

# WASTE- NOTIFICATION TO THE SCOTTISH PARLIAMENT

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

### 1. Name of instrument and summary of proposal:

The Waste (Miscellaneous) Amendments (EU Exit) Regulations 2019 (“The Regulations”) are made under powers in section 2(2) of the European Communities Act 1972 and section 8 of the European Union (Withdrawal) Act 2018. They aim to ensure that existing primary legislation dealing with the regulation of waste carriers and the landfill of waste, and EU legislation on various categories of waste batteries, scrap metal (including copper), glass cullet, industrial emissions, hazardous waste, packaging and packaging waste, extractive waste and waste targets are updated and modified to ensure continued functionality after exiting the European Union. Certain provisions relate to England and Wales only – those that update secondary legislation on landfill and extractive waste.

### 2. Explanation of law that the proposals amend and summary of the proposals

**The Control of Pollution (Amendment ) Act 1989** makes provision for the registration and regulation of carriers of controlled waste and has effect across all of the UK. The Regulations amend this so that carriers from EU member states will no longer be exempt from registration. This has no impact on the registration of UK carriers.

Part 1 of **the Waste and Emissions Trading Act 2003 (“the 2003 Act”)** includes power to create targets in respect of the amount of biodegradable waste going to landfill for England, Wales, Scotland, Northern Ireland and the UK as a whole. At present, the Act requires that these targets must be consistent with the targets set in the Landfill Directive 1999/31/EC. The relevant provisions of the Landfill Directive are fully transposed by the Landfill (Maximum Landfill Amount) Regulations 2011 by setting targets for biodegradable waste up until end March 2020. The reference to the Landfill Directive targets is therefore no longer needed and the Regulations remove the reference to the Landfill Directive in the Act. The Regulations amend sections 1 and 23 of the 2003 Act to recognise the devolved nature of powers in this area after EU exit: any exercise by the Secretary of State of the power to set new targets can only be with the consent of the relevant devolved administrations. These changes will retain provision for setting of targets for future years by agreement with devolved administrations, although it should be noted that Scotland has already legislated to ban biodegradable municipal waste going to landfill in 2021. Finally, the Regulations amend section 37 of the 2003 Act to ensure that references to the Waste Directive and retained EU law flowing from it is up-to-date and modified so that they will operate effectively on exit. This includes making specific domestic provision for Ministers to make determinations as to what is, and what ceases to be, hazardous waste.

The Regulations also amend **retained EU law** in this area to ensure continued operability of the waste management regime on and after exit day.

## EU Regulations

The Regulations amend the definition of various types of waste that appear in multiple EU Regulations to ensure that the definitions are consistent with one another and will continue to operate on exit day as they do now. The Regulations also ensure that where hazardous waste is referred to, there is domestic power available to Ministers to determine that a type or batch of waste as hazardous or non-hazardous. Where obligations are placed on “Member States” in the EU/EC Regulations, these are addressed to ensure that they continue to operate on exit day, or are removed if they are no longer relevant. If an obligation has already been met through domestic action or legislation then the reference to that obligation is removed. Where the obligation continues to operate it is imposed on the appropriate domestic agencies or authorities which are currently responsible for implementation and/or compliance. In Scotland the appropriate authority or agency can be the Scottish Ministers, the Scottish Environment Protection Agency (“SEPA”), or local authorities. Where a Directive is referred to in an EU Regulation, the Regulations address the text of the Directive to ensure that references to and in that Directive will operate effectively as required on exit day. These are administrative changes that recognise in legislation the domestic situation as it is now and do not involve policy changes.

**Commission Regulation (EU) No. 1103/2010** sets out rules on capacity labelling of rechargeable and automotive batteries and accumulators to assist in reduction of waste, and ensure fair competition. This is modified to reflect EU law as it will be on exit day (including updating references in and to the Waste Framework Directive and the Waste Electrical and Electronic Equipment Directive) and to modify or remove Member State obligations to ensure continued operability by appropriate UK agencies on and after exit day. In Scotland the appropriate agency is SEPA.

**Council Regulation (EU) No. 333/2011** sets out criteria for determining when certain types of scrap metal cease to be waste, and for regulating conformity with those criteria by producers or importers of scrap metal. The Regulations restrict the effect of the retained EU law version of the Council Regulation to the UK, and modify the application of the Waste Framework Directive, the Mining Waste Directive and the Industrial Emissions Directive in their application to the Council Regulation so that the criteria continue to be operable by the appropriate UK agencies on and after exit day. It includes transitional provisions to ensure that verification processes continue uninterrupted. In Scotland the appropriate agencies are SEPA and local authorities.

**Commission Regulation (EU) No. 493/ 2012** sets out rules for calculating the efficiency of recycling processes of waste batteries and accumulators to encourage the improvement of existing recycling and treatment technologies and the development of new ones. The Regulations update references to the Waste Framework Directive, and the Directive on batteries and accumulators itself, as well as updating definitions and ensuring that the relevant UK agencies continue to receive the required information on the recycling of waste from batteries and accumulators. This ensures continued effective operability on exit. In Scotland the relevant agency is SEPA.

**Commission Regulation (EU) No. 1179/2012** sets criteria for determining when glass cullet destined for the production of glass substances or objects ceases to be waste. This helps reduce waste and ensures a viable product for re-use, whilst protecting the environment and human health. The Regulations update references to the Waste Framework Directive in its application to the Commission Regulation, and makes provision for the appropriate UK agencies to continue to operate effectively after exit (including making provision for the continuation of verification processes without interruption). In Scotland the appropriate agencies are SEPA and local authorities.

**Commission Regulation (EU) No. 715/2013** sets criteria for determining when copper scrap ceases to be waste. This helps reduce waste, and enables re-use of copper, whilst ensuring a high level of environmental protection. The Regulations update references to the Waste Framework Directive, the Mining Waste Directive and the Industrial Emissions Directive in their application to the Commission Regulation, and makes provision for the appropriate UK agencies to continue to operate effectively after exit. It makes provisions for the continuation of verification processes without interruption. In Scotland, the appropriate agencies are SEPA and local authorities.

## **EU Decisions**

These Regulations make similar amendments in a number of EU Decisions to those made for EU Regulations. They include ensuring that the definitions of waste and hazardous waste continue to operate as described above; removing or redirecting obligations put on Member States to an appropriate agency or authority with domestic responsibility in that area, and ensuring that references to and in EU Directives referred to in the Decisions will operate appropriately on exit day. These are administrative changes that recognise in legislation the domestic situation as it is now and do not involve policy changes.

**Commission Decision 2000/532/EC** establishes a list of hazardous waste under the Waste Framework Directive. The Waste Framework Directive establishes a hierarchy of waste management – prevention, re-use, recycling, recovery and disposal. It also creates categories of waste on the basis of their impact of the environment and human health, to ensure that waste identified as hazardous is treated and stored in accordance with strict conditions. It has been recognised that new technology can have two effects: to create new hazardous substances, as well as creating better treatment processes for hazardous waste. The Directive provides mechanisms for updating the list of waste, and this Decision creating the list of hazardous waste has itself been amended and updated several times. The Regulations update references to the Waste Framework Directive, the Mining Waste Directive and the Industrial Emissions Directive in their application to the Commission Decision, and make provision for the appropriate UK authorities and agencies to continue to operate effectively in respect of hazardous waste after exit. Specific provision has been made for Ministers to make determinations as to what is hazardous waste and what ceases to be hazardous waste as technology develops, and so ensure that such waste is dealt with in a manner that continues to protect the environment and human health. In Scotland, the appropriate authorities and agencies are the Scottish Ministers, SEPA and local authorities.

**Commission Decision 2001/171/EC** establishes a derogation, relaxing the limits of heavy metal concentration levels for glass packaging or packaging waste, to encourage the recycling and re-use of glass packaging. The Regulations amend the Commission Decision to remove redundant references to Member State obligations, and make provision for appropriate UK agencies to ensure its continued monitoring and effectiveness after exit. In Scotland the appropriate agency is SEPA.

**Council Decision 2003/33/EC** establishes criteria and procedures for the acceptance of waste at landfills. The modifications of this Council Decision apply to England and Wales only. Any necessary Scottish modifications will be taken forward in Scottish regulations.

**Commission Decision 2009/292/ EC** sets the conditions for a derogation which allows for the use of plastic crate and pallet packaging with higher levels of heavy metal concentrations than normally permitted, where those crates and pallets are kept in product loops which are in a closed and controlled chains and satisfy specified conditions. This is to encourage the re-use and recycling of such crates and pallets, and reduce the amount that requires to be disposed of as waste. The Regulations amend the Commission Decision to remove redundant references to Member State obligations, and make provision for appropriate UK agencies to ensure its continued monitoring and effectiveness after exit. In Scotland the appropriate agency is SEPA.

**Commission Decisions 2009/ 335/EC; 2009/337/EC; 2009/ 359/EC and 2009/ 360/ EC** makes provision relating to the management of extractive waste in respect of financial guarantees; criteria for the classification of waste facilities; the definition of inert waste; and technical requirements for waste characterisation. Aside from the changes to the definition of waste which will apply consistently across the UK, the modifications of these Commission Decisions in the Regulations apply to England and Wales only. The necessary Scottish modifications will be taken forward in Scottish regulations.

**Commission Decision 2011/ 753/EU** sets out rules and calculation methods for compliance with re-use and recycling targets for municipal, construction and demolition waste, established in Article 11(2) of the Waste Directive. The Regulations update references to the Waste Framework Directive, in their application to the Commission Decision and amend the Commission Decision to modify Member State obligations, so that appropriate UK agencies are able to continue monitoring the effectiveness of the targets after exit. In Scotland the appropriate agencies are SEPA, and local authorities.

## **Revocations**

The Regulations revoke a number of EU Regulations and Decisions which will no longer have any meaningful effect in the UK post EU-exit. These include Regulations which will have no effect in domestic law post exit as they make minor amendments to EU Directives; and Decisions which deal with issues relating to reporting on progress in implementing or meeting targets in Directives which will have no effect in domestic law after EU exit. A number of provisions of the EEA Agreement are revoked to remove references to Decisions which have been revoked or are no longer relevant.

### **3. Why are these changes necessary?**

The waste management regime in Scotland is derived from a comprehensive set of EU legislation, made by way of Directives, with details and updated provisions set out in Regulations and Decisions provided for under those Directives. Whilst the majority of the EU instruments in the area have been transposed into domestic law, and will continue to have full effect on exit day, some have not been fully transposed, some require modification to ensure that they continue to be effective, and some provisions will no longer be relevant on exit. The European Union (Withdrawal) Act 2018 makes some modifications to ensure continued operability of retained EU law in these circumstances, but has recognised that further provision will be necessary in relation to some deficiencies.

These Regulations correct deficiencies arising from the UK's withdrawal from the EU that are not catered for by the 2018 Act, to enable the continued and effective function of domestic transposing provisions and retained EU law. In particular, they make the changes necessary to remove anything which has no practical application in relation to the UK or part of it (or is otherwise redundant); transfer functions in relation to EU entities which will no longer have those functions to appropriate UK bodies; remove provision for arrangements that are dependent on the UK's membership of the EU, or which makes provision in relation to reciprocal or other arrangements which no longer exist or are appropriate.

There is no change of policy on any of the provisions modified by the Regulations, but the 2003 Act is also being amended to reflect the impact of withdrawal from the EU on devolved powers to set landfill targets.

### **4. Scottish Government categorisation of significance of proposals**

The legislation modified by these Regulations is a mix of environmental and market orientated measures which, taken together, encourage the responsible use of materials by producers, help prevent waste, and actively encourage its re-use, recycling and recovery as alternatives to disposal.

Category A - Most of these changes are technical, and provide for a continuation of current functions and responsibilities (particularly of SEPA and local authorities) which flow from EU obligations on the management of waste. The majority of the changes are to ensure continued application and operability of EU Regulations and Decisions which currently apply equally across the UK, even though this is a largely devolved area.

Category B - We consider that the modification to Council Regulations No. 1103/2010 which makes provision for Scottish Ministers to make determinations as regards the classification of hazardous waste classifications falls within Category B. This determination function has been exercised at EU level, and the discretion to make such determinations at UK level has not been exercised to date. We consider it appropriate that the discretion will rest with Scottish Ministers as regards Scotland once the UK leaves the EU.

## **5. Impact on Devolved Area**

Given the mix of environmental and market provisions in this area, reserved and devolved interests are heavily intertwined in the Regulations. However, we take the view that a significant proportion of the Regulations deal with devolved matters, and we have ensured that devolved interests are fully accounted for.

## **6. Stakeholder engagement/consultation**

We are in regular contact with all our stakeholders regarding the move towards leaving the EU. However, these measures are aimed solely at preserving the functioning of the law as it stands at present. Therefore, apart from direct discussion with SEPA, we have not undertaken any engagement, nor any formal consultation, about these specific amendments.

## **7. Any other impact assessments**

On the basis that this does not result in any policy changes, there is not a requirement to undertake any impact assessment.

## **8. Summary of reasons for Scottish Ministers proposing to consent to UK Ministers legislating**

The provisions were made at the UK level to reflect the mix of reserved and devolved responsibilities and the UK wide approach taken in the subject matter dealt with in the Regulations. It is the most effective and transparent way to make changes to address deficiencies at the same level. Officials have worked with DEFRA to ensure the drafting delivers for our interests and respects devolved competence in Scotland, and so Scottish Ministers propose to agree to a UK approach for these deficiencies.

## **9. Have Scottish Ministers had regard to the guiding principles on animal welfare and the environment?**

Yes. The guiding principles on the environment as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union are relevant to these proposals. The legislation modified by the Regulations is already in line with these principles, and as no policy changes are being introduced, it is considered that these amendments are in adherence with these principles.

## **10. Are there governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

Later this year, Scottish Ministers will consult on the governance gaps that will be created once the UK leaves the EU, with a view to bringing proposals back to the Scottish Parliament on environmental governance arrangements once the future relationship is clear.

We have been engaged in framework discussions with all the administrations of the UK and the relevant regulators specifically looking at the waste regulation in the UK outside of the EU and its existing regime. These framework discussions are

progressing. The Scottish Government's position is that these arrangements should be based on staying closely aligned with the existing EU waste regulatory regime and maintaining existing standards of protection for human health and the environment.

**11. Intended laying date**

14 December

**12. Does the Scottish Parliament have 28 days to scrutinise?**

Yes

**13. Information about any time dependency associated with the proposal?**

It is essential that the Regulations are in force on the day we exit the EU in the event of a no deal scenario to ensure that legislation is operable to allow continued high levels of protection for human health and the environment, continued facilitation of the prevention of waste, and its effective re-use, recycling and disposal within the UK. In addition, this is likely to be particularly important in providing the standards that will enable the shipment of waste within and out-with the UK.

**14. Any significant financial implication?**

These regulations make technical amendments to existing regimes to preserve the way they function after exit. There are no significant financial implications associated with the proposals.

**15. Additional Information to Note**

Waste management is covered by specific EU regulations, some of which are the concern of the Regulations that this notification refers to. However, this is a wide-ranging area of EU law, and a further notification is anticipated in December 2018 to cover the remaining elements.

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