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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 26**

**The Environment (EU Exit) (Scotland)  
(Amendment etc.) Regulations 2019**

**PART 2**

Amendments to legislation concerning the water environment

**Water Environment and Water Services (Scotland) Act 2003**

**2.—**(1) The Water Environment and Water Services (Scotland) Act 2003<sup>(1)</sup> is amended as follows.

(2) In section 1(1) (general purpose of Part 1), after “water policy” insert “, as last amended by Commission [Directive 2014/101/EU](#)(**2**)”.

(3) In section 2 (the general duties), in subsections (1) and (2), after “Directive” insert “, the Groundwater Directive and the Priority Substances Directive”.

(4) In section 28(1) (interpretation of Part 1)—

(a) after the definition of “groundwater”, insert the following definition—

““the Groundwater Directive” means [Directive 2006/118/EC](#) of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(**3**), as amended by Commission [Directive 2014/80/EU](#)(**4**)”.

(b) after the definition of “loch”, insert the following definition—

““the Priority Substances Directive” means [Directive 2008/105/EC](#) of the European Parliament and of the Council on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives [82/176/EEC](#), [83/513/EEC](#), [84/156/EEC](#), [84/491/EEC](#), [86/280/EEC](#) and amending [Directive 2000/60/EC](#) of the European Parliament and of the Council(**5**), as amended by [Directive 2013/39/EU](#) of the European Parliament and of the Council(**6**)”.

(5) After section 28, insert—

**“28A. Interpretation of Directives for the purposes of Part 1**

For the purposes of this Part—

- (a) the Directive is to be interpreted in accordance with Part 1 of schedule 5,
- (b) the Groundwater Directive is to be interpreted in accordance with Part 2 of that schedule, and

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(1) [2003 asp 3](#).  
(2) [OJ L 311, 31.10.2014, p.32](#).  
(3) [OJ L 372, 27.12.2006, p.19](#).  
(4) [OJ L 182, 21.6.2014, p.52](#).  
(5) [OJ L 348, 24.12.2008, p.84](#).  
(6) [OJ L 226, 24.8.2013, p.1](#).

- (c) the Priority Substances Directive is to be interpreted in accordance with Part 3 of that schedule.”
- (6) After schedule 4 (modifications of Part III of the 1980 Act), insert—

## “SCHEDULE 5

Section 28A

## INTERPRETATION OF DIRECTIVES FOR THE PURPOSES OF PART 1

## PART 1

## The Directive

*Introduction*

- 1.—(1) When interpreting the Directive for the purposes of Part 1 of this Act—
- (a) 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 relevant 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 Scotland,
  - (b) a reference to Community legislation is to be read as a reference to retained EU law,
  - (c) the Directive is to be read subject to the following rules.
- (2) In sub-paragraph 1(a)—
- “exit day” has the meaning given by section 20 of the European Union (Withdrawal) Act 2018,
- “relevant authority” means—
- (a) the Scottish Ministers,
  - (b) SEPA,
  - (c) any responsible authority.

*Modifications to the Articles*

2. Article 2 is to be read as if—
- (a) in paragraph 24, for the words from “in Annex IX” to the end, there were substituted “by the Priority Substances Directive, and under relevant retained EU law which sets environmental quality standards”,
  - (b) in paragraph 37, for the words from “[Directive 80/778/EEC](#)” to the end, there were substituted “Council [Directive 98/83/EC](#) on the quality of water intended for human consumption<sup>(7)</sup>”.
3. Article 3(9) is to be ignored.
4. Article 4 is to be read as if—
- (a) in paragraph 1—
    - (i) in sub-paragraph (a)(iv), for “Article 16(1) and (8)” there were substituted “the Priority Substances Directive”,

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(7) OJ L 330, 5.12.1998, p.32, as last amended by Commission Directive (EU) 2015/1787 (OJ L 260, 7.10.2015, p.6.)

- (ii) in sub-paragraph (b)(iii), for “paragraphs 2, 4 and 5 of Article 17” there were substituted “the Groundwater Directive”,
  - (b) in paragraph 8, the reference to “other Community environmental legislation” were a reference to “retained EU law relating to the environment”,
  - (c) in paragraph 9, the reference to “the existing Community legislation” were a reference to “other relevant retained EU law”.
5. Article 7(2) is to be read as if—
- (a) for “at Community level under Article 16” there were substituted “by the Priority Substances Directive”,
  - (b) for “[Directive 80/778/EEC](#) as amended by [Directive 98/83/EC](#)” there were substituted “the retained EU law which implemented Council [Directive 98/83/EC](#) on the quality of water intended for human consumption”.
6. Article 10 is to be ignored.
7. Article 11(3) is to be read as if—
- (a) in sub-paragraph (a), for the words from “to implement” to the end, there were substituted “under retained EU law for the protection of water”,
  - (b) in sub-paragraph (j), in the fourth indent, for the words from “[Directive 2009/31/EC](#)” to the end, there were substituted “the retained EU law which implemented [Directive 2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide<sup>(8)</sup>”,
  - (c) in sub-paragraph (k)—
    - (i) for “action taken pursuant to Article 16,” there were substituted “the Priority Substances Directive”,
    - (ii) for “agreed pursuant to Article 16(2)” there were substituted “in Annex X”.
8. Article 12 is to be ignored.
9. Article 15 is to be ignored.
10. Article 24 is to be ignored.
11. Annex II is to be read as if, in section 1.4—
- (a) in the second paragraph—
    - (i) after “gathered under” there were inserted “the retained EU law which implemented”,
    - (ii) in sub-paragraph (ii), the reference to information gathered under Articles 9 and 15 of [Directive 96/61/EC](#) were a reference to relevant information gathered under the retained EU law which implemented Articles 5(3), 14 and 24 of [Directive 2010/75/EC](#) of the European Parliament and of the Council on industrial emissions<sup>(9)</sup>”,
  - (b) in the third paragraph—
    - (i) at the start of sub-paragraph (i), there were inserted “retained EU law which implemented”,
    - (ii) in sub-paragraph (ii), the reference to information gathered under Articles 7 and 17 of [Directive 91/414/EEC](#) were a reference to relevant information gathered under Regulation (EC) No 1107/2009 of the European Parliament and of the Council

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(8) OJ L 140 5.6.2009, p.114, as last amended by Decision (EU) 2018/853 of the European Parliament and of the Council (OJ L 150, 14.6.2018, p.155).

(9) OJ L 334, 17.12.2010, p.17, as last corrected by a corrigendum (OJ L 158, 19.6.2012, p.25).

concerning the placing of plant protection products on the market and repealing Council Directives [79/117/EEC](#) and [91/414/EEC](#)”,

- (iii) in sub-paragraph (iii), for “[Directive 98/8/EC](#)” there were substituted “Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products”.

**12.** Annex IV is to be read as if—

(a) in paragraph 1—

- (i) in sub-paragraph (iii), for “[Directive 76/160/EEC](#)” there were substituted “retained EU law which implemented [Directive 2006/7/EC](#) of the European Parliament and of the Council concerning the management of bathing water quality and repealing [Directive 76/160/EEC](#)(10)”,

- (ii) in sub-paragraph (iv), after “under”, in both places it occurs, there were inserted “the retained EU law which implemented”,

(iii) in sub-paragraph (v)—

- (A) after “under”, there were inserted “the retained EU law which implemented”,

- (B) for “[Directive 79/409/EEC](#)” there were substituted “the retained EU law which implemented [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds(11)”,

- (b) in paragraph 2, the words “Community, national or local” were omitted.

**13.** Annex V is to be read as if—

- (a) references in tables 1.2.1 to 1.2.5 to [Directive 91/414/EC](#), in each place they occur, were references to Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives [79/117/EEC](#) and [91/414/EEC](#),

- (b) references in tables 1.2.1 to 1.2.5 to [Directive 98/8/EC](#), in each place they occur, were references to Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products,

- (c) in section 1.3.1, in the unnumbered paragraph headed “Selection of monitoring points”, the fourth indent (referring to “the Information Exchange [Decision 77/795/EEC](#)”) were omitted,

- (d) in section 1.3.5, for “Drinking Water Directive” there were substituted “retained EU law which implemented Council [Directive 98/83/EC](#) on the quality of water intended for human consumption(12)”,

- (e) in section 1.4.3, for “Annex IX, Article 16 and under other relevant Community legislation” there were substituted “the Priority Substances Directive and under relevant retained EU law”,

- (f) in the table in section 2.3.2, in the column for “good status”, for “other relevant Community legislation in accordance with Article 17” there were substituted “the Groundwater Directive”,

- (g) in section 2.4.5, for “the Directives concerned” there were substituted “the Priority Substances Directive and the Groundwater Directive”.

(10) OJ L 64, 4.3.2006, p.37, as last relevantly amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ L 188, 18.7.2009, p.14).

(11) OJ L 20, 26.1.2010, p.7, as last amended by Council [Directive 2013/17/EU](#) (OJ L 158, 10.6.2013, p.193).

(12) OJ L 330, 5.12.1998, p.32, as last amended by Commission Directive (EU) 2015/1787 (OJ L 260, 7.10.2015, p.6).

14. Annex VI is to be read as if Part A were omitted.

15. Annex VII is to be read as if, in Part A, in point 7.1, for “to implement Community legislation” there were substituted “under retained EU law”.

#### *Definition of retained EU law*

16. For the purposes of this Part, “retained EU law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018(13).

## PART 2

### The Groundwater Directive

#### *Introduction*

17.—(1) When interpreting the Groundwater Directive for the purposes of Part 1 of this Act—

- (a) 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 relevant 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 Scotland,
- (b) a reference to Community legislation is to be read as a reference to retained EU law,
- (d) the Groundwater Directive is to be read subject to the following rules.

(2) In sub-paragraph 1(a)—

“exit day” has the meaning given by section 20 of the European Union (Withdrawal) Act 2018, “relevant authority” means—

- (a) the Scottish Ministers,
- (b) SEPA,
- (c) any responsible authority.

#### *Modifications to the Articles*

18. Article 3(5) is to be read as if for “submitted” there were substituted “produced”.

19. Article 5(4) and (5) are to be read as if for “submitted” there were substituted “produced”.

20. Article 6(4) is to be read as if the words from “for the” to the end were omitted.

21. Article 12 is to be ignored.

22. Annex I is to be read as if—

- (a) in footnote 1 to the table in paragraph 1, for “Article 2 of [Directive 91/414/EEC](#) and in Article 2 of [Directive 98/8/EC](#)” there were substituted “Article 2 of Regulation (EC) [No 1107/2009](#) of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives [79/117/EEC](#) and [91/414/EEC](#) and in Article 3 of Regulation (EU) No 528/2012 of the European Parliament

and of the Council concerning the making available on the market and use of biocidal products”,

- (b) in paragraph 2, for “[Directive 91/414/EEC](#) or [Directive 98/8/EC](#)” there were substituted “[Regulation \(EC\) No 1107/2009](#) of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives [79/117/EEC](#) and [91/414/EEC](#) or [Regulation \(EU\) No 528/2012](#) of the European Parliament and of the Council concerning the making available on the market and use of biocidal products”.

**23.** Annex II is to be read as if, in Part C—

- (a) in the first paragraph, for “submitted” there were substituted “produced”,
- (b) in the second paragraph—
- (i) in the opening words, for “provide” there were substituted “include”,
- (ii) in point (c)(iii), for “at national, Union or” there were substituted “in retained EU law or other national legislation, or at”.

*Definition of retained EU law*

**24.** For the purposes of this Part, “retained EU law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018.

## PART 3

### The Priority Substances Directive

*Introduction*

**25.—**(1) When interpreting the Priority Substances Directive for the purposes of Part 1 of this Act—

- (a) 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 relevant 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 Scotland,
- (b) the Priority Substances Directive is to be read subject to the following rules.
- (2) In sub-paragraph (1)(a)—
- “exit day” has the meaning given by section 20 of the European Union (Withdrawal) Act 2018,
- “relevant authority” means—
- (a) the Scottish Ministers,
- (b) SEPA,
- (c) any responsible authority.

*Modifications to Articles*

**26.—**(1) A reference in Article 3 to a provision of the relevant Directive is to be read as a reference to that provision subject to the modification described by paragraph 25(1)(a) of this schedule.

- (2) Article 3(5a) is to be ignored.

(3) In sub-paragraph (1), “the relevant Directive” means Commission [Directive 2009/90/EC](#) laying down, pursuant to [Directive 2000/60/EC](#) of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status<sup>(14)</sup>.

27. Article 4 is to be read as if—

- (a) in paragraph 2(b), the words from “, such as” to the end were omitted,
- (b) in paragraph 3(b), the reference to “Community law” were a reference to retained EU law.

28. Article 5 is to be read as if—

- (a) references to [Directive 91/414/EEC](#) were references to Regulation [\(EC\) No 1107/2009](#) of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives [79/117/EEC](#) and [91/414/EEC](#),
- (b) paragraph 3 were omitted.

29. The following are to be ignored—

- (a) Article 6(2),
- (b) Article 7a(3),
- (c) in Article 8a(1), the final sentence of the second sub-paragraph,
- (d) Article 8b(4),
- (e) Article 8c,
- (f) Article 13.

#### *Definition of retained EU law*

30. For the purposes of this Part, “retained EU law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018.”.

### **The Water Environment (Controlled Activities) (Scotland) Regulations 2011**

3.—(1) The Water Environment (Controlled Activities) (Scotland) Regulations 2011<sup>(15)</sup> are amended as follows.

(2) In regulation 2 (interpretation), after paragraph (2), insert—

“(3) For the purposes of these Regulations—

- (a) the Water Framework Directive is be interpreted in accordance with Part 1 (the Directive) of schedule 5 (interpretation of Directives for the purposes of Part 1) of the Act,
  - (b) the Groundwater Directive is be interpreted accordance with Part 2 (the Groundwater Directive) of schedule 5 of the Act,
  - (c) the Priority Substances Directive is to be interpreted in accordance with Part 3 (the Priority Substances Directive) of schedule 5 of the Act.
- (4) For the purposes of paragraph (3), schedule 5 of the Act is to be read as if—
- (a) references to “the Directive” are to “the Water Framework Directive”,
  - (b) references to “Part 1 of this Act” are to “these Regulations”. ”

(3) In schedule 3 (general binding rules), omit Part 3 (mutual recognition)<sup>(16)</sup>.

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<sup>(14)</sup> OJ L 201, 1.8.2009, p.36.

<sup>(15)</sup> S.S.I. 2011/209, relevantly amended by S.S.I. 2015/211 and S.S.I. 2017/389.

<sup>(16)</sup> Part 3 of schedule 3 was inserted by S.S.I. 2017/389.

## The Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013

4.—(1) The Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013<sup>(17)</sup> are amended as follows.

(2) In regulation 2(interpretation)—

(a) in paragraph (1)—

(i) after the definition of “environmental objective”, insert—

““the Groundwater Directive” means [Directive 2006/118/EC](#) of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration<sup>(18)</sup>, as amended by Commission [Directive 2014/80/EU](#)<sup>(19)</sup>,”

(ii) after the definition of “pollutant”, insert—

““the Priority Substances Directive” means [Directive 2008/105/EC](#) of the European Parliament and of the Council on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives [82/176/EEC](#), [83/513/EEC](#), [84/156/EEC](#), [84/491/EEC](#), [86/280/EEC](#) and amending [Directive 2000/60/EC](#) of the European Parliament and of the Council<sup>(20)</sup>, as amended by [Directive 2013/39/EU](#) of the European Parliament and of the Council<sup>(21)</sup>,”

(iii) after the definition of “programme of measures”, insert—

““retained EU law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018,”

(b) after paragraph (2), insert—

“(3) For the purposes of these Regulations—

(a) the Water Framework Directive is to be interpreted in accordance with Part 1 (the Directive) of schedule 5 (interpretation of Directives for the purposes of Part 1) of the Act,

(b) the Groundwater Directive is to be interpreted in accordance with Part 2 (the Groundwater Directive) of schedule 5 of the Act,

(c) the Priority Substances Directive is to be interpreted in accordance with Part 3 (the Priority Substances Directive) of schedule 5 of the Act.

(4) For the purposes of paragraph (3), schedule 5 of the Act is to be read as if—

(a) references to “the Directive” are to “the Water Framework Directive”,

(b) references to “Part 1 of this Act” are to “these Regulations”.”

(3) In regulation 3(1)(c) (setting of environmental objectives)—

(a) for “EU instrument” substitute “retained EU law”,

(b) for “EU legislation” substitute “retained EU law”.

(4) In regulation 10(b) (environmental objectives: application of regulations 4 to 9), for “EU environmental legislation” substitute “retained EU law relating to the environment”.

(5) In regulation 13(1) (preparation of programme of measures)—

<sup>(17)</sup> [S.S.I. 2013/323](#), as amended by [S.S.I. 2015/211](#).

<sup>(18)</sup> OJ L 372, 27.12.2006, p.19.

<sup>(19)</sup> OJ L 182, 21.6.2014, p.52.

<sup>(20)</sup> OJ L 348, 24.12.2008, p.84.

<sup>(21)</sup> OJ L 226, 24.8.2013, p.1.



- (a) in sub-paragraph (a), for “to implement EU legislation” substitute “under retained EU law”,
- (b) in sub-paragraph (j)(iv)—
  - (i) after “in accordance with” insert “the retained EU law which implemented”,
  - (ii) omit the words from “or excluded” to the end.
- (6) In regulation 14(1)(f)(ii) (content of river basin management plans), for “to implement EU legislation” substitute “under retained EU law”.
- (7) In regulation 16 (interpretation of Part 3)—
  - (a) in paragraph (1), omit the definition of “Priority Substances Directive”,
  - (b) after paragraph (2), insert—

“(3) When interpreting [Directive 2009/90/EC](#) for the purposes of this Part, 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 SEPA.”
- (8) In regulation 17(15) (environmental quality standards for bodies of surface water)—
  - (i) after sub-paragraph (a), omit “and”,
  - (ii) omit sub-paragraph (b).
- (9) Omit regulation 19A (coordination).
- (10) In regulation 20(1) (interpretation of Part 4), omit the definition of “the Groundwater Directive”.
- (11) In regulation 24(3) (measures to prevent or limit inputs of pollutants into groundwater), for “EU legislation” substitute “retained EU law”.

## **Revocation**

**5.** The Water Environment and Water Services (Scotland) Act 2003 (Modification of Part 1) Regulations 2015(**22**) are revoked.