



Waste and Emissions Trading Act 2003

2003 CHAPTER 33

PART 1

WASTE

CHAPTER 4

MISCELLANEOUS AND SUPPLEMENTARY

37 Meaning of “waste [^{F1}, recovery and disposal]” in Part 1 **E+W+N.I.**

- (1) In this Part “waste” means anything that—
- is waste for the purposes of the Waste Directive, and
 - is not excluded from the scope of that Directive by Article 2 of that Directive.

[^{F2}(1A) In this Part, “recovery” and “disposal” have the same meanings as in the Waste Directive.]

[^{F3}(2) For the purposes of this section [^{F4}and section 37A], “the Waste Directive” means Directive [2008/98/EC](#) of the European Parliament and of the Council on waste [^{F5}, as last amended by [^{F6}Directive (EU) 2018/851]] [^{F7}, and read in accordance with subsections (3) to (9)].]

[^{F8}(2) For the purposes of this section [^{F4}and section 37A], “the Waste Directive” means Directive [2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by [^{F6}Directive (EU) 2018/851].]

[^{F9}(3) A reference to one or more member States in a provision of the Waste 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 IP completion day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of England, Wales, Scotland or Northern Ireland.

Status: There are multiple versions of this provision on screen. These apply to different geographical extents. **Skip to:** E+W+N.I. - England, Wales and Northern Ireland extent S - Scotland extent

Changes to legislation: There are currently no known outstanding effects for the Waste and Emissions Trading Act 2003, Section 37. (See end of Document for details)

(4) 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 “ [F10]assimilated] law ” or, in relation to Northern Ireland, EU legislation which has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;
- (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “ Regulation (EC) No 1069/2009 ”;
- (iii) in point (d), as it extends to England and Wales, for the words from “Directive 2006/21/EC” to the end there were substituted “ the Mining Waste Directive ” (see section 37A);
- (iv) for point (d), as it extends to Scotland, there were substituted—
 - “(d) extractive waste, which has the same meaning as in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010 (S.S.I. 2010/60).”;
- (v) for point (d), as it extends to Northern Ireland, there were substituted—
 - “(d) extractive waste, which has the same meaning as in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 (S.R. 2015 No. 85).”;

(b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;

(c) paragraph 4 were omitted.

(5) Article 5 is to be read as if—

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

(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 appropriate authority or the appropriate agency 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, “Member States shall take appropriate measures to ensure that” were omitted;

(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 [F11]assimilated direct] legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

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- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, 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 subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (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 appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (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 England, Wales, Scotland or Northern Ireland (as the case may be).”;
 - (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.
- (8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
- (9) In this section—
- “appropriate agency” means—
 - (a) in relation to England, the Environment Agency;
 - (b) in relation to Wales, the Natural Resources Body for Wales;
 - (c) in relation to Scotland, the Scottish Environment Protection Agency;
 - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
 - “appropriate authority” means—
 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Ministers;

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- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
- “local authority” means—
- (a) in England outside Greater London—
- (i) a district council,
 - (ii) a county council, or
 - (iii) the Council of the Isles of Scilly;
- (b) in Greater London—
- (i) the council of a London borough,
 - (ii) the Common Council of the City of London,
 - (iii) the Sub-Treasurer of the Inner Temple, or
 - (iv) the Under-Treasurer of the Middle Temple;
- (c) in Wales—
- (i) a county council, or
 - (ii) a county borough council;
- (d) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
- (e) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972.]

Textual Amendments

- F1** Words in s. 37 heading inserted (E.W.N.I.) (1.10.2020) by [The Waste \(Circular Economy\) \(Amendment\) Regulations 2020 \(S.I. 2020/904\)](#), regs. 1(1), **5(3)(a)(i)**
- F2** S. 37(1A) inserted (E.W.N.I.) (1.10.2020) by [The Waste \(Circular Economy\) \(Amendment\) Regulations 2020 \(S.I. 2020/904\)](#), regs. 1(1), **5(3)(a)(ii)**
- F3** S. 37(2) substituted (E.W.) (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), reg. 1(2), **Sch. 4 para. 6** (with regs. 2, 47(2))
- F4** Words in s. 37(2) inserted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **6(4)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in s. 37(2) inserted (E.W.S.) (20.3.2019) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(a), **3(2)**
- F6** Words in s. 37(2) substituted (E.W.N.I.) (1.10.2020) by [The Waste \(Circular Economy\) \(Amendment\) Regulations 2020 \(S.I. 2020/904\)](#), regs. 1(1), **5(3)(a)(iii)**
- F7** Words in s. 37(2) inserted (E.W.S.) (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **6(4)(a)(ii)**; 2020 c. 1, **Sch. 5 para. 1(1)**
- F8** S. 37(2) substituted (N.I.) (20.3.2019) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(a), **3(3)**
- F9** S. 37(3)-(9) inserted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **6(4)(b)**; 2020 c. 1, **Sch. 5 para. 1(1)** (as amended by S.I. 2020/1540, regs. 1(3), **14(3)**)
- F10** Word in s. 37(4) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 51(a)**
- F11** Words in s. 37(6) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 51(b)**

[^{F12}37 Meaning of “waste [^{F13}, recovery and disposal]” in Part 1 **S**

- (1) In this Part, “waste” means anything that—

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- (a) is waste within the meaning of Article 3(1) of the Waste Directive, as read with Articles 5 and 6, and
 - (b) is not excluded from the scope of the Waste Directive by Article 2(1), (2) or (3).
- (2) For the purposes of this section, “the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste ^{F14}, as last amended by ^{F15}Directive (EU) 2018/851^{F16}, and read in accordance with subsections (3) to (9)].
- [A reference to one or more member States in a provision of the Waste Directive ^{F17}(3) 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 IP completion day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of England, Wales, Scotland or Northern Ireland.
- (4) 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 “ ^{F10}assimilated] law ”or, in relation to Northern Ireland, EU legislation which has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;
 - (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “ Regulation (EC) No 1069/2009 ”;
 - (iii) in point (d), as it extends to England and Wales, for the words from “Directive 2006/21/EC” to the end there were substituted “ the Mining Waste Directive ” (see section 37A);
 - (iv) for point (d), as it extends to Scotland, there were substituted—
 - “(d) extractive waste, which has the same meaning as in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010 (S.S.I. 2010/60).”;
 - (v) for point (d), as it extends to Northern Ireland, there were substituted—
 - “(d) extractive waste, which has the same meaning as in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 (S.R. 2015 No. 85).”;
 - (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
 - (c) paragraph 4 were omitted.
- (5) Article 5 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (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

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- (b) having regard to any guidance published by the appropriate authority or the appropriate agency 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, “Member States shall take appropriate measures to ensure that” were omitted;
 - (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 [F11]assimilated direct] legislation 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 appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, 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 subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (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 appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- (7) Article 7 is to be read as if—
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 - (b) in paragraph 1—
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(8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

(9) In this section—

“appropriate agency” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

“appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers;
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

“local authority” means—

- (a) in England outside Greater London—
 - (i) a district council,
 - (ii) a county council, or
 - (iii) the Council of the Isles of Scilly;
- (b) in Greater London—
 - (i) the council of a London borough,
 - (ii) the Common Council of the City of London,
 - (iii) the Sub-Treasurer of the Inner Temple, or
 - (iv) the Under-Treasurer of the Middle Temple;
- (c) in Wales—
 - (i) a county council, or
 - (ii) a county borough council;
- (d) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
- (e) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972.]]

Textual Amendments

- F10** Word in s. 37(4) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 51(a)**
- F11** Words in s. 37(6) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 51(b)**
- F12** S. 37 substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226) , reg. 1(1) , **Sch. para. 2**
- F13** Words in s. 37 heading inserted (S.) (1.10.2020) by The Waste (Circular Economy) (Amendment) Regulations 2020 (S.I. 2020/904), regs. 1(1), **5(3)(b)(i)**
- F14** Words in s. 37(2) inserted (E.W.S.) (20.3.2019) by The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/620), regs. 1(2)(a), **3(2)**
- F15** Words in s. 37(2) substituted (S.) (1.10.2020) by The Waste (Circular Economy) (Amendment) Regulations 2020 (S.I. 2020/904), regs. 1(1), **5(3)(b)(iii)**

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- F16** Words in s. 37(2) inserted (E.W.S.) (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), [6\(4\)\(a\)\(ii\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F17** S. 37(3)-(9) inserted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), [6\(4\)\(b\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#) (as amended by S.I. 2020/1540, regs. 1(3), [14\(3\)](#))

Status:

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