
DRAFT STATUTORY INSTRUMENTS

2019 No.

The Waste (Miscellaneous Amendments)
(EU Exit) Regulations 2019

PART 4

Amendment and revocation of retained direct EU legislation

CHAPTER 2

Decisions

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

18.—(1) 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 is amended as follows.

(2) Before Article 1 insert—

“Article 1

1. In this Decision, “appropriate agency” means—
 - (a) in relation to England, the Environment Agency;
 - (b) in relation to Wales, the Natural Resources Body for Wales;
 - (c) in relation to Scotland—
 - (i) a planning authority, or
 - (ii) a National Park authority within the meaning of section 35(1) of the National Parks (Scotland) Act 2000⁽¹⁾ (as the case may be);
 - (d) in relation to Northern Ireland—
 - (i) a district council established under section 1 of the Local Government Act (Northern Ireland) 1972, or
 - (ii) the Department for Infrastructure (as the case may be).
2. A term which is used in this Decision—
 - (a) as it extends to Scotland and which is defined in regulation 2(1) of the 2010 Scotland Regulations has the meaning given in that regulation;

⁽¹⁾ 2000 asp 10.

(b) as it extends to Northern Ireland and which is defined in regulation 2(2) of the 2015 NI Regulations has the meaning given in that regulation.

3. In this Decision—

- (a) “the 2010 Scotland Regulations” means the Management of Extractive Waste (Scotland) Regulations 2010;
- (b) “the 2015 NI Regulations” means the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.

Article A2

1. For the purposes of this Decision, [Directive 2006/21/EC](#) of the European Parliament and of the Council concerning the management of waste from extractive industries is to be read in accordance with this Article.

2. 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, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of England or Wales.

3. Article 3 is to be read as if—

- (a) in point (1), for “Article 1(a) of [Directive 75/442/EEC](#)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
- (b) in point (2), for “Article 1(4) of Council [Directive 91/689/EEC](#) of 12 December 1991 on hazardous waste” there were substituted “Article 3(2) of the Waste Framework Directive”;
- (c) in point (4), for the words from “the national law” to the end there were substituted “national law”;
- (d) in point (24), for the words from “the national law” to “takes place” there were substituted “national law”.

4. Annex 3 is to be read as if—

- (a) in the second indent, “under [Directive 91/689/EEC](#)” were omitted;
- (b) in the third indent, for “Directives [67/548/EEC](#) or [1999/45/EC](#)” there were substituted “Regulation [\(EC\) 1272/2008](#) of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures”.

Article A3

1. In Article A2(3), the “Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by [Council Regulation \(EU\) 2017/997](#), and read in accordance with this Article.

2. 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, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of England or Wales.

3. Article 5 is to be read as if paragraph 2 were omitted.

4. Article 6 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 “Where criteria” to “paragraphs 1 and 2” 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”;
 - (ii) the second sentence were omitted.
5. Article 7 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, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, 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, 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 regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, or regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties).”;
 - (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 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

Article A4

In Articles A2 and A3—

- (a) “appropriate authority” means—
 - (i) in relation to England, the Secretary of State;

- (ii) in relation to Wales, the Welsh Ministers;
- (b) “local authority” means—
 - (i) in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - (ii) in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - (iii) in Wales—
 - a county council, or
 - a county borough council.”.
- (3) In Article 1—
 - (a) in paragraph 1, in the words before point (a), for “indent of Annex III of [Directive 2006/21/EC](#)” substitute “part of the categorisation legislation”;
 - (b) after paragraph 2 insert—
 - “**3.** In paragraph 1, “first part of the categorisation legislation”—
 - (a) as it extends to England and Wales, means the first indent of Annex 3 to [Directive 2006/21/EC](#);
 - (b) as it extends to Scotland, means paragraph (a) of the definition of “Category A waste facility” in regulation 2(1) of the 2010 Scotland Regulations;
 - (c) as it extends to Northern Ireland, means paragraph 1 of Schedule 3 to the 2015 NI Regulations.”.
- (4) In Article 3(2), omit “under Council [Directive 91/689/EEC](#)”.
- (5) In Article 4(1), for “Member States” substitute “The appropriate agency”.
- (6) In Article 7—
 - (a) in paragraph 1—
 - (i) in the words before point (a), for “indent of Annex III of [Directive 2006/21/EC](#)” substitute “part of the categorisation legislation”;
 - (ii) in point (a), omit “in accordance with [Directive 91/689/EEC](#)”;
 - (b) after paragraph 4 insert—
 - “**5.** In paragraph 1, “second part of the categorisation legislation”—
 - (a) as it extends to England and Wales, means the second indent of Annex 3 to [Directive 2006/21/EC](#);
 - (b) as it extends to Scotland, means paragraph (b) of the definition of “Category A waste facility” in regulation 2(1) of the 2010 Scotland Regulations;
 - (c) as it extends to Northern Ireland, means paragraph 2 of Schedule 3 to the 2015 NI Regulations.”.
- (7) In Article 8—

- (a) in paragraph 1—
 - (i) for “Member States” substitute “The appropriate agency”;
 - (ii) for “indent of Annex III of [Directive 2006/21/EC](#)” substitute “part of the categorisation legislation”;
 - (b) in paragraph 2—
 - (i) in the first subparagraph, in point (c) for the words from “Council [Directive 67/548/EEC](#)” to the end substitute “Regulation (EC) No 1272/2008 of the European Parliament and of the Council”;
 - (ii) in the second subparagraph, for “Directives [1999/45/EC](#) or [67/548/EEC](#)” substitute “Regulation (EC) No 1272/2008 of the European Parliament and of the Council”;
 - (c) in paragraph 3, for “[Directive 1999/45/EC](#) or [67/548/EEC](#)” substitute “Regulation (EC) No 1272/2008 of the European Parliament and of the Council”;
 - (d) in paragraph 4—
 - (i) in the first sentence, for “Member States” substitute “the appropriate agency”;
 - (ii) in the second sentence, for “Directives [1999/45/EC](#) or [67/548/EEC](#)” substitute “Regulation (EC) No 1272/2008 of the European Parliament and of the Council”;
 - (e) after paragraph 4 insert—
 - “5. In paragraph 1, “third part of the categorisation legislation”—
 - (a) as it extends to England and Wales, means the third indent of Annex 3 to [Directive 2006/21/EC](#);
 - (b) as it extends to Scotland, means paragraph (c) of the definition of “Category A waste facility” in regulation 2(1) of the 2010 Scotland Regulations;
 - (c) as it extends to Northern Ireland, means paragraph 3 of Schedule 3 to the 2015 NI Regulations.”.
- (8) Omit Article 11.