
DRAFT STATUTORY INSTRUMENTS

2020 No.

The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020

PART 2

Retention of legislative functions: list of waste

Interpretation

2.—(1) In this Part—

“the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste⁽¹⁾, as last amended by Directive (EU) 2018/851⁽²⁾, and read in accordance with paragraph (2);

“the appropriate authority” has the meaning given in paragraphs (3) and (4);

“hazardous waste” and “non-hazardous waste” have the meanings given in Article 3(2) and (2a) of the Waste Framework Directive;

“waste” has the meaning given in Article 3(1) of the Waste Framework Directive.

(2) For the purposes of this Part, the Waste Framework Directive is to be read as if, in Annex 3, in entry HP 9, in the second sentence, “in the Member States” were omitted.

(3) “The appropriate authority” means—

- (a) for regulations applying in relation to England, the Secretary of State;
- (b) for regulations applying in relation to Wales, the Welsh Ministers;
- (c) for regulations applying in relation to Scotland, the Scottish Ministers;
- (d) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(4) But the appropriate authority is the Secretary of State 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.

Power to prescribe list of waste

3.—(1) The appropriate authority may, by regulations, make provision for or in connection with prescribing or amending a list which categorises different types of waste (a “list of waste”).

(2) The provision which may be made by regulations under paragraph (1) includes—

(1) OJ No L 312, 22.11.2008, p. 3.
(2) OJ No L 150, 14.6.2018, p. 109.

- (a) provision specifying identifying codes for categories of waste; and
- (b) provision specifying categories of waste which—
 - (i) are hazardous waste;
 - (ii) are non-hazardous waste; or
 - (iii) are hazardous waste if they contain a concentration of a substance which exceeds a value specified in the regulations, and are non-hazardous waste otherwise;
- (c) provision amending Commission [Decision 2000/532/EC](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of Council [Directive 75/442/EEC](#) on waste and Council [Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of Council [Directive 91/689/EEC](#) on hazardous waste⁽³⁾.

(3) The inclusion of a substance or object in a list of waste is not conclusive as to whether it is waste in all circumstances, and a substance or object is only to be considered as waste for the purposes of any legislation if, in the circumstances, it meets the definition of waste which applies for those purposes.

Consultation

4. Before making any regulations under regulation 3, the appropriate authority must consult such persons as the appropriate authority considers appropriate.

Regulations: procedure

5.—(1) Regulations by the Secretary of State or the Welsh Ministers under regulation 3 are to be made by statutory instrument.

(2) For regulations made by the Scottish Ministers under regulation 3, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010⁽⁴⁾.

(3) Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under regulation 3 is exercisable by statutory rule for the purpose of the Statutory Rules (Northern Ireland) Order 1979⁽⁵⁾.

(4) A statutory instrument containing regulations made by the Secretary of State under regulation 3 is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) A statutory instrument containing regulations by the Welsh Ministers under regulation 3 is subject to annulment in pursuance of a resolution of the Senedd Cymru.

(6) Regulations made by the Scottish Ministers under regulation 3 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 regulation 3 are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954⁽⁶⁾.

Power to make consequential etc. provision

- 6. Regulations made under regulation 3 may—
 - (a) include consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments);

(3) EUDN 2000/532.

(4) 2010 asp 10.

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

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

- (b) make different provision for different purposes.