
STATUTORY INSTRUMENTS

2019 No. 1350

**The Environment (Legislative Functions
from Directives) (EU Exit) Regulations 2019**

PART 2

Air quality

CHAPTER 1

Introductory

Interpretation of Part 2: general

3. In this Part—

“Directive 2004/42/CE” means Directive 2004/42/CE of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products⁽¹⁾;

“Directive 2008/50/EC” means Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe⁽²⁾;

“Directive 2010/75/EU” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)⁽³⁾;

“Directive 2015/2193/EU” means Directive (EU) 2015/2193 of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants⁽⁴⁾;

“Directive 2016/2284/EU” means Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants⁽⁵⁾.

Meaning of appropriate authority

4.—(1) In this Part, “appropriate authority” has the meaning given by this regulation.

(2) The “appropriate authority” is—

- (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.

(1) OJ No L 143, 30.4.2004, p. 87.

(2) OJ No L 152, 11.06.2008, p. 1, as amended by Commission Directive (EU) 2015/1480 (OJ No L 226, 29.8.2015, p. 4).

(3) OJ No L 334, 17.12.2010, p. 17, as corrected by a corrigendum (OJ No L 158, 19.6.2012, p. 25).

(4) OJ No L 313, 28.11.2015, p. 1.

(5) OJ No L 344, 17.12.2016, p. 1.

- (3) 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.

CHAPTER 2

Retention of functions from Directive 2004/42/CE

Power to specify format for monitoring data

5.—(1) The Secretary of State may, by regulations, make provision for or in connection with establishing the format of information to be reported or published for the purpose of regulation 7 of the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012⁽⁶⁾.

- (2) The provision which may be made under paragraph (1) includes provision amending—
- (a) the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012;
 - (b) Commission Implementing [Decision 2015/6674/EU](#) establishing a common format for the submission of Member State reports on the implementation of [Directive 2004/42/EC](#) of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products⁽⁷⁾.

Power to update in light of technical progress

6.—(1) The Secretary of State may, by regulations—

- (a) amend provision in any enactment which corresponds to that made by Annex 3 to Directive 2004/42/CE;
- (b) make provision requiring (whether by amending an enactment, or otherwise) a reference to Annex 3 to Directive 2004/42/CE (or a reference which encompasses that Annex) to be read as a reference to that Annex with modifications.

(2) But the Secretary of State may exercise the power in paragraph (1) only to the extent that the Secretary of State considers that it is appropriate to do so as a result of technical progress.

CHAPTER 3

Retention of functions from [Directive 2008/50/EC](#)

Power to amend non-essential elements

7.—(1) The appropriate authority may, by regulations—

- (a) amend provision in any enactment which corresponds to that made by a relevant Annex to [Directive 2008/50/EC](#);
- (b) make provision requiring (whether by amending an enactment, or otherwise) a reference to a relevant Annex to [Directive 2008/50/EC](#) (or a reference which encompasses a relevant Annex) to be read as a reference to that Annex with modifications.

(6) [S.I. 2012/1715](#).

(7) As amended by [S.I. 2018/1407](#).

(2) But the appropriate authority may not exercise the power in paragraph (1) to the extent that it would result in—

- (a) changes to—
 - (i) the limit values;
 - (ii) exposure reduction targets;
 - (iii) critical levels;
 - (iv) target values;
 - (v) information or alert thresholds;
 - (vi) long-term objectives;
- (b) any change to a date by which compliance with the matters referred to in sub-paragraph (a) is required.

(3) The relevant Annexes to [Directive 2008/50/EC](#) are—

- (a) Annex 1 (data quality objectives);
- (b) Annex 2 (determination of requirements for assessment of concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM₁₀ and PM_{2.5}), lead, benzene and carbon monoxide in ambient air within a zone or agglomeration);
- (c) Annex 3 (assessment of ambient air quality and location of sampling points for the measurement of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM₁₀ and PM_{2.5}), lead, benzene and carbon monoxide in ambient air);
- (d) Annex 4 (measurements at rural background locations irrespective of concentration);
- (e) Annex 5 (criteria for determining minimum number of sampling points for fixed measurement of concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM₁₀, PM_{2.5}), lead, benzene and carbon monoxide in ambient air);
- (f) Annex 6 (reference methods for assessment of concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM₁₀ and PM_{2.5}), lead, benzene, carbon monoxide, and ozone);
- (g) Annex 8 (criteria for classifying and locating sampling points for assessments of ozone concentrations);
- (h) Annex 9 (criteria for determining the minimum number of sampling points for fixed measurement of concentrations of ozone);
- (i) Annex 10 (measurements of ozone precursor substances);
- (j) Annex 15 (information to be included in the local, regional or national air quality plans for improvement in ambient air quality).

CHAPTER 4

Retention of functions from [Directive 2010/75/EU](#)

Power to update in light of scientific and technical progress

- 8.—(1) The appropriate authority may, by regulations—
- (a) amend provision in any enactment which corresponds to that made by a relevant provision of [Directive 2010/75/EU](#);
 - (b) make provision requiring (whether by amending an enactment, or otherwise) a reference to a relevant provision of [Directive 2010/75/EU](#) (or a reference which encompasses a relevant provision) to be read as a reference to that provision as modified.

(2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers that it is appropriate to do so as a result of scientific and technical progress.

(3) The relevant provisions of [Directive 2010/75/EU](#) are—

- (a) Parts 3 and 4 of Annex 5 (technical provisions relating to combustion plants);
- (b) Parts 2, 6, 7 and 8 of Annex 6 (technical provisions relating to waste incineration plants and waste co-incineration plants);
- (c) Parts 5, 6, 7 and 8 of Annex 7 (technical provisions relating to installations and activities using organic solvents).

Power to specify rules for determining start-up and shut-down periods

9.—(1) The appropriate authority may, by regulations, make provision for or in connection with the determination of start-up and shut-down periods, as referred to in point 27 of Article 3 and point 1 of Part 4 of Annex 5 to [Directive 2010/75/EU](#), for the purposes of retained EU law which implemented that Directive.

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

- (a) amending provision which corresponds to that made by point 27 of Article 3 of, or point 1 of Part 4 of Annex 5 to, [Directive 2010/75/EU](#), in so far as it concerns start-up and shut-down periods;
- (b) requiring a reference to point 27 of Article 3 of, or point 1 of Part 4 of Annex 5 to, [Directive 2010/75/EU](#) (or a reference which encompasses either or both of those provisions) to be read as a reference to those provisions with modifications.

(3) Regulations under paragraph (1) may amend any enactment.

Power to specify reporting requirements

10.—(1) The appropriate authority may, by regulations, make provision—

- (a) concerning the type, format and frequency of information to be prepared by the appropriate authority under Commission Implementing Decision 2018/1135 establishing the type, format and frequency of information to be made available by the Member States for the purposes of reporting on the implementation of [Directive 2010/75/EU](#) of the European Parliament and of the Council on industrial emissions⁽⁸⁾;
- (b) specifying the activities or pollutants for which information is to be prepared in accordance with sub-paragraph (a).

(2) The provision which may be made under paragraph (1) includes provision amending the Decision referred to in paragraph (1)(a).

CHAPTER 5

Retention of functions from [Directive 2015/2193/EU](#)

Power to update in light of scientific and technical progress

11.—(1) The appropriate authority may, by regulations—

- (a) amend provision in any enactment which corresponds to that made by point 2 of Part 2 of Annex 3 to [Directive 2015/2193/EU](#);

(8) As amended by [S.I. 2018/1407](#).

- (b) make provision requiring (whether by amending an enactment, or otherwise) a reference to point 2 of Part 2 of Annex 3 to [Directive 2015/2193/EU](#) (or a reference encompassing that provision) to be read as a reference to that provision as modified.

(2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers that it is appropriate to do so as a result of scientific and technical progress.

CHAPTER 6

Retention of functions from [Directive 2016/2284/EU](#)

Power to specify detailed rules for the purposes of derogations and the format of the national air pollution control programmes

- 12.**—(1) The Secretary of State may, by regulations, make provision for or in connection with—
- (a) the preparation of an adjusted inventory of emissions in accordance with regulation 4(1) of the National Emission Ceilings Regulations 2018⁽⁹⁾;
 - (b) exercising a derogation described in regulation 8(2), (3) or (4) of those Regulations;
 - (c) establishing the format of a national air pollution control programme to be prepared or revised in accordance with regulation 9 of those Regulations.
- (2) The provision which may be made under paragraph (1) includes provision specifying—
- (a) methods to be employed;
 - (b) factors to be taken into account;
 - (c) requirements for how any information is to be published or otherwise dealt with.
- (3) Regulations under paragraph (1) may amend any enactment.

Power to update in light of scientific and technical progress

- 13.**—(1) The Secretary of State may, by regulations—
- (a) amend any enactment which makes provision corresponding to a relevant provision of [Directive 2016/2284/EU](#);
 - (b) make provision requiring (whether by amending an enactment, or otherwise) a reference to a relevant provision of [Directive 2016/2284/EU](#) (or a reference encompassing a relevant provision) to be read as a reference to that provision with modifications.
- (2) But the Secretary of State may only make regulations under paragraph (1)—
- (a) to the extent that the Secretary of State considers that it is appropriate to do so as a result of scientific and technical progress;
 - (b) if doing so is consistent with the framework of the 1979 UNECE Convention on Long-Range Transboundary Air Pollution⁽¹⁰⁾.
- (3) The relevant provisions of [Directive 2016/2284/EU](#) are—
- (a) Annex 1 (monitoring and reporting of atmospheric pollutants);
 - (b) Part 2 of Annex 3 (emission reduction measures);
 - (c) Annex 4 (preparation of inventories, reports and adjusted inventories);
 - (d) Annex 5 (optional indicators for monitoring air pollution impacts).

⁽⁹⁾ [S.I. 2018/129](#).

⁽¹⁰⁾ The Convention can be obtained or viewed at the Department for Environment, Food and Rural Affairs, 2 Marsham Street, London SW1P 4DF or accessed at <https://www.unece.org/fileadmin/DAM/env/lrtap/full%20text/1979.CLRTAP.e.pdf>

Procedure for regulations under Chapter 6

14.—(1) The Secretary of State may not make regulations under this Chapter 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.

(2) Where any of the parties mentioned in paragraph (1)(a) to (c) requests that the Secretary of State make regulations under Chapter 6, the Secretary of State must have regard to that request.

CHAPTER 7

Consultation

Consultation

15. Before making any regulations under this Part, the Secretary of State or the appropriate authority (as the case may be) must consult—

- (a) such bodies or persons as appear to the Secretary of State or the appropriate authority to be representative of the interests likely to be substantially affected by the regulations;
- (b) such other persons as the Secretary of State or the appropriate authority considers appropriate.