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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The International Waste Shipments  
(Amendment) (EU Exit) Regulations 2019**

**PART 5**

Amendments to retained direct EU legislation

**New Articles 2A to 2C**

**48.** After Article 2 insert—

*“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 amended by—

- (a) [Commission Regulation \(EU\) No 1357/2014\(2\)](#);
- (b) [Commission Directive \(EU\) 2015/1127\(3\)](#); and
- (c) [Council Regulation \(EU\) 2017/997\(4\)](#),

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(5).”;

(iii) for point (d), in relation to Northern Ireland, there were substituted—

“(d) extractive waste, which has the same meaning as in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015(6).”;

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(1) OJNo. L 312, 22.11.2008, p. 3.  
(2) OJ No. L 365, 19.12.2014, p. 89.  
(3) OJ No. L 184, 11.7.2015, p. 13.  
(4) OJ No. L 150, 14.6.2017, p. 1.  
(5) S.S.I 2010/60.  
(6) [S.R. 2015 No. 85](#).

(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(7)” 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](#) of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy(8)” had the meaning given in paragraph 2B;

(ii) paragraphs 3 and 4 were omitted;

(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](#) of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy” means Article 11(3)(j) of [Directive 2000/60/EC](#) read as if—

(a) the 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 Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

(iii) in relation to Scotland, the Scottish Ministers or the Scottish Environment Protection Agency;

(iv) 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(9) as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 ([S.I. 2003/3245](#))(10);

(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(11);

(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 paragraph 2 were omitted.

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

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

(9) [S.I. 2017/407](#).

(10) [S.I. 2003/3245](#), amended by [S.I. 2016/139](#) and [2017/407](#).

(11) [S.I. 2004/99](#), amended by [S.I. 2016/139](#); there are other amending instruments but none is relevant.

4. Article 6 of [Directive 2008/98/EC](#) is to be read as if—
- (a) paragraphs 1 to 3 were omitted;
  - (b) in paragraph 4—
    - (i) in the first sentence, for the words from the beginning to “Member States” there were substituted “Except where Council Regulation (EU) No 333/2011, [Commission Regulation \(EU\) No 1179/2012](#) or [Commission Regulation \(EU\) No 715/2013](#) applies, the competent authority of destination and dispatch determined in accordance with regulation 6 of the [Transfrontier Shipment of Waste Regulations 2007](#)”;
    - (ii) the second sentence were omitted.
5. Article 7 of [Directive 2008/98/EC](#) is to be read as if—
- (a) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
  - (b) after paragraph 1, there were inserted—
    - “**1A.** Paragraph 1 is subject to—
      - (a) a determination by the Secretary of State under regulation 8(1) of the [Hazardous Waste \(England and Wales\) Regulations 2005](#)(**12**), or by the Welsh Ministers under regulation 8(1) of the [Hazardous Waste \(Wales\) Regulations 2005](#)(**13**), or by the Department of Agriculture, Environment and Rural Affairs under regulation 9(1) of the [Hazardous Waste Regulations \(Northern Ireland\) 2005](#)(**14**), that a specific batch of waste is to be treated as hazardous waste;
      - (b) a decision made by the Secretary of State under regulation 9(1) of the [Hazardous Waste \(England and Wales\) Regulations 2005](#), or by the Welsh Ministers under regulation 9(1) of the [Hazardous Waste \(Wales\) Regulations 2005](#), or by the Department of Agriculture, Environment and Rural Affairs under regulation 10(1) of the [Hazardous Waste Regulations \(Northern Ireland\) 2005](#), that a specific batch of waste is to be treated as non-hazardous waste;
      - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulations 8(2) or 9(2) of the [Hazardous Waste \(England and Wales\) Regulations 2005](#), regulations 8(2) or 9(2) of the [Hazardous Waste \(Wales\) Regulations 2005](#) or regulations 9(2) or 10(2) of the [Hazardous Waste Regulations \(Northern Ireland\) 2005](#);
      - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the [Environmental Protection Act 1990](#)(**15**) or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties);
      - (e) a determination by the Scottish Ministers that a specific batch or type of waste—

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(12) S.I. 2005/894; amended by S.I. 2011/988, 2015/1360.

(13) S.I. 2005/1806 (W. 138), amended by S.I. 2011/971 (W. 141), 2015/1417 (W. 141).

(14) S.R. 2005 No. 300, amended by S.R. 2005 No. 301, S.R. 2011 No. 127 and S.R. 2015 No. 288.

(15) 1990 c. 43. Section 62A was inserted by S.I. 2005/894, and amended by S.I. 2011/988, 2015/1360, 2018/721 (W. 140).

- (i) is to be treated as hazardous waste because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex 3;
  - (ii) is to be treated as non-hazardous waste because the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex 3.”;
  - (c) paragraphs 2, 3 and 5 were omitted;
  - (d) after paragraph 6, there were inserted—
    - “6A. In this Article, the “list of waste” means the list established by Commission [Decision 2000/532/EC](#).”;
  - (e) paragraph 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(16)”.

#### *Article 2B*

##### *References to EU country, non-EU country, EFTA country and third country*

In this Regulation—

- (a) a reference to an EU country is a reference to a country which is a member State on exit day;
- (b) a reference to a non-EU country is a reference to a country other than the United Kingdom which is not a member State on exit day;
- (c) a reference to an EFTA country is a reference to a non-EU country which is a party to the EEA agreement on exit day;
- (d) a reference to a third country is a reference to a country other than the United Kingdom.

#### *Article 2C*

##### *References to competent authority*

1. In this Regulation, a reference to the ‘competent authority’—
- (a) in relation to the United Kingdom, is to be read in accordance with paragraphs 3 and 4;
  - (b) in relation to an EU country, is a reference to the body designated by that country in accordance with Article 53 of Regulation [\(EC\) No. 1013/2006\(17\)](#) as it has effect in EU law as amended from time to time; or
  - (c) in relation to a non-EU country that is a Party to the Basel Convention, is a reference to the body designated by that country as the competent authority in accordance with Article 5 of the Convention; or

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(16) [S.I. 2007/1711](#), amended by [S.I. 2007/3538](#), [2008/9](#), [2010/265](#), [2010/675](#), [2010/1159](#), [2011/988](#), [2011/1043](#), [2014/861](#), [2016/1154](#).

(17) [OJ No. L 190, 12.7.2006, p. 1.](#)

- (d) in relation to any country not referred to in points (a) to (c), is a reference to the body that has been designated as the competent authority by the country or region concerned or, in the absence of such designation, the regulatory authority for the country or region, as appropriate, which has jurisdiction over shipments of waste for recovery or disposal or transit (as the case may be).

**2. In this Regulation—**

- (a) ‘competent authority of dispatch’ means the competent authority for the area from which the shipment is planned to be initiated or is initiated;
- (b) ‘competent authority of destination’ means the competent authority for the area to which the shipment is planned or takes place, or in which waste is loaded prior to recovery or disposal in an area not under the national jurisdiction of any country;
- (c) ‘competent authority of transit’ means the competent authority for any country, other than that of the competent authority of dispatch or destination, through which the shipment is planned or takes place.

**3. The competent authority of dispatch, or the competent authority of destination, in the United Kingdom is—**

- (a) where the area concerned is in England or the English area, the Environment Agency;
- (b) where the area concerned is in Wales or the Welsh area, the Natural Resources Body for Wales;
- (c) where the area concerned is in Scotland or the Scottish area, the Scottish Environment Protection Agency;
- (d) where the area concerned is in Northern Ireland or the Northern Irish area, the Department of Agriculture, Environment and Rural Affairs,

and “English area”, “Welsh area”, “Scottish area” and “Northern Irish area” have the meanings given by regulation 4(1) of the Transfrontier Shipment of Waste Regulations 2007.

**4. The competent authority of transit in the United Kingdom is the Environment Agency.”.**