
STATUTORY INSTRUMENTS

2019 No. 620

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

PART 4

Amendment and revocation of retained direct EU legislation

CHAPTER 2

Decisions

Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries

17.—(1) Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with 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) In Article 1—

(a) in paragraph 1, in the words before point (a)—

(i) omit “Member States and”;

(ii) omit “referred to in Article 14 of Directive 2006/21/EC”;

(b) after paragraph 2 insert—

“3. In paragraph 1—

(a) in so far as it extends to England and Wales, “financial guarantee” means the financial guarantee referred to in Article 14 of Directive 2006/21/EC;

(b) in so far as it extends to Scotland, “financial guarantee”, “rehabilitation”, “treatment” and “waste facility” have the meanings given in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010;

(c) in so far as it extends to Northern Ireland, “financial guarantee”, “rehabilitation”, “treatment” and “waste facility” have the meanings given in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.”.

(3) After Article 1, insert—

“Article 1A

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 paragraphs 2 to 12.

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 2 is to be read as if—

- (a) in paragraph 2(c), the reference to Article 11(3)(j) of [Directive 2000/60/EC](#) were a reference to that Article read in accordance with Article 1C;
- (b) paragraphs 3 and 4 were omitted.

4. 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 (17), for “[Directive 67/548/EEC](#)(1) or [Directive 1999/45/EC](#)(2)” there were substituted “[Regulation \(EC\) No 1272/2008](#) of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures”;
- (e) in point (18), for “Article 2(11) of [Directive 96/61/EC](#)” there were substituted “Article 3(10) of the Industrial Emissions Directive”;
- (f) in point (24), for the words from “the national law” to “takes place” there were substituted “national law”;
- (g) in point (26), for the words from “the national law” to “operates” there were substituted “national law”;
- (h) in point (27), for “which a Member State designates” there were substituted “designated”.

5. Article 5 is to be read as if—

- (a) in paragraph 2(a)(iii) and (b), “at Community level” were omitted;
- (b) in paragraph 3(g), for “[Directive 2000/60/EC](#)” there were substituted “the EU-derived domestic legislation which transposed [Directive 2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy in respect of England and Wales(3)”;
- (c) in paragraph 5, “national or Community” were omitted.

6. Article 6(2) is to be read as if the words from “Without prejudice” to “92/104/EEC,” were omitted.

(1) OJ No 196, 16.8.1967, p 1 (Special Edition Series I Volume 1967 p 234), repealed by [Regulation \(EC\) No 1272/2008](#) of the European Parliament and of the Council (OJ No L 353, 31.12.2008, p 1).

(2) OJ No L 200, 30.7.1999, p 1, repealed by [Regulation \(EC\) No 1272/2008](#) of the European Parliament and of the Council (OJ No L 353, 31.12.2008, p 1).

(3) See for example the Coastal Protection Act 1949 (c. 74), the Salmon and Freshwater Fisheries Act 1975 (c. 51), the Food and Environment Protection Act 1985 (c. 48), the Environmental Protection Act 1990 (c. 43), the Water Industry Act 1991 (c. 56), the Water Resources Act 1991 (c. 57), the Land Drainage Act 1991 (c. 59), the Environment Act 1995 (c. 25), the Water Act 2003 (c. 37), the Marine and Coastal Access Act 2009 (c. 23), and S.I. 1986/1510, 1989/1263, 1994/2941, 2001/2954, 2003/3245, 2004/99, 2007/1518, 2009/995 (W. 81), 3104, 2010/639, 740, 1493 (W. 136), 2011/735, 2015/483, 668, 810, 2016/614, 2017/407, 2018/151.

7. Article 7 is to be read as if—
 - (a) in paragraph 1, in the second subparagraph, “national or Community” were omitted;
 - (b) in paragraph 2(e), the reference to [Directive 85/337/EEC](#)(4) were a reference to the EU-derived domestic legislation which transposed [Directive 2011/92/EU](#) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(5) in respect of England and Wales(6);
 - (c) in paragraph 3(b), for “Article 7 of [Directive 75/442/EEC](#)” there were substituted “Article 28 of the Waste Framework Directive”;
 - (d) in paragraph 4, the third indent were omitted;
 - (e) in paragraph 5, “and Community” were omitted.
8. Article 10 is to be read as if paragraph 2 were omitted.
9. Article 11(2)(a) is to be read as if—
 - (a) “Community or” were omitted;
 - (b) for “Directives [76/464/EEC](#)(7), [80/68/EEC](#) and [2000/60/EC](#)” there were substituted “the EU-derived domestic legislation which transposed [Directive 2000/60/EC](#) in respect of England and Wales”.
10. Article 12 is to be read as if—
 - (a) in paragraph 4, “national or Community” were omitted;
 - (b) in paragraph 5, for the words from “Community” to “2000/60/EC” there were substituted “retained EU law, in particular the EU-derived domestic legislation which transposed [Directive 2000/60/EC](#) in respect of England and Wales”.
11. Article 13 is to be read as if—
 - (a) in paragraph 1, in the words before point (a)—
 - (i) “Community” were omitted;
 - (ii) for “[Directive 2000/60/EC](#)” there were substituted “the EU-derived domestic legislation which transposed [Directive 2000/60/EC](#) in respect of England and Wales”;
 - (b) in paragraph 3, for “Directives [76/464/EEC](#), [80/68/EEC](#) or [2000/60/EC](#)” there were substituted “the EU-derived domestic legislation which transposed [Directive 2000/60/EC](#) in respect of England and Wales”;
 - (c) in paragraph 4, for “Directives [76/464/EEC](#), [80/68/EEC](#) and [2000/60/EC](#)” there were substituted “the EU-derived domestic legislation which transposed [Directive 2000/60/EC](#) in respect of England and Wales”;
 - (d) in paragraph 5, in the second sentence—
 - (i) for “Community” there were substituted “retained EU law”;

(4) OJ No L 175, 5.7.1985, p 40, repealed by [Directive 2011/92/EU](#) of the European Parliament and of the Council (OJ No L 26, 28.1.2012, p 1).

(5) OJ No L 26, 28.1.2012, p 1, as amended by [Directive 2014/52/EU](#) of the European Parliament and of the Council (OJ No L 124, 25.4.2014, p 1).

(6) See for example [S.I. 2012/698](#), [2014/557](#), [615](#), [2015/398](#), [446](#), [660](#), [810](#), [1937](#) (W. 291), [2017/280](#) (W. 74), [407](#), [565](#) (W. 134), [567](#) (W. 136), [571](#), [572](#), [580](#), [582](#), [583](#), [585](#), [588](#), [592](#), [593](#), [1070](#), [2018/695](#), [798](#), [834](#).

(7) OJ No L 129, 18.5.1976, p 23, repealed by [Directive 2006/11/EC](#) of the European Parliament and of the Council (OJ No L 64, 4.3.2006, p 52).

- (ii) for “[Directive 2000/60/EC](#)” there were substituted “the EU-derived domestic legislation which transposed [Directive 2000/60/EC](#) in respect of England and Wales”.

12. Annex 3 is to be read as if—

- (a) in the second indent, for “[Directive 91/689/EEC](#)” there were substituted “the Waste Framework Directive”;
- (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”.

13. In this Decision—

- (a) “appropriate authority” means—
- (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
- (b) “appropriate agency” means—
- (i) in relation to England, the Environment Agency;
 - (ii) in relation to Wales, the Natural Resources Body for Wales;
- (c) “EU-derived domestic legislation” has the meaning given in section 2(2) of the European Union (Withdrawal) Act 2018;
- (d) “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.

Article 1B

1. In this Decision, 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 paragraphs 2 to 10.

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 2 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) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
 - (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
 - (c) paragraph 4 were omitted.
4. Article 3(20) is to be read as if for “Article 2(11) of [Directive 96/61/EC](#)” there were substituted “Article 3(10) of the Industrial Emissions Directive”.
5. Article 5 is to be read as if paragraph 2 were omitted.
6. 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.
7. 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.
- 8. Article 16 is to be read as if—
 - (a) in paragraph 1—
 - (i) in the first subparagraph, the words from “, in cooperation” to “advisable,” were omitted;
 - (ii) in the second subparagraph, the second sentence were omitted;
 - (b) in paragraph 2—
 - (i) for “Community as a whole” there were substituted “United Kingdom”;
 - (ii) the words from “, and to enable” to “individually” were omitted;
 - (c) paragraph 4 were omitted.
- 9. Article 28 is to be read as if—
 - (a) in paragraph 1, in the second subparagraph, for “Member State concerned” there were substituted “United Kingdom”;
 - (b) in paragraph 3(b), for “Community legislation” there were substituted “retained EU law”;
 - (c) in paragraph 5—
 - (i) for “[Directive 94/62/EC](#)” there were substituted “the Packaging Waste Directive”;
 - (ii) for “[Directive 1999/31/EC](#)” there were substituted “the Landfill Directive”.
- 10. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

Article 1C

- 1. For the purposes of Article 1A(3)(a), Article 11(3)(j) of [Directive 2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy is to be read as if—
 - (a) the reference to “Member States” were a reference to the appropriate authority or appropriate agency;
 - (b) in the words after the final indent, “environmental objectives”—
 - (i) in relation to the Northumbria River Basin District, means the environmental objectives referred to in the WFD Regulations as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
 - (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;
 - (iii) in relation to a river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations.
- 2. In paragraph 1(b), “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

Article 1D

1. In Articles 1A(4)(e) and 1B(4), the “Industrial Emissions Directive” means [Directive 2010/75/EU](#) of the European Parliament and of the Council on industrial emissions, read in accordance with paragraphs 2 and 3.

2. Article 3 is to be read as if—

- (a) in point (1)(a), for the words from “Article 1” to the end there were substituted “Article 4(78) of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation”;
- (b) in point (10)(b), for “Member State in question” there were substituted “United Kingdom”;
- (c) in point (23), for the words from “point 1” to the end there were substituted “point 1 of the second subparagraph of Article 2 of Council [Directive 2009/158/EC](#) on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs”;
- (d) in point (37), for “[Directive 2008/98/EC](#) of the European Parliament and of the Council of 19 November 2008 on waste” there were substituted “the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
- (e) in point (38), for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”.

3. Annex 1 is to be read as if—

- (a) in the words before point 1, the second paragraph were omitted;
- (b) in point 5.3—
 - (i) in point (a), in the words before point (i), for “Council [Directive 91/271/EEC](#) of 21 May 1991 concerning urban waste-water treatment” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;
 - (ii) in point (b), in the words before point (i), for “[Directive 91/271/EEC](#)” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;
- (c) in point 5.4, the reference to Council [Directive 1999/31/EC](#) of 26 April 1999 on the landfill of waste were a reference to the Landfill Directive;
- (d) in point 6.9, for “[Directive 2009/31/EC](#)” there were substituted “the EU-derived domestic legislation which transposed [Directive 2009/31/EC](#) in respect of England and Wales”;
- (e) in point 6.11, for “[Directive 91/271/EEC](#)” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”.

Article 1E

1. In Article 1B(9)(c)(i), “the Packaging Waste Directive” means European Parliament and Council [Directive 94/62/EC](#) on packaging and packaging waste, as last amended by Directive (EU) 2015/720 of the European Parliament and of the Council, and read in accordance with paragraphs 2 to 6.

2. A reference to one or more member States in a provision of the Directive 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 paragraph 1, the fourth subparagraph were omitted;
 - (b) in paragraph 2, for “[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”.
4. Article 4 is to be read as if—
 - (a) in paragraph 1—
 - (i) in the first subparagraph, for the words from “measures to” to “Article 9” there were substituted “essential requirements (which has the meaning given by regulation 2(1) of the Packaging (Essential Requirements) Regulations 2015(8))”;
 - (ii) in the second subparagraph—
 - (aa) in the first sentence, for “Member States” there were substituted “the United Kingdom”;
 - (bb) the second sentence were omitted;
 - (b) paragraphs 1a to 3 were omitted.
5. Article 5 is to be read as if “, in conformity with the Treaty” were omitted.
6. Article 14 is to be read as if—
 - (a) “the” in the second place it occurs were omitted;
 - (b) “required pursuant to Article 17 of [Directive 75/442/EEC](#),” were omitted;
 - (c) at the end, there were inserted “, the Single Use Carrier Bags Charges (England) Order 2015(9) and the Single Use Carrier Bags Charge (Wales) Regulations 2010(10)”.

Article 1F

1. In Articles 1B(9)(c)(ii) and 1D(3)(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Council [Directive 2011/97/EU](#), and read in accordance with paragraphs 2 to 5.

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 2 is to be read as if—
 - (a) for point (a) there were substituted—
 - “(a) “waste” means anything that—
 - (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive, and

(8) [S.I. 2015/1640](#), amended by [S.I. 2018/942](#). It is prospectively amended by [S.I. 2019/188](#) from exit day (see section 20 of the European Union (Withdrawal) Act 2018).

(9) [S.I. 2015/776](#).

(10) [S.I. 2010/2880 \(W. 238\)](#), amended by [S.I. 2011/2184 \(W. 236\)](#), [2012/1916](#), [2013/898 \(W. 102\)](#), [2014/2291 \(W. 226\)](#), [2016/1221 \(W. 292\)](#).

- (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;
 - (b) for point (c) there were substituted—
 - “(c) “hazardous waste” has the meaning given in Article 3(2) of the Waste Framework Directive;”.
 - 4. Article 5 is to be read as if—
 - (a) in paragraph 1—
 - (i) in the first sentence, for the words from “the date” to the end there were substituted “16th July 2001”;
 - (ii) the third sentence were omitted;
 - (b) in paragraph 2—
 - (i) in the first subparagraph, in points (a) to (c), for “the date laid down in Article 18(1)” there were substituted “16th July 2001”;
 - (ii) the second subparagraph were omitted;
 - (iii) in the third subparagraph, the second and third sentences were omitted;
 - (c) in paragraph 3—
 - (i) in point (b), for “Annex III to [Directive 91/689/EEC](#)” there were substituted “Annex 3 to the Waste Framework Directive”;
 - (ii) in point (c), for the words from “(property H9” to the end there were substituted “in Annex 3 to the Waste Framework Directive”;
 - (iii) in point (d), for “the date laid down in Article 18(1)” in both places it occurs there were substituted “16th July 2001”.
 - 5. Annex 2 is to be read as if—
 - (a) point 1 were omitted;
 - (b) in point 2, in the second paragraph, the third sentence were omitted;
 - (c) in point 4, in the fourth and fifth paragraphs, for “covered by [Directive 91/689/EEC](#)” there were substituted “classified as hazardous waste”;
 - (d) in point 5, the second and third sentences were omitted.”.
- (4) Omit Article 2.