing paragraph becomes paragraph 1;
- (b) in that paragraph—
  - (i) in the first sentence, for the words from “Commission” to “acts, to” substitute “appropriate authority may, by regulations,”;
  - (ii) omit the second sentence;
- (c) after that paragraph insert—

“2. In this Regulation, “appropriate authority” means—

  - (a) for regulations applying in relation to England, the Secretary of State;
  - (b) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
  - (c) for regulations applying in relation to Scotland, the Scottish Ministers;
  - (d) for regulations applying in relation to Wales, the Welsh Ministers.
3. But the appropriate authority is the Secretary of State if consent is given by—
  - (a) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
  - (b) for regulations applying in relation to Scotland, the Scottish Ministers;
  - (c) for regulations applying in relation to Wales, the Welsh Ministers.”

(4) In Article 7(3), in the second subparagraph—

- (a) in the first sentence—

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(6) The existing paragraph in Article 2 became paragraph 1 of that Article by virtue of S.I. 2019/XXX [the Control of Mercury (Amendment) (EU Exit) Regulations 2019]. Article 2(1)(12) was inserted by that instrument.

- (i) for the words from the beginning to “setting out” substitute “The appropriate authority may, by regulations, prescribe”;
  - (ii) omit the words from “, provided” to the end;
  - (b) omit the second sentence.
- (5) In Article 8(6)—
- (a) in the first subparagraph—
    - (i) for “Commission” substitute “Secretary of State”;
    - (ii) for the words from “new mercury-added” to the end substitute “condition in the second subparagraph is met”;
  - (b) for the second and third subparagraphs substitute—
 

“The condition is that the new mercury-added product or new manufacturing process would provide significant environmental or health benefits and pose no significant risks either to the environment or to human health, and that no technically practicable mercury-free alternatives providing such benefits are available.

The Secretary of State shall inform the competent authority of the result of the assessment under the first subparagraph.

Where the Secretary of State assesses that the condition in the second subparagraph is met, the Secretary of State shall, by regulations, specify that the relevant new mercury-added product or new manufacturing process is authorised.”.
- (6) In Article 13(2), for the words from “Commission” to “extending” substitute “appropriate authority may, by regulations, extend”.
- (7) For Articles 20 to 22 substitute—

*“Article 20*

*Amendment of Annexes*

1. The Secretary of State may, by regulations, amend Annex 1 or 2 to align it with a decision adopted by the Conference of the Parties to the Convention in accordance with Article 27 of the Convention.
2. The appropriate authority may, by regulations, amend Annex 3 or 4 to align it with a decision adopted by the Conference of the Parties to the Convention in accordance with Article 27 of the Convention.

*Article 21*

*Regulations*

1. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.
2. For regulations made by the Scottish Ministers under this Regulation, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010.
3. Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under this Regulation is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
4. A statutory instrument containing regulations made by the Secretary of State under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

5. A statutory instrument containing regulations made by the Welsh Ministers under this Regulation is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

6. Regulations made by the Scottish Ministers under this Regulation are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

7. Regulations made by the Department of Agriculture, Environment and Rural Affairs under this Regulation are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.

8. Regulations made under this Regulation may—

- (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
- (b) make different provision for different purposes.

9. Regulations may only be made under Article 8 or 20(1) in relation to the whole of the United Kingdom.

10. Regulations may not be made under Article 8 or 20(1) without the consent of—

- (a) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
- (b) in relation to Scotland, the Scottish Ministers;
- (c) in relation to Wales, the Welsh Ministers.

11. Where a devolved authority mentioned in paragraph 10(a) to (c) requests that the Secretary of State makes regulations under Article 20(1), the Secretary of State must have regard to that request.”