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STATUTORY INSTRUMENTS

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**2017 No. 407**

**WATER RESOURCES, ENGLAND AND WALES**

**The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017**

*Made* - - - - - *15th March 2017*  
*Laid before Parliament* *16th March 2017*  
*Laid before the National Assembly for Wales* *16th March 2017*  
*Coming into force* - - - *10th April 2017*

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The Secretary of State and the Welsh Ministers, acting respectively in relation to river basin districts that are wholly in England and river basin districts that are wholly in Wales, and jointly in relation to river basin districts that are partly in England and partly in Wales, make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State is designated for the purposes of that section of that Act in relation to the environment(b), and the Welsh Ministers are designated for the purposes of that section of that Act in relation to water resources(c).

## PART 1

### Introduction

#### Citation, commencement, extent and application

1. These Regulations—

- (a) may be cited as the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 and come into force on 10th April 2017;
- (b) extend to England and Wales;
- (c) apply only in relation to river basin districts identified under regulation 4(1).

#### Interpretation

2.—(1) In these Regulations—

“the 2003 Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003(d);

“the WFD” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(e);

“the GWD” means Directive 2006/118/EEC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(f);

“the EQSD” means Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy(g);

“the Agency” means the Environment Agency;

“the appropriate agency”, except as provided for by regulation 9(8), means—

- (a) in relation to a river basin district that is wholly in England, the Agency;
- (b) in relation to a river basin district that is wholly in Wales, NRW;
- (c) in relation to a river basin district that is partly in England and partly in Wales, the Agency and NRW acting jointly;

“the appropriate authority”, except as provided for by regulation 9(8), means—

- (a) in relation to a river basin district that is wholly in England, the Secretary of State;

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(a) 1972 c. 68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(b) S.I. 2008/301.

(c) S.I. 2003/2901, to which there are amendments not relevant to these Regulations. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers by virtue of paragraph 28(1) of Schedule 11 to the Government of Wales Act 2006 (c.32).

(d) S.I. 2003/3242, amended by S.I. 2005/2035, 2010/630, 2011/556, 603, 1043, 2013/755 (W. 90), 2015/1623, 2016/138, 1154.

(e) OJ No L 327, 22.12.2000, p1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p32).

(f) OJ No L 372, 27.12.2006, p19, as last amended by Commission Directive 2014/80/EU (OJ No L 182, 21.6.2014, p52).

(g) OJ No L 348, 24.12.2008, p84, as last amended by Directive 2013/39/EU (OJ No L 226, 24.8.2013, p1).

- (b) in relation to a river basin district that is wholly in Wales, the Welsh Ministers;
- (c) in relation to a river basin district that is partly in England and partly in Wales, the Secretary of State and the Welsh Ministers acting jointly;

“artificial or heavily modified water body” means a body of surface water designated as such under regulation 15;

“body of water” means a body of groundwater or a body of surface water;

“drinking water protected area” has the meaning given by regulation 8;

“England” includes the territorial sea adjacent to England not forming any part of Wales;

“environmental objectives”, in relation to a river basin district or body of water, means the objectives set under regulation 12 in accordance with regulation 13;

“NRW” means the Natural Resources Body for Wales;

“programme of measures”, in relation to a river basin district, means the programme of measures established under regulation 12 in accordance with regulation 20;

“protected area” means an area included on a register in accordance with regulation 10;

“public body” does not include a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975(a), the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government, but does include—

- (a) a person otherwise holding an office—
  - (i) under the Crown,
  - (ii) created or continued in existence by a public general Act of Parliament, or
  - (iii) the remuneration in respect of which is paid out of money provided by Parliament;
- (b) a statutory undertaker, being a person who by virtue of section 262 of the Town and Country Planning Act 1990(b) is, or is deemed to be, a statutory undertaker for any purpose;

“relevant functions” means functions under these Regulations and, so far as material, the enactments listed in Parts 1 and 2 of Schedule 2 (which relate to statutes and subordinate legislation);

“river basin district” means an area identified by regulation 4(1), being the main unit for the management of river basins for the purposes of the WFD and being made up of a river basin or neighbouring river basins, together with associated groundwater, transitional waters and coastal water;

“river basin management plan” means a plan to which Part 6 applies;

“shellfish” means any bivalve or gastropod mollusc;

“shellfish water protected area” has the meaning given by regulation 9;

“status”, in relation to a body of water, is a reference to its surface water status or groundwater status (as the case may be);

“the table of priority substances” means the table in Part A of Annex I to the EQSD;

“Wales” has the meaning given by section 158 of the Government of Wales Act 2006(c);

“water intended for human consumption” has the same meaning as in Council Directive 98/83/EC on the quality of water intended for human consumption(d).

(2) In these Regulations, where the appropriate agency is required to make copies of a list, statement, summary, draft plan or plan accessible to the public free of charge—

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(a) 1975 c. 26.

(b) 1990 c. 8; section 262 was amended by section 84 of, and Part 2 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34), section 76(7) of the Utilities Act 2000 (c. 27), section 37 of, and Schedule 5 to, the Transport Act 2000 (c. 38) and by S.I. 2001/1149 and 2013/755 (W. 90).

(c) 2006 c. 32; there are amendments to section 158 not relevant to these Regulations.

(d) OJ No L 330, 5.12.1998, p32, as last amended by Commission Directive (EU) 2015/1787 (OJ No L 260, 7.10.2015, p6).

- (a) references to doing so through its website mean—
  - (i) where the Agency is the appropriate agency, through its website;
  - (ii) where NRW is the appropriate agency, through its website;
  - (iii) where the Agency and NRW acting jointly are the appropriate agency, through their respective websites;
- (b) references to doing so at its principal office mean—
  - (i) where the Agency is the appropriate agency, at its principal office;
  - (ii) where NRW is the appropriate agency, at its principal office;
  - (iii) where the Agency and NRW acting jointly are the appropriate agency, at their principal offices.

(3) Expressions used in both these Regulations and the WFD and which are listed in Schedule 1 have the meaning given in that Schedule.

(4) Expressions used in both these Regulations and the WFD and not otherwise defined in these Regulations have the same meaning for the purposes of these Regulations as they do for the purposes of the WFD.

### **Duties on ministers and regulators**

**3.**—(1) The Secretary of State, the Welsh Ministers, the Agency and NRW must exercise their relevant functions so as to secure compliance with the requirements of the WFD, the EQSD and the GWD.

(2) Without prejudice to the generality of paragraph (1), the Secretary of State, the Welsh Ministers, the Agency and NRW must determine an authorisation so as, in particular—

- (a) to prevent deterioration of the surface water status or groundwater status of a body of water (subject to the application of regulations 18 and 19), and
- (b) otherwise to support the achievement of the environmental objectives set for a body of water (subject to the application of regulations 16 to 19).

(3) In paragraph (2), “determine an authorisation” means decide whether to grant, vary or revoke, or impose conditions (and if so which conditions) on—

- (a) an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016(a);
- (b) a licence for an abstraction or impoundment under Chapter 2 of Part 2 of the Water Resources Act 1991(b).

(4) The Secretary of State, the Welsh Ministers, the Agency and NRW must exercise their relevant functions in relation to each river basin district so as best to secure that the requirements of the WFD, the EQSD and the GWD for the achievement of the environmental objectives, and in particular programmes of measures, are coordinated for the whole of that district.

## **PART 2**

### **River basin districts and water bodies**

#### **Map of river basin districts**

**4.**—(1) The areas shown on the official map are identified as river basin districts for the purposes of these Regulations.

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(a) S.I. 2016/1154.  
(b) 1991 c. 57.

(2) In this regulation, “the official map” means the map of river basin districts produced by the Agency and published on its website.

(3) NRW must ensure that the official map is published on its website.

(4) The Agency and NRW must ensure that the official map is made available to the public at their principal offices.

#### **Characterisation of river basin districts**

**5.**—(1) The appropriate agency must undertake and periodically review and (where appropriate) update, in accordance with Annex II to the WFD (characterisation of waters)—

- (a) an analysis of the characteristics of each river basin district, and
- (b) a review of the impact of human activity on the status of surface water and groundwater in each river basin district.

(2) A review and any update must be done—

- (a) by 22nd December 2019, and
- (b) subsequently, by 22nd December of the sixth year following that date and of each sixth year following that.

(3) In relation to a review of the characteristics of each river basin district under paragraph (1)(a), the appropriate agency must include in the relevant river basin management plan an explanation of the approach taken to the use of System A or B in paragraph 1.1 and 1.2 to 1.2.4 (characterisation of surface water body types) of Annex II to the WFD.

#### **Classification of water bodies**

**6.** The appropriate agency must classify the status of bodies of water in accordance with Annex V to the WFD and such directions as the appropriate authority may give to the appropriate agency.

#### **Economic analysis of water use in river basin districts**

**7.**—(1) The appropriate authority must undertake and periodically review and (where appropriate) update, in accordance with Annex III to the WFD (economic analysis), an economic analysis of water use in each river basin district.

(2) A review and any update must be done—

- (a) by 22nd December 2019, and
- (b) subsequently, by 22nd December of the sixth year following that date and of each sixth year following that.

## **PART 3**

### **Protected areas**

#### **Bodies of water used for the abstraction of drinking water**

**8.**—(1) The appropriate agency must identify any body of water (a “drinking water protected area”) within each river basin district which—

- (a) is used for the abstraction of water intended for human consumption and—
  - (i) provides more than 10 cubic metres of such water per day as an average, or
  - (ii) serves more than 50 persons; or
- (b) is intended to be used for the abstraction of water intended for human consumption to the extent referred to in sub-paragraph (a)(i) or (ii).

(2) For each drinking water protected area, the programme of measures for the river basin district within which it is located must include measures with the aim of avoiding deterioration in the quality of the water in that area, in order to reduce the level of purification treatment required in the production of drinking water abstracted from it.

### **Designation of shellfish waters**

**9.**—(1) The appropriate authority may designate any area of coastal or transitional water within a river basin district as a shellfish water protected area by including it in the relevant list.

(2) But an area may not be included in the relevant list unless the appropriate authority considers that to do so is necessary or desirable in order to protect or develop economically significant shellfish production.

(3) In relation to a shellfish water protected area which is wholly in England, the relevant list is the list entitled “Shellfish Waters (England) 2016” and dated 3rd March 2016.

(4) In relation to a shellfish water protected area which is wholly in Wales, the relevant list is the list entitled “Shellfish Waters (Wales) 2016” and dated 8th February 2016.

(5) The appropriate authority must periodically review and (where appropriate) revise designations made under paragraph (1).

(6) A review and any revision must be done—

- (a) by 22nd December 2021, and
- (b) subsequently, by 22nd December of the sixth year following that date and of each sixth year following that.

(7) The appropriate agency must ensure that the relevant list is—

- (a) published on its website, and
- (b) made available to the public at its principal offices.

(8) In this regulation—

“appropriate agency” means—

- (a) in relation to a shellfish water protected area that is wholly in England, the Agency;
- (b) in relation to a shellfish water protected area that is wholly in Wales, NRW;

“appropriate authority” means—

- (a) in relation to a shellfish water protected area or proposed area that is wholly in England, the Secretary of State;
- (b) in relation to a shellfish water protected area or proposed area that is wholly in Wales, the Welsh Ministers.

### **Register of protected areas**

**10.**—(1) The appropriate agency must, for each river basin district, maintain, review and keep up to date a register of the protected areas lying (whether wholly or partly) within the district.

(2) The register must include the following protected areas—

- (a) a drinking water protected area;
- (b) an area or body of water for the time being designated or otherwise identified as requiring special protection under any EU instrument providing for the protection of surface water and groundwater or for the conservation of habitats or species directly depending on water, or any enactment implementing such an EU instrument, including, in particular—
  - (i) areas designated for the protection of economically significant aquatic species (including shellfish water protected areas);
  - (ii) bodies of water designated as recreational waters;
  - (iii) nutrient-sensitive areas;

- (iv) areas designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in the protection of the habitats or species.

## PART 4

### Monitoring

#### Monitoring programmes

**11.**—(1) The appropriate agency must establish and keep under review programmes for monitoring water status in order to establish a coherent and comprehensive overview of water status within each river basin district.

(2) In relation to surface water, the monitoring programme must cover—

- (a) the volume and level or rate of flow to the extent relevant to ecological and chemical status and ecological potential, and
- (b) ecological and chemical status and ecological potential.

(3) In relation to groundwater, the monitoring programme must cover chemical and quantitative status.

(4) In relation to protected areas, the monitoring programme must—

- (a) cover any supplementary monitoring required by the EU legislation under which the area is protected;
- (b) provide for the monitoring of each drinking water protected area which provides on average more than 100m<sup>3</sup> per day of drinking water intended for human consumption;
- (c) for each shellfish water protected area, enable a reliable assessment to be made of whether the objectives in regulation 13(4) have been or will be achieved.

(5) The monitoring programme must comply with the following provisions of Annex V to the WFD—

- (a) points 1.3 to 1.3.4 and 1.3.6 (monitoring of ecological status, chemical status and ecological potential for surface waters);
- (b) point 1.3.5 (monitoring of drinking water abstraction points and habitats and species protection areas);
- (c) points 1.4 to 1.4.3 (classification and presentation of ecological status, chemical status and ecological potential);
- (d) points 2.2 to 2.2.4 (monitoring of groundwater quantitative status);
- (e) points 2.4 to 2.4.4 (monitoring of groundwater chemical status);
- (f) points 2.4.5 and 2.5 (interpretation and presentation of groundwater status).

(6) By 22nd December 2018, the appropriate agency must establish, for each river basin district, a monitoring programme in respect of substances 34 to 45 in the table of priority substances.

## PART 5

### Environmental objectives and programmes of measures

#### Procedure for setting environmental objectives and programmes of measures

**12.**—(1) The appropriate agency must, by such date as the appropriate authority may direct, prepare and submit to the authority proposals for—

- (a) environmental objectives for each river basin district, in accordance with regulation 13, and



- (b) a programme of measures to be applied in order to achieve those objectives, in accordance with regulation 20.
- (2) In preparing proposals under paragraph (1), the appropriate agency must—
- (a) take account of the characterisation of, and economic analysis of water use in, the relevant river basin district carried out or updated under regulations 5 and 7, and
  - (b) take such steps as the appropriate agency thinks fit, or the appropriate authority may direct, to—
    - (i) provide opportunities for the general public and those persons likely to be interested in or affected by the appropriate agency's proposals to participate in discussion and the exchange of information or views in relation to the preparation of those proposals,
    - (ii) publicise the appropriate agency's draft proposals to those persons, and
    - (iii) consult those persons in respect of those proposals.
- (3) The appropriate authority may, having considered any proposals for environmental objectives or for a programme of measures submitted to it and any representations received by the authority in relation to those proposals—
- (a) approve them, or any of them, in the form submitted,
  - (b) approve them, or any of them, either with modifications or subject to such modifications as the authority may direct the appropriate agency to make, or
  - (c) reject them, or any of them.
- (4) In any case falling within paragraph (3)(b) or (c), the appropriate authority must state its reasons.
- (5) Where the appropriate authority rejects any proposals, it must direct the appropriate agency to resubmit proposals by such time as the direction may specify with—
- (a) modifications of such nature as the direction may specify, and
  - (b) any further modifications which the appropriate agency considers appropriate.
- (6) The appropriate authority must ensure that, for each river basin district, the environmental objectives and programme of measures are periodically reviewed and, where appropriate, updated—
- (a) by 22nd December 2021, and
  - (b) subsequently, by 22nd December of the sixth year following that date and of each sixth year following that.
- (7) Where a programme of measures is updated under paragraph (6), any new or revised measures must be made operational within three years of that updating.

### **The environmental objectives**

**13.**—(1) The environmental objectives referred to in regulation 12 are, subject to regulations 14 to 19, the following objectives for the relevant type of water body or area.

- (2) For surface water bodies, the objectives are to—
- (a) prevent deterioration of the status of each body of surface water;
  - (b) protect, enhance and restore each body of surface water (other than an artificial or heavily modified water body) with the aim of achieving good ecological status and (subject to paragraph (3)) good surface water chemical status, if not already achieved, by 22nd December 2021;
  - (c) protect and enhance each artificial or heavily modified water body with the aim of achieving good ecological potential and (subject to paragraph (3)) good surface water chemical status, if not already achieved, by 22nd December 2021;
  - (d) aim progressively to reduce pollution from priority substances and aim to cease or phase out emissions, discharges and losses of priority hazardous substances.

(3) The objectives in paragraph (2)(b) and (c) are to be read as though they referred to achieving good surface water chemical status—

- (a) in relation to substances 2, 5, 15, 20, 22, 23 and 28 in the table of priority substances, by 22nd December 2021;
- (b) in relation to substances 34 to 45 in the table of priority substances, by 22nd December 2027.

(4) For shellfish water protected areas, in addition to the objectives under paragraph (2) for the surface water bodies in which they are located, the objectives are such objectives as are necessary or desirable to improve or protect the shellfish water protected area in order to support shellfish life and growth and to contribute to the high quality of shellfish products suitable for human consumption as the appropriate authority may direct.

(5) For groundwater bodies, the objectives are to—

- (a) prevent deterioration of the status of each body of groundwater;
- (b) prevent or limit the input of pollutants into groundwater;
- (c) protect, enhance and restore each body of groundwater, and ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater chemical status and good groundwater quantitative status, if not already achieved, by 22nd December 2021;
- (d) reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order to progressively reduce pollution of groundwater.

(6) For each protected area, other than a shellfish water protected area, the objective is to achieve compliance with any standards and objectives required by or under any EU instrument under which the area or body is protected—

- (a) by 22nd December 2021, if not already achieved, or
- (b) if different, by any date for compliance set in that EU instrument.

(7) Where two or more objectives set under this regulation apply to the same body of water, or the same part of a body of water, the most stringent objective applies.

#### **Environmental objectives: application of regulations 15 to 19**

**14.** Regulations 15 to 19 must be applied in a way that—

- (a) does not permanently exclude or compromise the achievement of the environmental objectives set in relation to any other water body within the same river basin district;
- (b) is not inconsistent with the implementation of any other EU instrument;
- (c) guarantees at least the same level of protection for bodies of water as the EU instruments repealed by Article 22 of the WFD.

#### **Artificial or heavily modified water bodies**

**15.—**(1) The appropriate agency may designate a body of surface water as artificial or heavily modified if it considers that—

- (a) the changes to the hydromorphological characteristics of that body which would be necessary for achieving good ecological status would have significant adverse effects on—
  - (i) the wider environment,
  - (ii) navigation, including port facilities, or recreation,
  - (iii) activities for the purposes of which water is stored, such as drinking water supply, power generation or irrigation,
  - (iv) water regulation, flood protection, land drainage, or

- (v) other sustainable human development activities which the appropriate agency considers are of equal importance to the matters in paragraphs (i) to (iv), and
  - (b) the beneficial objectives served by the artificial or modified characteristics of the water body cannot, for reasons of technical feasibility or disproportionate cost, reasonably be achieved by other means which are a significantly better environmental option.
- (2) Designations under this regulation, and an explanation for them, must be included in the relevant river basin management plan, and reviewed (and where necessary revised) when that plan is updated under Part 6.

### **Extended deadlines for environmental objectives**

**16.**—(1) The deadline by which an environmental objective referred to in regulation 13(2)(b) or (c), (5)(c) or (6) must be achieved may be extended for the purposes of the phased achievement of the environmental objectives for a body of water if the conditions in paragraphs (2) and (3) are or will be met.

(2) The condition is that no further deterioration occurs in the status of the affected body of water.

(3) The condition is that all the necessary improvements in the status of the body of water cannot reasonably be achieved within the timescales set out in the provisions of regulation 13 mentioned in paragraph (1) for one or more of the following reasons—

- (a) the scale of improvements required can only be achieved in phases exceeding the timescale for reasons of technical feasibility;
- (b) completing the improvements within the timescale would be disproportionately expensive;
- (c) natural conditions do not allow timely improvement in the status of the body of water.

(4) Subject to paragraph (5), a deadline must not be extended beyond 22nd December 2027, except in cases where the natural conditions are such that the environmental objectives cannot be achieved by that date.

(5) Paragraph (4) does not apply to the deadline specified in regulation 13(2) for an objective of aiming to achieve good surface water chemical status—

- (a) in relation to substances 2, 5, 15, 20, 22, 23 and 28 in the table of priority substances, which may be extended until 22nd December 2033;
- (b) in relation to substances 34 to 45 in the table of priority substances, which may be extended until 22nd December 2039.

(6) Where a deadline is extended under paragraph (1), the relevant river basin management plan must set out—

- (a) the extended deadline and the reasons for it,
- (b) a summary of the measures to be applied to achieve the environmental objectives set pursuant to regulation 12 which are envisaged as necessary to bring the body of water progressively to the required status by the extended deadline, and
- (c) the reasons for any significant delay in making these measures operational and the expected timetable for their implementation.

(7) Following an extension under paragraph (1), the next update of the relevant river basin management plan must include a review of the implementation of the measures referred to in paragraph (6)(b) and a summary of any additional measures necessary for the purpose set out in that paragraph.

### **Setting less stringent environmental objectives**

**17.**—(1) Less stringent environmental objectives than those required by regulation 13(2)(b) or (c), (4), (5)(c) or (6) may be set for a specific body of water where—

(a) that body of water is so affected by human activity or its natural condition is such that the achievement of the environmental objectives set would be infeasible or disproportionately expensive, and

(b) all the conditions in paragraphs (2) to (5) are or will be met.

(2) The condition is that the environmental and socio-economic needs served by such human activity cannot be achieved by other means which are a significantly better environmental option not entailing disproportionate costs.

(3) The condition is that where the body of water is a body of surface water, the highest ecological and chemical status possible is achieved, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution.

(4) The condition is that where the body of water is a body of groundwater, the least possible changes to good groundwater status occur, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution.

(5) The condition is that no further deterioration occurs in the status of the affected body of water.

(6) Where a less stringent environmental objective is set under paragraph (1)—

(a) that objective, and the reasons for it, must be set out in the relevant river basin management plan;

(b) the review of that objective in accordance with regulation 12(6) must include consideration of whether a less stringent objective should continue to be set.

#### **Natural causes or force majeure**

**18.**—(1) A temporary deterioration in the status of a body of water is not a breach of the environmental objectives set for it under regulation 12 if—

(a) it is the result of—

(i) circumstances of natural cause or force majeure which are exceptional or could not reasonably have been foreseen, in particular extreme floods or prolonged droughts, or

(ii) circumstances due to accidents which could not reasonably have been foreseen, and

(b) all the conditions in paragraphs (2) to (4) are or will be met.

(2) The condition is that all practicable steps are taken—

(a) to prevent further deterioration in the status of the affected body of water, and

(b) so as not to compromise the achievement of the environmental objectives for any body of water not affected by the circumstances mentioned in paragraph (1)(a).

(3) The condition is that the river basin management plan sets out the conditions under which circumstances are exceptional or could not reasonably have been foreseen including the adoption of the appropriate indicators.

(4) The condition is that the measures to be taken under such exceptional circumstances are included in the programme of measures to be applied to the body of water and will not compromise the recovery of the quality of that body of water once the circumstances are over.

(5) Where paragraph (1) applies, the effects of the circumstances mentioned in paragraph (1)(a) must be reviewed annually and, subject to regulation 16, all practicable measures must be taken with the aim of restoring the body of water as soon as reasonably practicable to its status prior to the effects of the circumstances.

(6) The next update of the relevant river basin management plan must include a summary of the effects of the circumstances referred to in paragraph (1)(a), and of the measures taken or to be taken.

### **Modifications to physical characteristics of water bodies**

**19.**—(1) A failure to achieve good groundwater status, good ecological status or (where relevant) good ecological potential, or to prevent deterioration in the status of a body of surface water or groundwater, is not a breach of the environmental objectives set for it under regulation 12 if—

- (a) the failure is the result of new modifications to the physical characteristics of the body of surface water or alterations to the level of the body of groundwater, and
- (b) all the conditions in paragraphs (3) to (5) are or will be met.

(2) A failure to prevent deterioration from high status to good status of a body of surface water is not a breach of the environmental objectives set for it under regulation 12 if—

- (a) the failure is the result of new sustainable development activities, and
- (b) all the conditions in paragraphs (3) to (5) are or will be met.

(3) The condition is that all practicable steps are taken to mitigate the adverse impact on the status of the body of water.

(4) The condition is that one or both of the following is the case—

- (a) the reasons for the modifications or alterations, or for the sustainable development activities, are of overriding public interest;
- (b) the benefits to the environment and to society of achieving the environmental objectives are outweighed by the benefits of the new modifications or alterations, or of the sustainable development activities, to human health, to the maintenance of human safety, or (in the case of modifications or alterations) to sustainable development.

(5) The condition is that the beneficial objectives served by the modifications or alterations, or by the sustainable development activities, cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means which are a significantly better option.

(6) Where paragraph (1) or (2) applies, the reasons for the modifications or alterations, or for the sustainable development activities, must be set out and explained in the river basin management plan, and the environmental objectives must be reviewed every six years.

### **Content of programmes of measures**

**20.**—(1) Each programme of measures proposed and approved under regulation 12 must include basic measures and, where necessary, supplementary measures (see paragraph (4)).

(2) The basic measures must comply with Article 11.3 of the WFD and must, in particular, include the following—

- (a) measures required to implement the EU instruments for the protection of water listed in Schedule 3;
- (b) measures in accordance with regulation 21(1) (charges for water services);
- (c) measures to promote an efficient and sustainable water use to avoid compromising the achievement of the environmental objectives;
- (d) the measures required by regulation 8(2) (drinking water protected areas);
- (e) measures to control the abstraction of fresh surface water and groundwater, and the impoundment of fresh surface water, including a register of water abstractions and a requirement for prior authorisation for abstraction and impoundment;
- (f) measures to control the artificial recharge or augmentation of groundwater bodies, including a requirement for prior authorisation;
- (g) for point source discharges liable to cause pollution, a requirement for prior regulation or prior authorisation which sets emission controls for the pollutants concerned;
- (h) for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants;

- (i) measures to address any other significant adverse impacts on the status of water, including in particular measures to ensure that the hydromorphological conditions of each body of surface water are consistent with the achievement of the required ecological status (or good ecological potential for artificial or heavily modified water bodies);
  - (j) a prohibition of direct discharges of pollutants into groundwater, except for the following discharges which may be authorised—
    - (i) injection of water containing substances resulting from operations for exploration and extraction of hydrocarbons or mining activities, and injection of water for technical reasons, into geological formations—
      - (aa) from which hydrocarbons or other substances have been extracted, or
      - (bb) which for natural reasons are permanently unsuitable for other purposes;
    - (ii) reinjection of pumped groundwater from mines and quarries or associated with the construction or maintenance of civil engineering works;
    - (iii) injection of natural gas or liquefied petroleum gas for storage purposes into—
      - (aa) geological formations which for natural reasons are permanently unsuitable for other purposes;
      - (bb) geological formations where there is an overriding need for security of gas supply, and where the injection is such as to prevent any present or future danger of deterioration in the quality of any receiving groundwater;
    - (iv) injection of carbon dioxide streams for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that such injection is—
      - (aa) made in accordance with Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide<sup>(a)</sup>, or
      - (bb) excluded from the scope of that Directive under Article 2(2) of that Directive;
    - (v) construction, civil engineering and building works and similar activities on or in the ground which come into contact with groundwater;
    - (vi) discharges of small quantities of substances for scientific purposes for characterisation, protection or remediation of a body of water limited to the amount strictly necessary for the purposes concerned;
  - (k) measures to eliminate pollution of surface waters by priority substances and to progressively reduce pollution by other substances which would otherwise prevent the achievement of the environmental objectives for bodies of surface water;
  - (l) measures required to—
    - (i) prevent significant losses of pollutants from technical installations;
    - (ii) prevent or reduce the impact of accidental pollution incidents, such as from floods.
- (3) The measures required by paragraph (2)(l) may include—
- (a) systems to detect or give warning of events which may lead to accidental pollution;
  - (b) appropriate measures to reduce the risk to aquatic ecosystems from accidents which cannot reasonably be foreseen.
- (4) Where necessary, each programme of measures must include any other supplementary measures designed and implemented with the aim of achieving the environmental objectives set under regulation 12.

### **Charges for water services**

**21.—**(1) The appropriate authority must ensure—

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(a) OJ No L 140, 5.6.2009, p114, as last amended by Directive 2011/92/EU (OJ No L 26, 28.1.2012, p1).

- (a) that water pricing policies provide adequate incentives to use water resources efficiently, and
  - (b) an adequate contribution by industry, households and agriculture, and such other sectors as the appropriate authority considers appropriate, to the recovery of the costs of water services, based on the economic analysis conducted under regulation 7.
- (2) In complying with paragraph (1), the appropriate authority—
- (a) must take account of environmental and resource costs and the polluter pays principle;
  - (b) may have regard to the social, environmental and economic effects of the cost recovery and the geographical and climatic conditions of the region or regions affected.
- (3) The appropriate authority may, in accordance with established practices, disapply paragraph (1) in relation to a particular water use activity, provided the authority considers that this does not otherwise compromise the purposes and achievement of the objectives of the WFD.

### **Further programmes of measures in relation to certain priority substances**

**22.**—(1) The appropriate agency must, by 22nd December 2018, establish a preliminary programme of measures for each river basin district in relation to substances 34 to 45 in the table of priority substances.

(2) For the purposes of a programme of measures to be updated by 22nd December 2021 under regulation 12(6)(a), the appropriate agency must, by such date as the appropriate authority directs, prepare and submit to the appropriate authority proposals for a final programme of measures for the purposes of aiming to achieve good surface water chemical status in relation to substances 34 to 45 in the table of priority substances by 22nd December 2027 and preventing deterioration in the chemical status of each body of surface water in relation to those substances.

(3) Regulation 12(2) applies to the preparation by the appropriate agency of its proposals under paragraph (2) as it does to the preparation of proposals under regulation 12(1).

(4) Without prejudice to the existing obligations, the appropriate authority must ensure that, for each river basin district, the programme of measures updated under regulation 12(6)(a) by 22nd December 2021 contains measures for the purposes of aiming to achieve good surface water chemical status in relation to substances 34 to 45 in the table of priority substances by 22nd December 2027 and preventing deterioration in the chemical status of each body of surface water in relation to those substances.

(5) Regulation 12(3) to (5) applies in relation to proposals for a programme of measures submitted to the appropriate authority under paragraph (2) as it does to proposals submitted under regulation 12(1).

(6) The appropriate authority must ensure that the measures referred to in paragraph (4) are made operational as soon as possible after 22nd December 2021, and at the latest by 22nd December 2024.

(7) In paragraph (4), “existing obligations” means the obligations (on environmental quality standards in the field of water policy) under the EQSD (“the original Directive”) before it was amended by Directive 2013/39/EU of the European Parliament and of the Council as regards priority substances in the field of water policy<sup>(a)</sup> including, in particular, the achievement of good surface water chemical status in relation to the substances and the associated environmental quality standards listed in the original Directive.

### **Action in relation to plant protection and biocidal products**

**23.**—(1) This regulation applies where the results of a report under Article 7a of the EQSD show that additional measures at European Union or member State level may be necessary in order to facilitate compliance with the WFD in relation to a particular substance approved pursuant to Regulation (EC) No 1107/2009 of the European Parliament and of the Council

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(a) OJ No L 226, 24.8.2013, p1.

concerning the placing of plant protection products on the market<sup>(a)</sup> 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<sup>(b)</sup>.

(2) The competent authority must apply Article 44 of Regulation (EC) No 1107/2009 or Article 48 of Regulation (EU) No 528/2012, as appropriate, to the relevant substance referred to in paragraph (1), or products containing that substance.

(3) In applying the provisions referred to in paragraph (2), the competent authority must take into account any risk evaluations and socio-economic or cost-benefit analyses required under Regulation (EC) No 1107/2009 or Regulation (EU) No 528/2012, including as regards the availability of alternatives.

(4) The competent authority for the purposes of this regulation is the person defined as the competent authority for England or Wales—

- (a) in respect of Regulation (EC) No 1107/2009, under regulation 3 of the Plant Protection Products Regulations 2011<sup>(c)</sup>;
- (b) in respect of Regulation (EU) No 528/2012, under regulation 5 of the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013<sup>(d)</sup>.

### **Implementation of programmes of measures**

**24.**—(1) The appropriate authority or, in the exercise of its relevant functions, the appropriate agency must ensure that the implementation of measures required under regulations 20 and 22 does not lead—

- (a) to increased pollution of marine waters;
- (b) directly or indirectly to increased pollution of surface waters.

(2) Paragraph (1) does not apply to the extent that compliance with it would result in increased pollution of the environment as a whole.

### **Action where environmental objectives are unlikely to be achieved**

**25.** Where monitoring or other data indicate that the environmental objectives set for a body of water under regulation 12 are unlikely to be achieved, the appropriate agency or, where relevant, the appropriate authority must ensure that—

- (a) the causes of the possible failure are investigated,
- (b) relevant permits and authorisations are examined and reviewed as appropriate,
- (c) the monitoring programmes under regulation 11 are reviewed and adjusted as appropriate, and
- (d) such additional measures as may be necessary to achieve those objectives (subject to the application of regulations 15 to 19) are included in the programme of measures applying to that body of water.

## **PART 6**

### **River basin management plans**

#### **Application of this Part**

**26.** This Part applies in relation to —

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- (a) OJ No L 309, 24.11.2009, p1, as last amended by Regulation (EU) No 652/2014 (OJ No L 189, 27.6.2014, p1).
  - (b) OJ No L 167, 27.6.2012, p1, as last amended by Regulation (EU) No 334/2014 (OJ L 103, 5.4.2014, p22).
  - (c) S.I. 2011/2131, to which there are amendments not relevant to these Regulations.
  - (d) S.I. 2013/1506, to which there are amendments not relevant to these Regulations.



- (a) the most recent version of each river basin management plan prepared and updated under the 2003 Regulations, and
- (b) any subsequent version of such a plan updated under this Part.

#### **River basin management plans: content**

**27.**—(1) A river basin management plan must—

- (a) relate to such period as the appropriate authority may direct;
- (b) include the information required by the relevant provisions of the WFD, the GWD and the EQSD specified in paragraphs (2) to (4);
- (c) in relation to any shellfish water protected area, include the information required by paragraph (2)(d) in relation to protected areas.

(2) The relevant provisions of the WFD are—

- (a) Article 9(2) and (4) (recovery of the costs of water services);
- (b) Annex II, section 1.3(vi) (exclusion of elements from the assessment of ecological status);
- (c) the following provisions of Annex V—
  - (i) points 1.3 and 1.3.4 (confidence and precision in monitoring surface water);
  - (ii) point 2.4.1 (confidence and precision in monitoring groundwater);
  - (iii) points 2.4.5 and 2.5 (presentation of monitoring results for groundwater);
- (d) Annex VII, Parts A and B (elements to be covered in river basin management plans).

(3) The relevant provisions of the GWD are—

- (a) Article 3(5) and (6) (the threshold values and revisions to them);
- (b) Article 4(4) (summary of assessment of groundwater chemical status);
- (c) Article 5(4) and (5) (trend assessment and starting points);
- (d) Annex II Part C (how groundwater threshold values have been set);
- (e) Annex III, point 5 (maps showing exceedances).

(4) The relevant provisions of the EQSD are—

- (a) Article 3(5) (information about monitoring and analysis, including alternative matrices);
- (b) Article 4(2) (information relating to mixing zones);
- (c) Article 5(4) (updated inventories).

#### **Review of river basin management plans**

**28.** The appropriate agency must, by such date as the appropriate authority directs—

- (a) review and update each river basin management plan, and
- (b) submit each updated plan to the appropriate authority.

#### **River basin management plans: public participation**

**29.**—(1) The appropriate agency must—

- (a) not less than three years before the relevant date, publish a statement of—
  - (i) the steps and consultation measures the appropriate agency is to take in connection with the preparation of the updated plan, and
  - (ii) the dates by which those steps and measures are to be taken;
- (b) not less than two years before the relevant date, publish a summary of the significant water management matters which the appropriate agency considers arise for consideration in relation to the river basin district;

(c) not less than one year before the relevant date, publish a draft of the updated plan.

(2) The appropriate agency must carry out the publication required by paragraph (1) in such manner as the appropriate agency considers appropriate for the purpose of bringing it to the attention of persons likely to be affected, and must—

- (a) make copies of the statement, summary or draft updated plan accessible to the public free of charge through its website and at its principal office;
- (b) publish a notice—
  - (i) stating the fact of publication,
  - (ii) specifying the arrangements made for making copies of the statement, summary or draft updated plan available for public inspection, and
  - (iii) stating that any person may make representations to the appropriate agency in relation to the statement, summary or draft updated plan;
- (c) consult the persons referred to in paragraph (4);
- (d) take such steps as the appropriate agency thinks fit, or the appropriate authority may direct, to provide opportunities for the general public and the persons referred to in paragraph (4) to participate in discussion and the exchange of information or views in relation to the preparation of the draft updated plan;
- (e) invite the public and the persons referred to in paragraph (4) to make representations in relation to the draft updated plan.

(3) A notice required by paragraph (2)(b) must be published—

- (a) in the London Gazette, and
- (b) at least once in each of two successive weeks, in one or more newspapers circulating in the river basin district to which the updated plan relates.

(4) The persons to be consulted are—

- (a) the appropriate authority;
- (b) the Water Services Regulation Authority;
- (c) the appropriate nature conservation bodies;
- (d) every local authority any part of whose area is within the river basin district;
- (e) every local planning authority any part of whose area is within the river basin district;
- (f) where any part of the river basin district has been designated as a National Park, the National Park authority for that National Park;
- (g) where any part of the river basin district contains a shellfish water protected area, the Food Standards Agency;
- (h) the harbour authority for each harbour in the river basin district;
- (i) every navigation authority having functions in relation to any part of the river basin district;
- (j) every water undertaker or sewerage undertaker any part of whose area is within the river basin district;
- (k) any inshore fisheries and conservation authority for an inshore fisheries and conservation district any part of which lies within the river basin district;
- (l) such persons as appear to the appropriate agency, in relation to the river basin district—
  - (i) to be representative of the interests of those carrying on any business which relies upon the water environment,
  - (ii) to have an interest in the protection of the water environment, or
  - (iii) to have an interest in the promotion of flood management;
- (m) such other persons as—
  - (i) the appropriate agency thinks fit;

(ii) the appropriate authority may direct.

(5) In this regulation—

- (a) “appropriate nature conservation bodies” means the Joint Nature Conservation Committee, and—
  - (i) in relation to a river basin district that is wholly in England, Natural England;
  - (ii) in relation to a river basin district that is partly in England and partly in Wales, Natural England in relation to the part in England;
- (b) “harbour” and “harbour authority” have the meanings given by section 57 of the Harbours Act 1964(a);
- (c) “inshore fisheries and conservation authority” means the inshore fisheries and conservation authority for an inshore fisheries and conservation district;
- (d) “inshore fisheries and conservation district” means an inshore fisheries and conservation district established by an order under section 149(1) of the Marine and Coastal Access Act 2009(b);
- (e) “local authority” means the council of any county, county borough, district or London borough, the Common Council of the City of London or the Greater London Authority;
- (f) “local planning authority” has the meaning given by section 1 of the Town and Country Planning Act 1990(c);
- (g) “navigation authority” has the meaning given by section 221(1) of the Water Resources Act 1991(d);
- (h) “the relevant date”, in relation to a plan, means—
  - (i) if a period of time has been directed under regulation 27(1)(a), the date on which that period begins, or
  - (ii) otherwise, the date by which the appropriate authority is next required under regulation 31(5) to publish an updated plan.

(6) The appropriate agency must take into account any representations relating to a statement, summary or draft updated plan published in accordance with paragraph (1) which are received by the appropriate agency within the period of six months beginning with the date of publication or such longer period as the appropriate authority may direct.

### **River basin management plans: submission for approval**

**30.**—(1) As soon as an updated river basin management plan is submitted to the appropriate authority under regulation 28, the appropriate agency must—

- (a) make copies of the plan accessible to the public free of charge through its website and at its principal office, and
- (b) publish a notice—
  - (i) stating the fact of submission, and
  - (ii) specifying the arrangements made for making copies of the plan accessible to the public.

(2) An updated plan submitted to the appropriate authority must be accompanied by—

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(a) 1964 c. 40; section 57 was amended by paragraph 33 of Schedule 12 to the Merchant Shipping Act 1995 (c. 21); there are other amendments not relevant to these Regulations.

(b) 2009 c. 23.

(c) 1990 c. 8; section 1 was amended paragraph 28 of Schedule 21 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28), section 18 of, and paragraph 1 of Schedule 18 to, the Local Government (Wales) Act 1994 (c. 19), paragraph 32(1) of Schedule 10 and paragraph 1 of Schedule 24 to the Environment Act 1995 (c. 25) and section 31(1) of the Greater London Authority Act 2007 (c. 24).

(d) 1991 c. 57; there are amendments to section 221(1) not relevant to these Regulations.

- (a) a statement of the steps taken by the appropriate agency to comply with regulation 29(1) to (4) (public participation), and
- (b) a summary of the representations referred to in regulation 29(6) and of any changes made to the plan in light of those representations.

(3) If the appropriate authority considers in relation to a plan that further action should be taken by the appropriate agency under regulation 29(2) to (4), the appropriate authority may direct the appropriate agency—

- (a) to take such further steps under those provisions as the appropriate authority may specify in the direction, and
- (b) to resubmit the updated plan within such period, if any, as the appropriate authority may specify in the direction.

(4) Where the appropriate authority gives a direction to the appropriate agency under paragraph (3), it must state its reasons for doing so.

(5) This regulation applies in relation to a river basin management plan resubmitted to the appropriate authority in accordance with a direction under paragraph (3) as it applies to the plan as originally submitted, with the modification that, for the reference in paragraph (3) to regulation 29(2) to (4), there is substituted a reference to this regulation.

### **River basin management plans: approval**

**31.**—(1) The appropriate authority may, having considered an updated river basin management plan submitted to it and any representations received by the authority in relation to that plan—

- (a) approve it, in whole or in part, in the form submitted,
- (b) approve it, in whole or in part, either with modifications or subject to such modifications as the appropriate authority may direct the appropriate agency to make, or
- (c) reject it.

(2) In any case falling within paragraph (1)(b) or (c), the appropriate authority must state its reasons.

(3) Where the appropriate authority rejects an updated plan, it must direct the appropriate agency to resubmit the plan, by such time, if any, as the direction may specify, with—

- (a) modifications of such nature as the direction may specify, and
- (b) any further modifications which the appropriate agency considers appropriate.

(4) Where the appropriate authority approves an updated plan, the appropriate agency must publish the approved plan in such manner as the appropriate agency thinks fit for the purpose of bringing the plan to the attention of the general public and of those persons likely to be interested in or affected by it and, in particular, must—

- (a) make copies of the approved plan accessible to the public free of charge through its website and at its principal office, and
- (b) publish a notice—
  - (i) stating that the plan has been approved, and
  - (ii) specifying the arrangements made for making copies of the plan accessible to the general public.

(5) The appropriate authority must ensure that an updated plan is published—

- (a) by 22nd December 2021, and
- (b) subsequently, by 22nd December of the sixth year following that date and of each sixth year following that.

### **Supplementary plans**

**32.**—(1) The appropriate agency may prepare a supplementary plan for the purposes of supplementing the river basin management plan for a river basin district.

(2) A plan prepared under paragraph (1) may, for example, relate to—

- (a) a particular description of body of water;
- (b) a particular catchment or geographical area;
- (c) a particular matter relating to, or aspect of, the water environment;
- (d) a particular description of user of water resources.

(3) The appropriate agency must, in relation to the preparation of a supplementary plan, consult such of the persons referred to in regulation 29(4) and such other persons likely to be interested in or affected by that plan as the appropriate agency thinks fit, and must take into account any views expressed by those consulted.

### **River basin management plans: duties on public bodies**

**33.** The Secretary of State, the Welsh Ministers, the Agency, NRW and each public body must, in exercising their functions so far as affecting a river basin district, have regard to—

- (a) the river basin management plan for that district as approved under regulation 31, and
- (b) any supplementary plan prepared under regulation 32.

## **PART 7**

### **General**

### **Publication of information**

**34.**—(1) The appropriate agency must make accessible to the public at its principal office—

- (a) the results of the work required by regulation 5 (characterisation of river basin districts);
- (b) maps showing bodies of water identified under regulation 8 (bodies of water used for the abstraction of drinking water);
- (c) the registers prepared under regulation 10 (register of protected areas);
- (d) the results of the monitoring programmes established under regulation 11 (monitoring);
- (e) the environmental objectives and programmes of measures proposed or approved under regulation 12 (environmental objectives and programmes of measures);
- (f) any supplementary plan prepared under regulation 32 (supplementary plans).

(2) Where the appropriate authority approves (with or without modifications) proposals made by the appropriate agency under regulation 12(1) (environmental objectives and programmes of measures), the appropriate agency must publish a notice—

- (a) stating that the proposals have been approved, and
- (b) specifying the arrangements made for making the approved objectives and programme of measures accessible to the public.

(3) The appropriate authority must make accessible to the public through its website and at its principal office the results of the analysis conducted under regulation 7 (economic analysis of water use in river basin districts).

(4) The appropriate authority must ensure that an interim report describing progress in the implementation of the planned programme of measures required to be produced under Article 15(3) of the WFD is made available via a central portal which is accessible to the public

electronically in accordance with Article 7(1) of Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information<sup>(a)</sup>.

### Provision of information and assistance

**35.**—(1) A public body must, on being requested to do so by the appropriate agency, provide the agency with such information in its possession or under its control and such assistance as the appropriate agency may reasonably seek in connection with the exercise of any of the appropriate agency's functions under these Regulations.

(2) Section 202 of the Water Resources Act 1991 (information and assistance in connection with the control of pollution)<sup>(b)</sup> has effect as if functions under these Regulations were functions under the water pollution provisions of that Act.

### Directions

**36.**—(1) Section 40 of the Environment Act 1995 (directions to agencies)<sup>(c)</sup> has effect as if the power in subsection (2) to give directions included a power for the appropriate authority to give directions to any public body for the purposes of giving effect to the WFD.

(2) Section 122 of the Environment Act 1995 (directions)<sup>(d)</sup> applies in relation to any direction given by virtue of paragraph (1) of this regulation.

(3) Article 11 of the Natural Resources Body for Wales (Establishment) Order 2012 (directions to the Natural Resources Body for Wales)<sup>(e)</sup> has effect as if the power in paragraph (3) of that Order to give directions included a power for the appropriate authority to give directions to any public body for the purposes of giving effect to the WFD.

(4) Article 11A of the Natural Resources Body for Wales (Establishment) Order 2012 (further provision about directions) applies in relation to any direction given by virtue of paragraph (3) of this regulation.

(5) The appropriate authority may give guidance to the appropriate agency or to any other public body with respect to the practical implementation of the WFD, and that agency or public body must have regard to it.

### Revocation

**37.** The 2003 Regulations are revoked.

### Transitional provision

**38.**—(1) Anything done under the 2003 Regulations (whether or not subsequently revised), and which has not been superseded at the time these Regulations come into force, continues to have effect and is taken to have been done under these Regulations.

(2) Paragraph (1) applies to (but is not limited to) the following—

- (a) the analysis of river basin characteristics and review of impact of human activity required to be undertaken by 22nd December 2004 under regulation 5 of the 2003 Regulations;
- (b) the economic analysis required to be undertaken by 22nd December 2004 under regulation 6 of the 2003 Regulations;
- (c) the identification of water bodies from which water is abstracted for human consumption under regulation 7 of the 2003 Regulations;

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(a) OJ No L 41, 14.2.2003, p26.

(b) Section 202 was amended by paragraph 172 of Schedule 22 and paragraph 1 of Schedule 24 to the Environment Act 1995 (c. 25) and by S.I. 2013/755 (W. 90).

(c) 1995 c. 25; section 40 was amended by S.I. 2011/1043, 2013/755 (W. 90).

(d) Section 122 was amended by S.I. 2011/1043; there are other amending instruments but none is relevant.

(e) S.I. 2012/1903, amended by section 5 of the Environment (Wales) Act 2016 (anaw 3) and by S.I. 2013/755 (W. 90). There are other amendments not relevant to these Regulations.

- (d) the designation of shellfish water protected areas under regulation 7A of the 2003 Regulations;
- (e) the establishment of a register of protected areas required by 22nd December 2004 under regulation 8 of the 2003 Regulations;
- (f) the establishment of operational monitoring programmes required by 22nd December 2006 under regulation 9 of the 2003 Regulations;
- (g) the setting of environmental objectives for each body of water and the establishment of programmes of measures required by 22nd December 2009 under regulation 10 of the 2003 Regulations;
- (h) the approval of updated river basin management plans required by 22nd December 2015 under regulations 14 and 15 of the 2003 Regulations.

### Consequential amendments

39. The consequential amendments in Schedule 4 have effect.

7th March 2017

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

15th March 2017

*Carwyn Jones*  
First Minister of Wales

## SCHEDULE 1

Regulation 2(3)

### Directive definitions

- 1.—(1) In the definitions in paragraph (2) (which derive from the WFD)—
- (a) a reference to an Article or Annex is a reference to an Article or Annex of the WFD (unless otherwise specified);
  - (b) a reference to a regulation is a reference to a regulation in these Regulations.
- (2) The definitions are—
- “aquifer” means a subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the abstraction of significant quantities of groundwater;
- “body of groundwater” means a distinct volume of groundwater within an aquifer or aquifers;
- “body of surface water” means a discrete and significant element of surface water such as a lake, a reservoir, a stream, river or canal, part of a stream, river or canal, a transitional water or a stretch of coastal water;
- “coastal water” means surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters;
- “direct discharges of pollutants into groundwater” means the discharge of pollutants into groundwater without percolation through the soil or subsoil;
- “ecological status” is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with Annex V and such Directions as the appropriate authority may give to the appropriate agency;

“good ecological potential” means the status of an artificial or heavily modified water body classified as such in accordance with the relevant provisions of Annex V and such Directions as the appropriate authority may give to the appropriate agency;

“good ecological status” means the status of a body of surface water classified as such in accordance with the relevant provisions of Annex V and such Directions as the appropriate authority may give to the appropriate agency;

“good groundwater status” means the status of a body of groundwater when both its chemical and quantitative status are at least good;

“good groundwater chemical status” means the chemical status of a body of groundwater which meets all the conditions set out in table 2.3.2 of Annex V;

“good surface water chemical status” means the chemical status required to meet the environmental objectives for surface waters under regulation 13(2), that is the chemical status achieved by a body of surface water in which concentrations of pollutants do not exceed the environmental quality standards established by the table of priority substances, and under other relevant EU legislation setting environmental quality standards at EU level;

“groundwater” means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“groundwater status” is the general expression of the status of a body of groundwater, determined by the poorer of its quantitative status and chemical status;

“hazardous substances” means substances or groups of substances that are toxic, persistent and liable to bio-accumulate, and other groups of substances which give rise to an equivalent level of concern;

“inland water” means all standing and flowing water on the surface of the land, and all groundwater on the landward side of the baseline from which the breadth of the territorial sea is measured;

“lake” means a body of standing inland surface water;

“pollutant” means any substance liable to cause pollution, including those listed in Annex VIII;

“pollution” means the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems, which result in damage to material property, or which impair or interfere with amenities and other legitimate uses of the environment;

“priority substance” and “priority hazardous substance” means a substance identified as such in Annex X to the WFD;

“quantitative status” is an expression of the degree to which a body of groundwater is affected by direct and indirect abstractions;

“river” means a body of inland water flowing for the most part on the surface of the land but which may flow underground for part of its course;

“river basin” means the area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta;

“surface water” means inland waters, except groundwater; transitional waters and coastal waters except in respect of chemical status for which it shall also include territorial waters;

“surface water status” means the status of a body of surface water, determined by the poorer of its ecological status and chemical status;

“transitional waters” means bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flow;

“water services” means all services which provide, for households, public institutions or any economic activity—



- (a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater;
- (b) waste-water collection and treatment facilities which subsequently discharge into surface water;

“water use” means water services together with any other activity identified as having a significant impact on the status of water in the analyses carried out under regulations 5 and 7 in accordance with Annex II.

## SCHEDULE 2

Regulation 2(1)

### Enactments in relation to which duties in regulation 3 apply

#### PART 1

##### Statutes

1. Section 2(2) of the European Communities Act 1972(a).
2. The Salmon and Freshwater Fisheries Act 1975(b).
3. Parts 2 and 2A of the Environmental Protection Act 1990 (waste on land and contaminated land)(c).
4. Part 4 of the Water Industry Act 1991 (sewerage services)(d).
5. Parts 2 to 5 and 7 to 9 of the Water Resources Act 1991 (water resources management; control of pollution of water resources; flood defence; general control of fisheries; land and works powers; information provisions; miscellaneous and supplemental)(e).
6. The Land Drainage Act 1991(f).
7. The Environment Act 1995(g).
8. Sections 3, 4, 10, 81 and 83 of the Water Act 2003 (abstraction and impoundment; duties to conserve water)(h).
9. Part 4 of the Marine and Coastal Access Act 2009 (marine licensing)(i).
10. The Flood and Water Management Act 2010(j).
11. Section 61 of the Water Act 2014 (regulation of the water environment)(k).

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(a) 1972 c. 68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) 1975 c. 51.

(c) 1990 c. 43.

(d) 1991 c. 56.

(e) 1991 c. 57.

(f) 1991 c. 59.

(g) 1995 c. 25.

(h) 2003 c.37; sections 3, 4 and 10 were amended by S.I. 2013/755.

(i) 2009 c. 23.

(j) 2010 c. 29.

(k) 2014 c. 21.

## PART 2

### Subordinate instruments

12. The Sludge (Use in Agriculture) Regulations 1989(a).
13. The Urban Waste Water Treatment (England and Wales) Regulations 1994(b).
14. The Water Protection Zone (River Dee Catchment) (Procedural and Other Provisions) Regulations 1999(c).
15. The Control of Pollution (Oil Storage) (England) Regulations 2001(d).
16. The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003(e).
17. The Urban Waste Water Treatment (England and Wales) (Amendment) Regulations 2003(f).
18. The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009(g).
19. The Eels (England and Wales) Regulations 2009(h).
20. The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010(i).
21. The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010(j).
22. The Natural Resources Body for Wales (Establishment) Order 2012(k).
23. The Bathing Water Regulations 2013(l).
24. The Nitrate Pollution Prevention (Wales) Regulations 2013(m).
25. The Keeping and Introduction of Fish (Wales) Regulations 2014(n).
26. The Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015(o).
27. The Control of Major Accident Hazards Regulations 2015(p).
28. The Nitrate Pollution Prevention Regulations 2015(q).
29. The Environmental Damage (Prevention and Remediation) (England) Regulations 2015(r).
30. The Water Environment (Control of Pollution) (Oil Storage) (Wales) Regulations 2016(s).

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- (a) S.I. 1989/1263; relevant amending instruments are S.I. 1990/880, 1996/593, 2000/656, 2010/1159, 1820 (W.177), 2013/755 (W. 90).
- (b) S.I. 1994/2841, amended by S.I. 2003/1788, 2005/2035, 2010/675, 2011/556, 2013/755 (W. 90), 2016/1154.
- (c) S.I. 1999/916, amended by S.I. 2013/755 (W. 90).
- (d) S.I. 2001/2954, amended by S.I. 2010/1159 and 2016/1154.
- (e) S.I. 2003/164; relevant amending instruments are S.I. 2006/3124, 2010/1159, 2013/755 (W. 90).
- (f) S.I. 2003/1788, amended by S.I. 2013/755 (W. 90).
- (g) S.I. 2009/995 (W. 81); relevant amending instruments are S.I. 2012/630, 2013/755 (W. 90), 2015/1394 (W. 138), 2015/1937 and 2016/1154.
- (h) S.I. 2009/3344, amended by S.I. 2011/2976, 2013/755 (W. 90).
- (i) S.I. 2010/639, amended by S.I. 2010/1091.
- (j) S.I. 2010/1493 (W. 136), amended by S.I. 2013/755 (W. 90) and 2016/359 (W. 112).
- (k) S.I. 2012/1903 (W. 230).
- (l) S.I. 2013/1675, amended by S.I. 2013/2363, 2014/1067 (W. 106), 2016/314 (W. 103), 600.
- (m) S.I. 2013/2506 (W. 245), amended by S.I. 2015/2020 (W. 308).
- (n) S.I. 2014/3303 (W. 336).
- (o) S.I. 2015/10.
- (p) S.I. 2015/483, amended by S.I. 2016/1154; there are other amendments not relevant to these Regulations.
- (q) S.I. 2015/668, amended by S.I. 2016/1190, 1254.
- (r) S.I. 2015/810, amended by S.I. 2015/1391, 2016/1154.
- (s) S.I. 2016/359 (W. 112), amended by S.I. 2016/1154.

**31. The Environmental Permitting (England and Wales) Regulations 2016(a).**

**SCHEDULE 3**

Regulation 20(2)(a)

**EU instruments for the protection of water**

- 1. Council Directive 91/271/EEC concerning urban waste-water treatment(b).**
- 2. Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources(c).**
- 3. Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(d).**
- 4. Council Directive 98/83/EC on the quality of water intended for human consumption(e).**
- 5. Directive 2006/7/EC of the European Parliament and of the Council concerning the management of bathing water quality(f).**
- 6. Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(g).**
- 7. Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy(h).**
- 8. Directive 2009/147/EU of the European Parliament and of the Council on the conservation of wild birds(i).**
- 9. Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)(j).**
- 10. 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(k).**
- 11. Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances(l).**

**SCHEDULE 4**

Regulation 39

**Consequential amendments**

**The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003**

**1.—(1) The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(m) are amended as follows.**

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- (a) S.I. 2016/1154.
  - (b) OJ No L 135, 30.5.1991, p40, as last amended by Council Directive 2013/64/EU (OJ No L 353, 28.12.2013, p8).
  - (c) OJ No L 375, 31.12.1991, p1, as last amended by Regulation (EC) No 1137/2008 (OJ No L 311, 21.11.2008, p1).
  - (d) OJ No L 206, 22.7.1992, p7, as last amended by Council Directive 2013/17/EU (OJ No L 158, 10.6.2013, p193).
  - (e) OJ No L 330, 5.12.1998, p32, as last amended by Commission Directive (EU) 2015/1787 (OJ No L 260, 7.10.2015, p6).
  - (f) OJ No L 64, 4.3.2006, p37, as last amended by Council Directive 2013/64/EU (OJ No L 353, 28.12.2013, p8).
  - (g) OJ No L 372, 27.12.2006, p19, as last amended by Commission Directive 2014/80/EU (OJ No L 182, 21.6.2014, p52).
  - (h) OJ No L 348, 24.12.2008, p84, as last amended by Directive 2013/39/EU (OJ No L 226, 24.8.2013, p1).
  - (i) OJ No L 20, 26.1.2010, p7, as last amended by Council Directive 2013/17/EU (OJ No L 158, 10.6.2013, p193).
  - (j) OJ No L 334, 17.12.2010, p17.
  - (k) OJ No L 26, 28.1.2012, p1, as last amended by Directive 2014/52/ EU (OJ No L 124, 25.4.2014, p1).
  - (l) OJ No L 197, 24.7.2012, p1.
  - (m) S.I. 2003/3245, amended by S.I. 2016/139.

- (2) In regulation 2—
- (a) in the definition of “the principal Regulations”, for “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003” substitute “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017”;
  - (b) in paragraph (a) of the definition of “relevant function”, for “regulations 5 to 20” substitute “regulations 5 to 36”.
- (3) Regulation 5 is amended as follows—
- (a) in paragraph (1A)—
    - (i) in sub-paragraph (a), for “regulations 2, 5 to 18, 19 and 20” substitute “regulations 2, 5 to 22, 24 to 36, 38 and Schedules 1 and 3”;
    - (ii) in sub-paragraph (b), for “regulation 18A” substitute “regulation 23”;
  - (b) in paragraph (2)(b), for “paragraphs (1A) and (1B)” substitute “paragraph (2)”;
  - (c) in paragraph (2C)—
    - (i) for “Regulation 7A” substitute “Regulation 9”;
    - (ii) for “paragraph (7)” substitute “paragraph (8)”;
  - (d) in paragraph (3)—
    - (i) in the words before paragraph (a), for “Regulation 12” substitute “Regulation 29”;
    - (ii) for sub-paragraph (c)(iv) substitute—
      - “(iv) after sub-paragraph (j) there were inserted—
      - “(ja) Scottish Water;”;
    - (iii) in sub-paragraph (d), for sub-paragraph (h) of the substituted paragraph (5) substitute—
      - “(h) “the relevant date”, in relation to a plan, means—
      - (i) if a period of time has been directed under regulation 27(1)(a), the date on which that period begins, or
      - (ii) otherwise, the date by which the Secretary of State is next required under regulation 31(5) to publish an updated plan;”;
  - (e) in paragraph (4), for “Regulation 13” substitute “Regulation 30”;
  - (f) in paragraph (5)—
    - (i) for “Regulation 14” substitute “Regulation 31”;
    - (ii) for “paragraph 3(a)” substitute “paragraph 4(a)”;
  - (g) in paragraph (6)—
    - (i) for “Regulation 17” substitute “Regulation 33”;
    - (ii) for “the NRBW” substitute “NRW”.
- (4) Regulation 6 is amended as follows—
- (a) in paragraph (3)(b)(i) —
    - (i) for “regulation 14” substitute “regulation 31”;
    - (ii) for “regulation 16” substitute “regulation 32”;
  - (b) in paragraph (5), for “regulation 14” substitute “regulation 31”.

## The Flood Risk Regulations 2009

- 2.—(1) The Flood Risk Regulations 2009(a) are amended as follows.

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(a) S.I. 2009/3042, amended by S.I. 2010/1102; there are other amendments not relevant to these Regulations.

(2) In regulation 8, for “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003” substitute “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017”.

(3) In regulation 8A, for the words from “means” to the end, substitute “has the same meaning as in the Water Environment Regulations”.

(4) In regulation 21(2)—

(a) in sub-paragraph (a), for “regulation 8(2)(a) or (b)(ii) or (iv)” substitute “regulation 10(2)(a) or 10(2)(b)(ii) or (iv)”;

(b) in sub-paragraph (b), for “regulation 8(1)” substitute “regulation 10(1)”.

### **The Marine Strategy Regulations 2010**

**3.** In Schedule 2 to the Marine Strategy Regulations 2010(a), for “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003” substitute “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017”.

### **The Bathing Water Regulations 2013**

**4.**—(1) The Bathing Water Regulations 2013(b) are amended as follows.

(2) In regulation 5(2), for “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003” substitute “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017”.

(3) In regulation 7(3)(a), for “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003” substitute “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017”.

### **The London Underground (Northern Line Extension) Order 2014**

**5.** In Part 3 of Schedule 8 to the London Underground (Northern Line Extension) Order 2014(c), in paragraph 30(2), for “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003” substitute “the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017”.

## **EXPLANATORY NOTE**

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

These Regulations revoke and replace the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (S.I. 2003/3242) (“the 2003 Regulations”) which have been amended by several instruments. They continue to transpose for England and Wales Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy) (OJ No L 327, 22.12.2000, p1) (“the WFD”) and also transpose aspects of Directive 2006/118/EEC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration (OJ No L 372, 27.12.2006, p19) (“the GWD”) and of Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy (OJ No L 348, 24.12.2008, p84) (the EQSD”).

Regulation 3 imposes duties on the Secretary of State, Welsh Ministers, the Environment Agency (“the EA”) and Natural Resources Wales (“NRW”) to carry out certain functions so as to ensure

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(a) S.I. 2010/1627, to which there are amendments not relevant to these Regulations.

(b) S.I. 2013/1675, to which there are amendments not relevant to these Regulations.

(c) S.I. 2014/3102.

compliance with the WFD, GWD and EQSD, in particular when deciding whether to grant, vary or revoke certain permits and licences which affect water quality, and to co-ordinate their actions relating to these three Directives.

Part 2 requires the identification of river basin districts, and a number of other assessments to be carried out by the EA and NRW to characterise and classify the status of water bodies in those districts, and assess the economic aspects of water use. These assessments were carried out under the 2003 Regulations, and are treated as having been carried out under these Regulations as a result of the transitional provision in regulation 38.

Part 3 makes provision for certain protected areas. Regulation 8 requires the identification of bodies of water from which drinking water is abstracted, and specifies specific measures that must be included in a programme of measures (see Part 5) to protect the quality of the water. Regulation 9 sets out a procedure for designating areas of water as “shellfish water protected areas” which will have additional objectives (see regulation 13). Regulation 10 requires a number of types of areas which are protected by other EU legislation (for example, protected habitats and birds sites), as well as the areas under regulations 8 and 9, to be included on registers of protected areas.

Part 4 sets out what monitoring of water quality the EA and NRW must undertake in relation to water bodies, including protected areas.

Part 5 provides for the establishment of environmental objectives for each water body, and programmes of measures to meet those objectives. Regulation 12 sets out a procedure for these to be proposed by the EA or NRW, approved by the Secretary of State or Welsh Ministers, and reviewed and revised at least every six years. Regulation 13 sets out what the objectives are for each type of water body. This is subject to regulations 16 and 17 which enable alternative deadlines or less stringent objectives to be set if certain conditions are met, and to regulations 18 and 19 which set out circumstances in which it is permissible not to achieve the objectives set for a water body.

The remainder of Part 5 provides for the content and application of programmes of measures. In particular, regulation 20 sets out the minimum requirements for each programme of measures, (which may also contain supplementary measures), regulation 21 imposes requirements about water pricing and contributions to the recovery of costs, and regulation 22 requires additional measures in relation to certain priority substances set by the EQSD. Regulation 24 explains the actions which must be taken if it is likely that the environmental objectives for a body of water will not be met.

Part 6 deals with river basin management plans (“RBMPs”) which must be established for each river basin district, and applies in relation to the most recent plans published under the 2003 Regulations, or (once plans have been revised) under these Regulations. Regulation 27 lists the content required in each RBMP. The plans must be reviewed and revised periodically by the EA and NRW (regulation 28) and are then subject to the consultation requirements set out in regulation 29. The procedure for RBMPs to be submitted to and approved by the Secretary of State and Welsh Ministers is set out in regulations 30 and 31. Regulation 33 requires public bodies (as well as the Secretary of State, Welsh Ministers, the EA and NRW) to have regard to the RBMP for a river basin district (or a supplementary plan under regulation 32) when exercising functions affecting the district.

Part 7 contains miscellaneous provisions. Regulation 37 revokes the 2003 Regulations (and accordingly, Schedule 4 makes consequential amendments to other legislation). Regulation 38 contains a transitional provision ensuring that things done under the 2003 Regulations before their revocation continue to have effect as if done under these Regulations (for example, the analyses and assessments required by Part 2, and the objectives and programmes of measures established under Part 5).

Schedule 1 contains definitions from the WFD for terms used in the Regulations. Schedule 2 lists the functions in primary and secondary legislation to which the duty in regulation 3(1) (to exercise functions so as to secure compliance with the WFD, GWD and EQSD) applies. Schedule 3 contains a list of EU Directives relating to water quality which programmes of measures must

contain measures to implement. Schedule 4 contains consequential amendments to other legislation.

No impact assessment has been prepared for this instrument as no impact on the private, voluntary or business sectors is foreseen.