

**2020 No. (W. )**

**ENVIRONMENTAL  
PROTECTION, WALES**

**The Waste (Wales) (Miscellaneous  
Amendments) (EU Exit)  
Regulations 2020**

**EXPLANATORY NOTE**

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

These Regulations are made under powers of the Welsh Ministers in paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16), in order to address failures of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

In particular, these regulations make modifications to the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414 (W. 96)) (“the 2019 Regulations”).

The 2019 Regulations, which come into force on IP completion day, make modifications to the Waste (Wales) Measure 2010 (nawm 8), the Landfill Allowances Scheme (Wales) Regulations 2004 (S.I. 2004/1490 (W. 155)), the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W. 138)) and the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 (S.I. 2011/1014 (W. 152)).

As a result of implementation of EU legislation since the 2019 Regulations were made, including amendments to various EU Directives made under the EU Circular Economy Package, the correcting provisions made by the 2019 Regulations no-longer fully address the deficiencies in the operation of retained EU law which will arise as a consequence of leaving the European Union, and which they were intended to correct.

Regulation 2 of these Regulations, which has effect immediately before IP completion day, makes amendments to the 2019 Regulations, in order to

ensure that when they come into force, the instruments they amend, will function effectively on IP completion day.

Regulation 3 revokes certain minor provisions in the Hazardous Waste (Wales) Regulations 2005 which will cease to function effectively after IP completion day.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a Regulatory Impact Assessment as to the likely costs and benefits of complying with these Regulations.

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<i>Sift requirements satisfied</i>	***
<i>Made</i>	***
<i>Laid before Senedd Cymru</i>	***
<i>Coming into force in accordance with regulation 1(3) and (4)</i>	

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1 of Schedule 2, to the European Union (Withdrawal) Act 2018<sup>(1)</sup>.

The requirements of paragraph 4 of Schedule 2 and paragraph 4(2) of Schedule 7 to that Act have been satisfied.

**Title and commencement**

**1.**—(1) The title of these Regulations is the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020.

(2) These Regulations come into force in accordance with paragraphs (3) and (4).

(3) This regulation and regulation 2 come into force immediately before IP completion day.

(4) Regulation 3 comes into force on IP completion day.

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(1) 2018 c.16, amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1).

**Amendment of the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019**

2.—(1) The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019<sup>(1)</sup> are amended as follows.

(2) In regulation 6—

(a) for paragraph (2) substitute—

“(2) In section 9(3) at the end insert “, and read as if—

(a) in Article 2—

(i) in point (a) the reference to the definition of ‘waste’ were omitted;

(ii) after point (a) there were inserted—

“(aa) ‘Waste’ has the meaning given in Article 3(1) of Directive 2008/98/EC (“the Waste Framework Directive”), as read with Articles 5 and 6 of that Directive.”;

(b) in Article 3—

(i) in paragraph (2) for “Without prejudice to existing Community legislation the” there were substituted “The”;

(ii) for paragraph (3) there were substituted—

“3. The management of extractive waste, within the meaning given in regulation 2(1) of the Environmental Permitting (England and Wales) Regulations 2016, is excluded from the scope of this Directive where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to those Regulations.”;

(b) omit paragraph (3);

(c) in paragraph (4)—

(i) in sub-paragraph (a), omit “(as amended by regulation 3(3))”;

(ii) in sub-paragraph (b)—

(aa) in the inserted subsection (3), for “exit day” substitute “IP completion day (within the meaning given to that expression in the European Union

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(1) S.I. 2019/414 (W. 96).

(Withdrawal Agreement) Act 2020)”;

- (bb) for the inserted subsections (5) to (7) substitute—

“(5) Article 5 is to be read as if—

- (a) in paragraph 1, for “Member States shall take appropriate measures to ensure that a”, there were substituted “A”;

- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product, must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

- (b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;

- (c) paragraphs 2 and 3 were omitted.

(6) Article 6 is to be read as if—

- (a) in paragraph 1 for “Member States shall take appropriate measures to ensure that waste”, there were substituted “Waste”;

- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation (within the meaning given to that expression in the European Union (Withdrawal) Act 2018) setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

- (b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;

- (c) in paragraph 2—

- (i) the first sub-paragraph were omitted;

- (ii) in the second sub-paragraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth sub-paragraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first sub-paragraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a) the Natural Resources Body for Wales”;
      - (bb) the second sentence were omitted;
    - (ii) in the second sub-paragraph—
      - (aa) for “Member States” there were substituted “The Natural Resources Body for Wales”;
      - (bb) “by competent authorities” were omitted.
- (7) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
 

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission Decision 2000/532/EC, as that list has effect in Wales.”;
  - (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission Decision 2000/532/EC, be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - (c) paragraphs 2, 3, 6 and 7 were omitted.”
- (3) In regulation 7—
- (a) for paragraph (2) substitute —
 

“(2) In regulation 2(1)—

- (a) in the definition of “waste facility (*“cyfleuster gwastraff”*)”, omit “(as substituted by regulation 4(2))”;
- (b) after the definition of “waste facility” insert—
  - ““the Waste Framework Directive” (*“y Gyfarwydddeb Fframwaith Gwastraff”*) means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851 and read in accordance with paragraphs (3) to (9).”;
- (b) omit paragraph (3);
- (c) in paragraph (4)—
  - (i) for “After paragraph (2)” substitute “After regulation 2(2)”;
  - (ii) in the inserted paragraph (3), for “exit day” substitute “IP completion day (within the meaning given to that expression in the European Union (Withdrawal Agreement) Act 2020)”;
  - (iii) for the inserted paragraphs (5) to (7) substitute—
    - “(5) Article 5 is to be read as if—
      - (a) in paragraph 1, for “Member States shall take appropriate measures to ensure that a”, there were substituted “A”;
      - (b) after paragraph 1 there were inserted—
        - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
          - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
          - (b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;
      - (c) paragraphs 2 and 3 were omitted.
- (6) Article 6 is to be read as if—
  - (a) in paragraph 1, for “Member States shall take appropriate measures to ensure that waste” there were substituted “Waste”;
  - (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation (within the meaning given to that expression in the European Union (Withdrawal) Act 2018) setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
  - (b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;
- (c) in paragraph 2—
- (i) the first sub-paragraph were omitted;
  - (ii) in the second sub-paragraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
  - (iii) the third and fourth sub-paragraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
- (i) in the first sub-paragraph—
    - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the Natural Resources Body for Wales”;
    - (bb) the second sentence were omitted;
  - (ii) in the second sub-paragraph—
    - (aa) for “Member States” there were substituted “The Natural Resources Body for Wales”;
    - (bb) “by competent authorities” were omitted.

(7) Article 7 is to be read as if—

- (a) before paragraph 1 there were inserted—



“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission Decision 2000/532/EC, as that list has effect in Wales.”;

(b) in paragraph 1—

- (i) the first and second sentences were omitted;
- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission Decision 2000/532/EC, be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;

(c) paragraphs 2, 3, 6 and 7 were omitted.”

(d) in paragraph (6) omit “(as amended by regulation 4(3))”;

(e) for paragraph 7 substitute—

“(7) After regulation 7(10) insert—

“(11) For the purposes of regulation 7(10) Directive 1999/31/EC is to be read as if—

(a) in Article 2—

(i) in point (a), the reference to the definition of ‘waste’ were omitted;

(ii) after point (a) there were inserted—

“(aa) ‘Waste’ has the meaning given in Article 3(1) of Directive 2008/98/EC (“the Waste Framework Directive”), as read with Articles 5 and 6 of that Directive”;

(b) in Article 3—

(i) in paragraph (2) for “Without prejudice to existing Community legislation the” there were substituted “The”;

(ii) for paragraph (3) there were substituted—

“(3) The management of extractive waste, within the meaning given in regulation 2(1) of the Environmental Permitting (England and Wales) Regulations 2016, is excluded from the

scope of this Directive where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to those Regulations.””

(4) In regulation 8—

(a) in paragraph (3)—

(i) in the inserted regulation 2A—

(aa) in paragraph (2), for “exit day” substitute “IP completion day (within the meaning given to that expression in the European Union (Withdrawal Agreement) Act 2020)”;

(bb) omit paragraph (4);

(cc) for paragraphs (5) to (7) substitute—

“(5) Article 5 is to be read as if—

(a) in paragraph 1, for “Member States shall take appropriate measures to ensure that a” there were substituted “A”;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

(6) Article 6 is to be read as if—

(a) in paragraph 1, for “Member States shall take appropriate measures to ensure that waste” there were substituted “Waste”;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste, must be made—

(a) in accordance with any regulations or retained direct EU legislation (within the meaning given to that expression in the European Union (Withdrawal)

Act 2018) setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;

(c) in paragraph 2—

(i) the first sub-paragraph were omitted;

(ii) in the second sub-paragraph for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;

(iii) the third and fourth sub-paragraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first sub-paragraph—

(aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the Natural Resources Body for Wales”;

(bb) the second sentence were omitted;

(ii) in the second sub-paragraph—

(aa) for “Member States” there were substituted “The Natural Resources Body for Wales”;

(bb) “by competent authorities” were omitted.

(7) Article 7 is to be read as if—

(a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission Decision 2000/532/EC, as that list has effect in Wales.”;

(b) in paragraph 1—

(i) the first and second sentences were omitted;

- (ii) for the third sentence, there were substituted “The list of waste shall, except as provided in Commission Decision 2000/532/EC, be binding as regards determination of the wastewhich is to be considered as hazardous waste or non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (ii) in the inserted regulation 2B—
  - (aa) in the heading omit “and Industrial Emissions Directive”;
  - (bb) omit paragraphs (4), (5) and (6);
- (b) in paragraph 4(b), for the inserted definition of “Landfill Directive”, substitute—
 

““the Landfill Directive” (*“y Gyfarwydddeb Dirlenwi”*) means Council Directive 1999/31/EC on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if—

  - (a) in Article 2—
    - (i) in point (a)—
      - (aa) the reference to the definition of ‘waste’ were omitted; and
      - (bb) for “Directive 2008/98/EC” there were substituted “the Waste Framework Directive”;
    - (ii) after point (a) there were inserted—
 

“(aa) ‘waste’ has the meaning given by regulation 2(1)(b) of the Hazardous Waste (Wales) Regulations 2005”;
  - (b) in Article 3—
    - (i) in paragraph 2, for “Without prejudice to existing Community legislation the” there were substituted “The”;
    - (ii) for paragraph 3 there were substituted—

“3. The management of extractive waste, within the meaning given in regulation 2(1) of the Environmental Permitting Regulations, is excluded from the scope of this Directive where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to those Regulations.””;

- (c) in paragraph (7) omit “(as amended by regulation 5(2) and 5(3)).

(5) In regulation 9—

- (a) in paragraph (2), omit “(“y Gyfarwydddeb Fframwaith Gwastraff”) (as substituted by regulation 6)”;

- (b) in paragraph (3)—

- (i) for “After paragraph (2)” substitute “after regulation 2(2)”;
  - (ii) in the inserted paragraph (3), for “exit day” substitute “IP completion day (within the meaning given to that expression in the European Union (Withdrawal Agreement) Act 2020)”;
  - (iii) for the inserted paragraphs (5) to (7), substitute—

“(5) Article 5 is to be read as if—

- (a) in paragraph 1, for “Member States shall take appropriate measures to ensure that a” there were substituted “A”;

- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
  - (b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;

- (c) paragraphs 2 and 3 were omitted.

(6) Article 6 is to be read as if—

- (a) in paragraph 1, for “Member States shall take appropriate measures to ensure that waste” there were substituted “Waste”;

- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation (within the meaning given to that expression in the European Union (Withdrawal)

Act 2018 setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the Welsh Ministers or the Natural resources Body for Wales for the purposes of this Article.”;

(c) in paragraph 2—

(i) the first sub-paragraph were omitted;

(ii) in the second sub-paragraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;

(iii) the third and fourth sub-paragraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first sub-paragraph—

(aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the Natural Resources Body for Wales”;

(bb) the second sentence were omitted;

(ii) in the second sub-paragraph—

(aa) for “Member States” there were substituted “The Natural Resources Body for Wales”;

(bb) “by competent authorities” were omitted.

(7) Article 7 is to be read as if—

(a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission Decision 2000/532/EC, as that list has effect in Wales.”;

(b) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission Decision 2000/532/EC, be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;

(c) paragraphs 2, 3, 6 and 7 were omitted.”

**Amendment of the Hazardous Waste (Wales) Regulations 2005**

**3.**—(1) The Hazardous Waste (Wales) Regulations 2005<sup>(1)</sup> are amended as follows.

(2) Omit regulations 6(b), 8(1)(b) and 9(1)(b).

*Name*

Minister for Environment, Energy and Rural Affairs,  
one of the Welsh Ministers

*Date*

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(1) S.I. 2005/1806 (W. 138) amended by S.I. 2009/2861 (W. 250), 2011/971 (W. 141), 2013/755 (W. 90), 2018/721 (W. 140) and 2019/414 (W. 96). There are other amendments not relevant to these Regulations.