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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Environment (Legislative Functions  
from Directives) (EU Exit) Regulations 2019**

**PART 6**

Water quality

**CHAPTER 1**

Introductory

**Interpretation of Part 6: general**

**24.—(1)** In this Part—

“the WEWS Act” means the Water Environment and Water Services (Scotland) Act 2003<sup>(1)</sup>;

“the Sewage Sludge Directive” means Council Directive 86/278/EEC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture<sup>(2)</sup>;

“the Urban Waste Water Treatment Directive” means Council Directive 91/271/EEC concerning urban waste water treatment<sup>(3)</sup>;

“the Nitrates Directive” means Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources<sup>(4)</sup>;

“the Drinking Water Directive” means Directive 1998/83/EC of the European Parliament and of the Council on the quality of water intended for human consumption<sup>(5)</sup>;

“the Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework in the field of water policy<sup>(6)</sup>;

“the Bathing Water Directive” means Directive 2006/7/EC of the European Parliament and of the Council concerning the management of bathing water quality<sup>(7)</sup>;

“the Groundwater Directive” means Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration<sup>(8)</sup>;

“the EQS Directive” means Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy<sup>(9)</sup>.

(2) In Chapters 2 and 3, “body of groundwater” and “body of surface water” have the meaning given by the Water Framework Directive.

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(1) 2003 asp 3.

(2) OJ No L 181, 4.7.1986, p. 6, as last amended by Decision (EU) 2018/853 (OJ No L 150, 14.6.2018, p. 155).

(3) OJ No L 135, 30.5.1991, p. 40, as last corrected by a corrigendum (OJ No L 189, 17.7.2005, p. 41).

(4) OJ No L 375, 31.12.1991, p. 1, as last amended by Regulation (EC) No 1137/2008 (OJ No L 311, 21.11.2008, p. 1).

(5) OJ No L 330, 5.12.1998, p. 32, as last amended by Commission Directive 2015/1787/EU (OJ No L 260, 7.10.2015, p. 6).

(6) OJ No L 327, 22.12.2000, p. 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p. 32).

(7) OJ No L 64, 4.3.2006, p. 37, as last amended by Council Directive 2013/641/EU (OJ No L 353, 28.12.2013, p. 8).

(8) OJ No L 372, 27.12.2006, p. 19, as last amended by Commission Directive 2014/80/EU (OJ No L 182, 21.6.2014, p. 52).

(9) OJ No L 348, 24.12.2008, p. 84, as last amended by Directive 2013/39/EU (OJ No L 226, 24.8.2013, p. 1).

### **Meaning of appropriate authority**

- 25.**—(1) In this Part, “appropriate authority” has the meaning given by this regulation.
- (2) The “appropriate authority” is—
- (a) for regulations applying in relation to England, the Secretary of State;
  - (b) for regulations applying in relation to Wales, the Welsh Ministers;
  - (c) for regulations applying in relation to Scotland, the Scottish Ministers;
  - (d) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.
- (3) But the appropriate authority is the Secretary of State if consent is given by—
- (a) for regulations applying in relation to Wales, the Welsh Ministers;
  - (b) for regulations applying in relation to Scotland, the Scottish Ministers;
  - (c) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

### **Meaning of appropriate agency**

- 26.** In this Part, except where otherwise specified, the “appropriate agency” means—
- (a) for regulations applying in relation to England, the Environment Agency;
  - (b) for regulations applying in relation to Wales, the Natural Resources Body for Wales;
  - (c) for regulations applying in relation to Scotland, the Scottish Environment Protection Agency;
  - (d) for regulations applying in relation to Northern Ireland, the Northern Ireland Environment Agency.

## **CHAPTER 2**

### **Retention of functions from the Water Framework Directive**

#### **Power to make provision in relation to the economic analysis for river basin districts**

**27.**—(1) The appropriate authority may, by regulations, make provision in relation to the technical specifications for the economic analysis which must be carried out under retained EU law which implemented Article 5(1) of the Water Framework Directive.

- (2) The provision which may be made under paragraph (1) includes —
- (a) requiring a reference to Annex 3 to the Water Framework Directive (or a reference which encompasses that Annex) to be read as a reference to that Annex with modifications;
  - (b) amending provision corresponding to that made by that Annex.
- (3) Regulations under paragraph (1) may amend the WEWS Act or any subordinate legislation.

(4) The appropriate authority may exercise the power in paragraph (1) only to the extent that the authority considers it appropriate to do so as a result of scientific and technical progress.

#### **Power to make provision in relation to monitoring of water quality**

**28.**—(1) The appropriate authority may, by regulations, make provision, for the purposes of retained EU law which implemented Article 8 of the Water Framework Directive—

- (a) specifying the technical specifications and standardised methods for analysis to be used when undertaking monitoring of the status of bodies of groundwater and surface water;

- (b) specifying the national or international standards which must be conformed with when carrying out monitoring in bodies of surface water of biological quality elements and physico-chemical parameters.
- (2) The provision which may be made under paragraph (1) includes—
  - (a) requiring a reference to Commission [Directive 2009/90/EC](#) laying down, pursuant to [Directive 2000/60/EC](#) of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status<sup>(10)</sup> to be read as a reference to that Directive with modifications;
  - (b) requiring a reference to paragraph 1.3.6 of Annex 5 to the Water Framework Directive (or a reference which encompasses that paragraph) to be read as a reference to that paragraph with modifications;
  - (c) amending provision corresponding to the provision made by Commission [Directive 2009/90/EC](#) or by paragraph 1.3.6 of Annex 5 to the Water Framework Directive.
- (3) Regulations under paragraph (1) may amend the WEWS Act or any subordinate legislation.
- (4) The appropriate authority may exercise the power in paragraph (1) only to the extent that the authority considers it appropriate to do so as a result of scientific and technical progress.

### CHAPTER 3

#### Retention of functions from the Groundwater Directive

##### **Power to make provision in relation to groundwater threshold values**

- 29.**—(1) The appropriate authority may, by regulations, make provision—
- (a) about the procedure for establishing threshold values, under retained EU law which implemented the Groundwater Directive, for pollutants and indicators of pollutants which indicate that a body of groundwater is at risk of failing to achieve good groundwater chemical status;
  - (b) specifying the information relating to threshold values which is to be included in river basin management plans, which may include—
    - (i) information about bodies of groundwater or groups of such bodies characterised as being at risk;
    - (ii) the threshold values that have been set and the area to which they apply;
    - (iii) the methodology for determining background levels;
    - (iv) information about the groundwater chemical status assessment.
- (2) The provision which may be made under paragraph (1) includes—
- (a) requiring a reference to Part A or Part C of Annex 2 to the Groundwater Directive (or a reference which encompasses that provision) to be read as a reference to that provision with modifications;
  - (b) amending provision corresponding to provision made by Part A or Part C of Annex 2 to the Groundwater Directive.
- (3) Regulations under paragraph (1) may amend the WEWS Act or subordinate legislation.
- (4) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.

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<sup>(10)</sup> OJ No L 201, 1.8.2009, p. 36.

(5) In this regulation, “background levels” means the concentration of a substance or the value of an indicator in a body of groundwater corresponding to no, or only very minor, anthropogenic alterations to undisturbed conditions.

#### **Power to make provision in relation to the procedure for assessing groundwater chemical status**

**30.**—(1) The appropriate authority may, by regulations, make provision, for the purposes of retained EU law which implemented Article 4(2) of the Groundwater Directive, about the assessment procedure for determining the chemical status of a body of groundwater or a group of such bodies.

(2) The provision which may be made under paragraph (1) includes—

- (a) requiring a reference to Annex 3 to the Groundwater Directive (or a reference which encompasses that Annex) to be read as a reference to that Annex with modifications;
- (b) amending provision corresponding to that made by Annex 3 to the Groundwater Directive.

(3) Regulations under paragraph (1) may amend the WEWS Act or any subordinate legislation.

(4) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.

#### **Power to make provision in relation to upward trends in groundwater pollutants**

**31.**—(1) The appropriate authority may, by regulations, make provision, for the purposes of retained EU law which implemented Article 5 of the Groundwater Directive—

- (a) about the procedure for identifying significant and sustained upward trends in pollutants (or indicators of pollutants) in bodies of groundwater (or groups of such bodies) that are characterised as being at risk;
- (b) about the requirements for reversing such trends.

(2) The provision under paragraph (1)(a) may include, in particular, provision about the design of, and technical standards relating to, the monitoring programme for bodies of groundwater.

(3) The provision under paragraph (1)(b) may include, in particular, provision about how the starting point for trend reversal is to be determined, and the monitoring requirements for the purposes of demonstrating trend reversals.

(4) The provision which may be made under paragraph (1) includes—

- (a) requiring a reference to Annex 4 to the Groundwater Directive (or a reference which encompasses that Annex) to be read as a reference to that Annex with modifications;
- (b) amending provision corresponding to that made by Annex 4 to the Groundwater Directive.

(5) Regulations under paragraph (1) may amend the WEWS Act or any subordinate legislation.

(6) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.

### CHAPTER 4

#### Retention of functions from the EQS Directive

#### **Power to amend the watch list of substances**

**32.**—(1) The appropriate authority may, by regulations, amend the Annex to Commission Implementing Decision (EU) 2018/840 establishing a watch list of substances for Union-Wide monitoring in the field of water policy pursuant to [Directive 2008/105/EC](#) of the European Parliament and of the Council.

- (2) The provision which may be made under paragraph (1) is provision—
- (a) adding a substance to or removing a substance from column 1 of the table;
  - (b) amending any of columns 2 to 5;
  - (c) inserting or amending a footnote to the table, or omitting such a footnote.

(3) A substance may only be added to column 1 if the appropriate authority considers that, taking into account new or emerging robust scientific evidence, the available data suggest that the substance may pose a threat to, or via, the aquatic environment in the British Islands or in the rest of Europe.

### **Power to make provision in relation to environmental quality standards for certain metals**

**33.**—(1) The appropriate authority may, by regulations, make provision specifying how the environmental quality standards set by Part A of Annex 1 to the EQS Directive for cadmium, lead, mercury and nickel are to be applied.

- (2) The provision which may be made under paragraph (1) includes—
- (a) requiring a reference to paragraph 3 of Part B of Annex 1 to the EQS Directive (or a reference which encompasses that paragraph) to be read as a reference to that paragraph with modifications;
  - (b) amending provision which corresponds to that made by paragraph 3 of Part B of Annex 1 to the EQS Directive.

(3) Regulations under paragraph (1) may amend the WEWS Act or any subordinate legislation.

(4) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.

## CHAPTER 5

### Retention of functions from the Bathing Water Directive

### **Power to specify symbols about bathing waters**

**34.**—(1) The appropriate authority may, by regulations, make provision, for the purposes of retained EU law which implemented Article 12(1)(a) of the Bathing Water Directive, specifying the symbols for—

- (a) information on bathing prohibition or advice against bathing;
  - (b) information on bathing water classification.
- (2) The provision which may be made under paragraph (1) includes—
- (a) amending Commission Implementing [Decision 2011/321/EU](#) establishing, pursuant to [Directive 2006/7/EC](#) of the European Parliament and of the Council, a symbol for information to the public on bathing water classification and any bathing prohibition or advice against bathing;
  - (b) requiring a reference to Article 12(1)(a) of the Bathing Water Directive (or a reference which encompasses that provision) to be read as a reference to that Article with modifications;
  - (c) amending provision which corresponds to that made by Article 12 of the Bathing Water Directive.
- (3) Regulations under paragraph (1) may amend any subordinate legislation.

### **Power to specify reference methods of analysis for microbiological methods**

**35.**—(1) The appropriate authority may, by regulations—

- (a) for the purposes of retained EU law which implemented Article 3(9) of the Bathing Water Directive, specify an EN standard<sup>(11)</sup> or a standard of the International Organization for Standardization for establishing the equivalence of microbiological methods;
  - (b) for the purposes of retained EU law which implemented Annex 1 to the Bathing Water Directive, specify the reference methods of analysis for intestinal enterococci and *Escherichia coli*.
- (2) The provision which may be made under paragraph (1) includes—
- (a) amending Commission Decision (EU) 2017/1583 specifying, pursuant to [Directive 2006/7/EC](#) of the European Parliament and of the Council, EN ISO 17994:2014 as the standard on the equivalence of microbiological methods;
  - (b) requiring a reference to Article 3(9) of or Annex 1 to the Bathing Water Directive (or a reference which encompasses either or both of those provisions) to be read as a reference to that Article or Annex with modifications;
  - (c) amending provision which corresponds to that made by Article 3(9) of or Annex 1 to the Bathing Water Directive.
- (3) Regulations under paragraph (1) may amend any subordinate legislation.
- (4) The appropriate authority may only exercise the power in paragraph (1)(b) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.

#### **Power to make provision in relation to handling of samples**

**36.**—(1) The appropriate authority may, by regulations, for the purposes of retained EU law which implemented Annex 5 to the Bathing Water Directive, make provision about the handling of samples for microbiological analyses, including provision about the requirements for—

- (a) sampling points;
  - (b) sterilisation of sample bottles;
  - (c) the process of sampling;
  - (d) storage and transport of samples before analysis.
- (2) The provision which may be made under paragraph (1) includes—
- (a) requiring a reference to Annex 5 to the Bathing Water Directive (or a reference which encompasses that Annex) to be read as a reference to that Annex with modifications;
  - (b) amending provision which corresponds to that made by Annex 5 to the Bathing Water Directive.
- (3) Regulations under paragraph (1) may amend any subordinate legislation.
- (4) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers that it is appropriate to do so as a result of scientific and technical progress.

## CHAPTER 6

### Retention of functions from the Drinking Water Directive

#### **Power to make provision in relation to monitoring of drinking water**

**37.**—(1) The appropriate authority may, by regulations, for the purposes of retained EU law which implemented Annexes 2 and 3 to the Drinking Water Directive, make provision for or in connection with the monitoring of water intended for human consumption.

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<sup>(11)</sup> Copies of the relevant EN standards can be obtained from BSI, 389 Chiswick High Road, London W4 4AL (or by email from [cservices@bsigroup.com](mailto:cservices@bsigroup.com)).

- (2) The provision which may be made under paragraph (1) includes specifying—
  - (a) the general objectives of and provisions of monitoring programmes for water intended for human consumption;
  - (b) the general framework for monitoring programmes, including the list of parameters and the sampling frequencies;
  - (c) standards for risk assessment;
  - (d) standards for sampling and sampling points;
  - (e) standards for the methods of analysis used for monitoring, including those for microbiological parameters, and the performance characteristics for methods for chemical and indicator parameters.
- (3) The provision which may be made under paragraph (1) includes—
  - (a) requiring a reference to Annex 2 or 3 to the Drinking Water Directive (or a reference which encompasses either of those Annexes) to be read as a reference to those Annexes with modifications;
  - (b) amending provision which corresponds to that made by Annex 2 or 3 to the Drinking Water Directive.
- (4) Regulations under paragraph (1) may amend any subordinate legislation.
- (5) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.
- (6) Before making any regulations under paragraph (1), the appropriate authority must consult—
  - (a) the appropriate drinking water regulator, and
  - (b) such other persons as the authority considers appropriate.
- (7) In this regulation, the “appropriate drinking water regulator” means—
  - (a) for regulations applying in England, the Chief Inspector of Drinking Water;
  - (b) for regulations applying in Wales, the Chief Inspector of Drinking Water, or the Chief Inspector of Drinking Water for Wales, if different;
  - (c) for regulations applying in Scotland, the Drinking Water Quality Regulator for Scotland;
  - (d) for regulations applying in Northern Ireland, the Drinking Water Inspectorate for Northern Ireland.

## CHAPTER 7

### Retention of functions from the Urban Waste Water Treatment Directive

#### Interpretation of Chapter 7

**38.** In this Chapter—

“collecting system” means a system of conduits which collects and conducts urban waste water;

“domestic waste water” means waste water from residential settlements and services which originates predominantly from the human metabolism and from household activities;

“industrial waste water” means any waste water which is discharged from premises used for carrying on any trade or industry, other than domestic waste water and run-off rain water;

“urban waste water” means domestic waste water or domestic waste water mixed with either or both of industrial waste water and run-off rain water.

### **Power to make provision in relation to requirements of collecting systems**

**39.**—(1) The appropriate authority may, by regulations, for the purposes of retained EU law which implemented section A of Annex 1 to the Urban Waste Water Treatment Directive, make provision as to the requirements of collecting systems for urban waste water.

- (2) The provision which may be made under paragraph (1) includes—
- (a) requiring a reference to section A of Annex 1 to the Urban Waste Water Treatment Directive (or a reference which encompasses that provision) to be read as a reference to that provision with modifications;
  - (b) amending provision which corresponds to that made by section A of Annex 1 to the Urban Waste Water Treatment Directive.
- (3) Regulations under paragraph (1) may amend any subordinate legislation.

### **Power to make provision in relation to requirements for discharges from urban waste water treatment plants**

**40.**—(1) The appropriate authority may, by regulations, for the purposes of retained EU law which implemented section B of Annex 1 (including Tables 1 and 2) to the Urban Waste Water Treatment Directive, make provision as to the requirements for discharges from urban waste water treatment plants.

- (2) The provision which may be made under paragraph (1) includes—
- (a) requiring a reference to section B of Annex 1 (including Tables 1 and 2) to the Urban Waste Water Treatment Directive (or a reference which encompasses that provision) to be read as a reference to that provision with modifications;
  - (b) amending provision which corresponds to that made by section B of Annex 1 (including Tables 1 and 2) to the Urban Waste Water Treatment Directive.
- (3) Regulations under paragraph (1) may amend any subordinate legislation.

### **Power to make provision in relation to requirements for discharges of industrial waste water**

**41.**—(1) The appropriate authority may, by regulations, for the purposes of retained EU law which implemented section C of Annex 1 to the Urban Waste Water Treatment Directive, make provision as to the requirements for discharges of industrial waste water to collecting systems and urban waste water treatment plants.

- (2) The provision which may be made under paragraph (1) includes—
- (a) requiring a reference to section C of Annex 1 to the Urban Waste Water Treatment Directive (or a reference which encompasses that provision) to be read as a reference to that provision with modifications;
  - (b) amending provision which corresponds to that made by section C of Annex 1 to the Urban Waste Water Treatment Directive.
- (3) Regulations under paragraph (1) may amend any subordinate legislation.

## CHAPTER 8

### Retention of functions from the Nitrates Directive

### **Power to specify the criteria for identifying waters**

**42.**—(1) The appropriate authority may, by regulations, for the purposes of retained EU law which implemented Annex 1 to the Nitrates Directive, make provision—

- (a) specifying the criteria for identifying waters affected, or which could be affected, by pollution from nitrates from agricultural sources;
  - (b) as to the factors that may be taken into account in applying the criteria.
- (2) The provision which may be made under paragraph (1) includes—
- (a) requiring a reference to Annex 1 to the Nitrates Directive (or a reference which encompasses that Annex) to be read as a reference to that Annex with modifications;
  - (b) amending provision which corresponds to that made by Annex 1 to the Nitrates Directive.
- (3) Regulations under paragraph (1) may amend any subordinate legislation.
- (4) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.

#### **Power to make provision about action programmes**

**43.**—(1) The appropriate authority may, by regulations, for the purposes of retained EU law which implemented Annex 3 to the Nitrates Directive, make provision about the measures to be included in programmes of action to reduce pollution of surface freshwaters or groundwater from nitrates from agricultural sources.

- (2) In particular, the regulations may make provision as to—
- (a) periods when the application of certain types of fertiliser to land is prohibited;
  - (b) the capacity of storage vessels for manure;
  - (c) other limitations on the application of fertilisers to land, consistent with good agricultural practice;
  - (d) the total amount of livestock manure which may be applied, including provision specifying—
    - (i) that for each farm or livestock unit the total amount of nitrogen in livestock manure applied to the land each calendar year, whether directly by an animal or by spreading, does not exceed a specified amount per hectare;
    - (ii) how that amount is to be calculated.
- (3) The provision which may be made under paragraph (1) includes—
- (a) requiring a reference to Annex 3 to the Nitrates Directive (or a reference which encompasses that Annex) to be read as a reference to that Annex with modifications;
  - (b) amending provision which corresponds to that made by Annex 3 to the Nitrates Directive.
- (4) Regulations under paragraph (1) may amend any subordinate legislation.
- (5) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.

#### **Power to make provision in relation to reference methods of measurement for nitrate concentration**

**44.**—(1) The appropriate authority may, by regulations, for the purposes of retained EU law which implemented Annex 4 to the Nitrates Directive, make provision about the reference methods of measurement for—

- (a) nitrogen compounds in chemical fertiliser;
  - (b) the concentration of nitrates in freshwaters, coastal waters and marine waters.
- (2) The provision which may be made under paragraph (1) includes—

- (a) requiring a reference to Annex 4 to the Nitrates Directive (or a reference which encompasses that Annex) to be read as a reference to that Annex with modifications;
  - (b) amending provision which corresponds to that made by Annex 4 to the Nitrates Directive.
- (3) Regulations under paragraph (1) may amend any subordinate legislation.
- (4) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.

## CHAPTER 9

### Retention of functions from the Sewage Sludge Directive

#### **Power to make provision about the criteria for testing of sludge and agricultural soil**

**45.**—(1) The appropriate authority may, by regulations, for the purposes of retained EU law which implemented the Annexes to the Sewage Sludge Directive, make provision about—

- (a) the limit values in sludge and in soil on which sludge is used or on which its use is considered;
  - (b) sludge analysis and information relating to sludge analysis;
  - (c) analysis of soil on which sludge is used or on which its use is considered;
  - (d) reference methods for sampling and analysis of sludge and soil on which it is used.
- (2) But regulations under paragraph (1) must not make provision which corresponds to or which has the effect of amending provision corresponding to—
- (a) the parameters and values listed in Annexes 1A, 1B and 1C to the Sewage Sludge Directive;
  - (b) any factors likely to affect the evaluation of those values;
  - (c) the parameters for analysis referred to in Annexes 2A and 2B to the Sewage Sludge Directive.
- (3) The provision which may be made under paragraph (1) includes—
- (a) requiring a reference to the Annexes to the Sewage Sludge Directive (or a reference which encompasses those Annexes) to be read as a reference to those Annexes with modifications;
  - (b) amending provision which corresponds to that made by the Annexes to the Sewage Sludge Directive.
- (4) Regulations under paragraph (1) may amend any subordinate legislation.
- (5) The appropriate authority may only exercise the power in paragraph (1) to the extent that the authority considers it is appropriate to do so as a result of scientific and technical progress.

## CHAPTER 10

### Consultation

#### **Requirement to consult**

**46.** Before making regulations under this Part, apart from under Chapter 6, the appropriate authority must consult—

- (a) the appropriate agency;
- (b) such other persons as the authority considers appropriate.

