

**2019 No. 473**

**EXITING THE EUROPEAN UNION**

**ENVIRONMENTAL PROTECTION**

**WILDLIFE**

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

*Made* - - - - - *26th February 2019*

*Coming into force in accordance with regulation 1*

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The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

## PART 1

### Introduction

#### **Citation and commencement**

1. These Regulations may be cited as the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 and come into force on exit day.

## 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)(b) 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)—

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(a) 2018 c. 16.

(b) 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.

- (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”;
    - (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(a).

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(b).

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(c) 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”;

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(a) 2010 asp 10.

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

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

(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<sup>(a)</sup>.”.

(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)—

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(a) 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.

- (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)(a) 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—
  - (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

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(a) The existing paragraph in Article 2 became paragraph 1 of that Article by virtue of S.I. 2019/96. Article 2(1)(12) was inserted by that instrument.

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.”.

## PART 3

### Other provision in relation to the environment

#### **Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)**

##### *Power to make decisions on BAT conclusions for the purposes of Directive 2010/75/EU*

9.—(1) An appropriate authority may, by regulations, make provision specifying BAT conclusions for the purposes of provisions that have transposed Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)(a) into domestic law.

(2) Regulations made by the Secretary of State or the Welsh Ministers under this Part are to be made by statutory instrument.

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

(4) Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under this Part is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

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

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

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

(8) Regulations made by the Department of Agriculture, Environment and Rural Affairs under this Part 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.

(9) 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.

(10) Before making any regulations under this Part, an appropriate authority must consult—

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

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

(11) In this Part, “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.

(12) 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.

(13) In this Part, “BAT conclusions” means a document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures.

(14) In relation to paragraph (13) and this paragraph—

“available techniques” means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible;

“best” means most effective in achieving a high general level of protection of the environment as a whole;

“best available techniques” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole.

“emission levels associated with the best available techniques” means the range of emission levels obtained under normal operating conditions using a best available technique or a combination of best available techniques, as described in BAT conclusions, expressed as an average over a given period of time, under specified reference conditions;

“emission limit value” means the mass, expressed in terms of certain specific parameters, concentration and/or level of an emission, which may not be exceeded during one or more periods of time;

“techniques” includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned.

## PART 4

### Amendments to retained direct EU legislation on wildlife

#### **Council Regulation (EEC) No 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards**

**10.**—(1) Council Regulation (EEC) No 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards is amended as follows.

(2) In Article 3—

(a) in paragraph 1, for the words from “the Commission” to the end substitute “the pelts originate from an approved country”;

(b) at the end insert—

“4. In paragraph 1, “an approved country”, in relation to the pelts of any species (and goods incorporating such pelts), means a country listed in the Annex to the Council Decision in respect of that species.

5. Subject to paragraph 6, the Secretary of State may, by regulations, amend the Annex to the Council Decision by—

(a) adding an entry;

(b) amending an entry;

(c) omitting an entry.

6. The Secretary of State may not add a country to the list of approved countries in the Annex to the Council Decision unless the Secretary of State is satisfied that, in that country—

(a) there are adequate administrative or legislative provisions in force to prohibit the use of the leghold trap, or

(b) the trapping methods used for the species specified in Annex 1 meet internationally agreed trapping standards.

7. In this Article, “the Council Decision” means Council Decision 97/602/EC concerning the list referred to in the second subparagraph of Article 3(1) of Regulation (EEC) No 3254/1991 and in Article 1(1)(a) of Commission Regulation (EC) No 35/97.”.

(3) In Article 4, for the second paragraph substitute—

“The Secretary of State may, by regulations, amend Council Regulation (EC) No 35/97 laying down provision on the certification of pelts and goods covered by Regulation (EEC) No 3254/91.”.

(4) For Article 5 substitute—

#### *“Article 5*

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 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)).”.

**Commission Regulation (EC) No 35/97 laying down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91**

**11.** In Article 2 of Commission Regulation (EC) No 35/97 laying down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91—

- (a) in paragraph 1, for “shown in the Annex” substitute “which at the date of importation is for the time being specified by the Secretary of State”;
- (b) after paragraph 3 insert—

“4. The Secretary of State must publish the model forms referred to in paragraph 1 in a manner which the Secretary of State considers appropriate.”.

**Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein**

**12.—**(1) Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein is amended as follows.

(2) In Article 2(d)—

- (a) for “Community” substitute “United Kingdom”;
- (b) for the words from “by the Commission” to the end substitute “in regulations made by the Secretary of State”.

(3) In Article 4—

- (a) in paragraph 6—
  - (i) in the first subparagraph, in the words before point (a)—
    - (aa) omit the words from “in accordance” to “Article 18(2)”;
    - (bb) for “Scientific Review Group, the Commission may” substitute “scientific authority, the Secretary of State may, by regulations,”;
    - (cc) for “Community” substitute “United Kingdom”;
  - (ii) in the first subparagraph, in point (d), for “Community”, in both places it occurs, substitute “United Kingdom”;
  - (iii) in the second subparagraph—
    - (aa) for “Commission shall” substitute “Secretary of State must”;
    - (bb) omit “, in the Official Journal of the European Communities”;
- (b) in paragraph 7—

- (i) in the first subparagraph—
  - (aa) for “Community” substitute “United Kingdom”;
  - (bb) for “shall be granted by the Commission” substitute “may, by regulations, be prescribed by the Secretary of State”;
- (ii) omit the second subparagraph.

(4) In Article 5(7)(b)—

- (a) for “a management” substitute “the management”;
- (b) for “Commission which shall” substitute “Secretary of State who may”;
- (c) for “recommend restrictions on” substitute “make regulations restricting”;
- (d) omit the words from “in accordance” to the end.

(5) In Article 7—

- (a) in paragraph 1(b), for “laid down by the Commission” substitute “set out in writing, and published, by the Secretary of State”;
  - (b) in paragraphs 1(c) and 2(c)—
    - (i) in the first sentence, for “by the Commission” substitute “in writing, and published, by the Secretary of State”;
    - (ii) omit the second sentence;
  - (c) in paragraph 3—
    - (i) in the first sentence—
      - (aa) for “Community” substitute “United Kingdom”;
      - (bb) for “by the Commission” substitute “in writing, and published, by the Secretary of State”;
    - (ii) omit the second sentence.
- (6) In Article 8(4)—
- (a) in the first sentence, for “Commission” substitute “Secretary of State in regulations”;
  - (b) in the second sentence, for “Community” substitute “United Kingdom”;
  - (c) omit the third sentence.
- (7) In Article 9(6)—
- (a) in the first sentence—
    - (i) for “Commission may” substitute “Secretary of State may, by regulations,”;
    - (ii) for “Community” substitute “United Kingdom”;
  - (b) omit the second sentence.
- (8) In Article 11(5)—
- (a) in the first sentence, for “Commission shall” substitute “Secretary of State may, by regulations,”;
  - (b) omit the second sentence.
- (9) In Article 12(4)—
- (a) in the first sentence—
    - (i) for “defined by the Commission, a” substitute “set out in regulations made by the Secretary of State, the”;
    - (ii) for “Community” substitute “United Kingdom”;
  - (b) omit the second sentence.
- (10) For Article 18 substitute—

*“Article 18*

**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 to be laid before Parliament after being made, except for a statutory instrument containing regulations made under the following Articles, which is subject to annulment in pursuance of a resolution of either House of Parliament—
  - (a) Article 4(6);
  - (b) Article 5(7);
  - (c) Article 8(4);
  - (d) Article 9(6);
  - (e) Article 19(4);
  - (f) Article 19(5).



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.”.
- (11) In Article 19—
- (a) in paragraph 1—
    - (i) omit the first subparagraph;
    - (ii) in the second subparagraph—
      - (aa) for “Commission shall determine” substitute “Secretary of State may, by regulations, prescribe”;
      - (bb) omit the words from “in accordance” to the end;
  - (b) omit paragraph 2;
  - (c) in paragraph 3—
    - (i) in the first subparagraph, in the words before point (a), for “Commission shall lay down uniform” substitute “Secretary of State must, by regulations, prescribe”;
    - (ii) omit the second subparagraph;
  - (d) in paragraph 4—
    - (i) in the first sentence, for “Commission shall adopt, where necessary, additional measures to” substitute “Secretary of State may, by regulations,”;
    - (ii) omit the second sentence;
  - (e) in paragraph 5—
    - (i) in the first sentence, for “Commission shall” substitute “Secretary of State may, by regulations,”;
    - (ii) for the second sentence substitute—

“Before amending Annex B with respect to species described at Article 3(2)(c) or (d), or amending Annex D with respect to species described at Article 3(4)(a), the Secretary of State must consult the scientific authority regarding the amendment.”.

26th February 2019

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (f) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

They provide for functions of making an instrument of a legislative character exercised by EU entities to be exercisable instead by a public authority in the United Kingdom. These functions are in the fields of the environment and wildlife. The provisions are all amendments to retained direct EU legislation except for regulation 9, which concerns a legislative function in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast) (OJ No L 334, 17.12.2010, p 17).

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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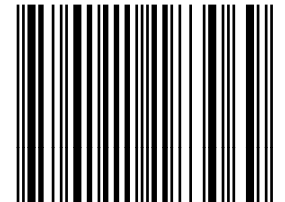


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