

EXPLANATORY MEMORANDUM TO
THE WATER ENVIRONMENT (WATER FRAMEWORK DIRECTIVE) (ENGLAND
AND WALES) (AMENDMENT) REGULATION 2015

2015 No. 1623

1. This explanatory memorandum has been prepared by Department of Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends certain provisions of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003¹ to transpose aspects of Directive 2013/39/EU (“the Priority Substances Directive”).

2.2 The Priority Substances Directive itself amends the Environmental Quality Standards Directive² (“the EQS Directive”), which is a daughter Directive of the Water Framework Directive³ (“WFD”), and identifies and sets environmental quality standards (EQS) in surface waters for a list of priority substances identified under the WFD as presenting a significant risk to or via the aquatic environment.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Water Framework Directive establishes an integrated approach to water management, based on river basin planning, and sets environmental objectives which are designed to protect and improve the ecological health of aquatic eco-systems as a whole.

4.2 The list of priority substances forms Annex X to the WFD. The list was reviewed in accordance with Article 16(4) WFD and updated by the EQS Directive which also set standards for each of those substances. Following a further review of the list of priority substances the European Commission proposed to revise a number of the standards set by the EQS Directive and add twelve new substances to the list. The proposal was subject to scrutiny by Parliament and consultation in the UK prior to adoption (see attached annex). The resulting Priority Substances Directive, which this instrument partially transposes,

¹ SI 2003/3242.

² Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy.

³ Directive 2000/60/EC of the European Parliament and Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

amended the EQS Directive to revise the list and some of the standards and established some new monitoring and reporting requirements in addition to those already required by the WFD.

4.3 The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (“the 2003 regulations”) transposed many of the obligations of the WFD. The key amendments made to the 2003 Regulations by this instrument are set out below.

4.3(i) Regulation 3 of the 2003 regulations provides for the Secretary of State, the Welsh Ministers, and the environment agencies in England and Wales⁴ to exercise their relevant functions so as to secure compliance with the requirements of the WFD. The amendment to Regulation 3 provides for this duty to apply also in relation to the requirements of the EQS Directive as amended by the Priority Substances Directive. The “relevant functions” are the functions under the 2003 Regulations and those listed in Schedule 2 to the 2003 Regulations (which this instrument updates – see below).

4.3(ii) Regulations 9 and 10 of the 2003 Regulations are amended, and a new regulation 10A inserted, to transpose the new monitoring requirements of the Priority Substances Directive and to ensure that revised programmes of measures established for the purposes of the WFD include measures which take into account the new priority substances and the revised standards from the appropriate dates.

4.3(iii) Regulation 11 is amended to include new requirements from the Priority Substances Directive as to matters which must be included in river basin management plans under the WFD. Regulation 18 is amended to require the interim progress report required by the WFD to be published. Regulation 18A is inserted which sets out further requirements relating to certain substances approved under other EU instruments (relating to biocidal products and plant protection products).

4.4 The more technical aspects of the obligations imposed on the environment agencies by the Priority Substances Directive are being transposed through a set of statutory Directions (made under section 40 of the Environment Act 1990 in relation to England, and under article 11 of the Natural Resources Body for Wales (Establishment) Order 2012⁵ in relation to Wales). The Directions are the Water Framework Directive (Standards and Classification) (England and Wales) Directions 2015.

4.5 As well as the amendments to the 2003 Regulations for the purposes of transposing the Priority Substances Directive, the instrument makes other minor updating amendments to the 2003 Regulations. These include updating the list of ‘relevant functions’ in Schedule 2 to the 2003 Regulations, changing references from “the Assembly” to “the Welsh Ministers”, and from “English Nature” to “Natural England”, updating regulation 4 relating to the map of river basin districts, and removing references to the regional offices of the environment agencies.

⁴ The Environment Agency and the Natural Resources Body for Wales.

⁵ S.I. 2012/1903 (W.230).

4.6 These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in both Houses of the UK Parliament and in the National Assembly for Wales. A further separate instrument to amend regulations applying to two England-Scotland cross-border areas (Northumbria and the Solway Tweed) will also be made.

5. Territorial Extent and Application

5.1 This instrument extends and applies to England and Wales.

5.2 Scotland and Northern Ireland are introducing separate transposing instruments to similar timescales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Water Framework Directive (WFD) 2000/60/EC⁶ provides a strategic framework for protecting and improving the water environment, reflecting and building on practice in the UK at the time it was developed, initially under a UK presidency, and coming into force in December 2000. Specific environmental objectives and measures for individual bodies of water are identified through a 6-yearly river basin planning process. All key stages in the river basin planning process are subject to stakeholder engagement and extensive public consultation.

7.2 Water body quality (“status”) is assessed in terms of how closely the water body resembles conditions unaffected by human activity. There are five ecological status classes (ranging from high to bad). Chemical status is classed as “good” or “failing to achieve good”. Assessment of compliance with the standards set for the priority substances determines whether a water body is at good chemical status or not. Member States are required to prevent deterioration in status and aim to achieve good status (where it does not already exist) by December 2015. The deadline can be extended to December 2021 or 2027 for reasons of technical feasibility, disproportionate cost or natural conditions.

7.3 Standards for general ecological indicators such as dissolved oxygen and nutrient concentrations are set by each Member State to reflect local environmental conditions. Setting of standards for the priority substances (chemicals with a high level of toxicity

⁶ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1). <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02000L0060-20141120&qid=1439993953078&from=EN>

that are identified under Article 16.4 WFD as presenting a significant risk to the aquatic environment or to people and which are widely used across the EU) is coordinated by the European Commission.

7.4 The UK had extensive involvement in the review of priority substances and chaired the Expert Group responsible for the prioritisation, substance selection and standard setting exercises. As a result three pharmaceuticals for which the evidence base was insufficient for inclusion as priority substances in the Priority Substances Directive were removed from the original proposal. These are instead on a 'watch list' ensuring that further evidence is gathered before consideration is given to making them priority substances.

7.5 Implementation of the EQS Directive, as amended by the Priority Substances Directive, will help ensure that standards for toxic chemicals are sufficiently protective of the environment and human health by preventing them reaching dangerous concentrations in water bodies by means of controls on discharges and emissions.

8. Consultation outcome

8.1 These amending Regulations affect functions of the environment agencies, the Secretary of State and the Welsh Ministers. Since they do not impose requirements on industry or the public, there has been no consultation exercise on this Regulation. The UK adopted an approach of continuing engagement through a stakeholder group of industries likely to be affected by revised and new standards (which are being implemented through Directions to the environment agencies) from the time of the proposal to adoption of the Priority Substances Directive.

9. Guidance

9.1 No guidance is needed as the instrument imposes no obligations on external bodies.

10. Impact

10.1 Since the amending Regulations have no direct impact on the public or business, a separate impact assessment has not been prepared for this instrument. The potential costs of implementing the new standards were assessed in the initial impact assessment developed for consideration in UK of the Commission proposal. This indicated that the greatest costs (with an estimated cost to the water sector of £27 - £31 billion) were associated with the three pharmaceutical products mentioned in paragraph 7.2 above that were not included in the final Priority Substances Directive. Costs to the UK environment agencies relating to new monitoring requirements have been estimated as £27.3 - £45.3 million over 20 years.

10.2 Any specific measures to achieve standards for priority substances in individual water bodies will be determined through the river basin planning process, which itself

involves an assessment of the costs and benefits. The revised standards for the existing priority substances that apply to the period 2015 to 2027 have been used to develop draft updated river basin management plans, to be submitted by the agencies to Ministers this autumn for approval and published by 22nd December 2015. An impact assessment is being prepared for these updated river basin management plans.

11. Regulating small business

11.1 This instrument does not regulate small businesses.

12. Monitoring & review

12.1 The Water Framework Directive requires ongoing monitoring and review of all measures, and River Basin Management Plans are reviewed and updated on a six-year planning cycle. The standards in the EQS Directive are also subject to review by the European Commission every 4 years and any changes subject to adoption by the European Parliament and the Council.

13. Contact

Jenny Maresh at the Department for Environment Food and Rural Affairs.
Tel: 02072386070 or email: Jenny.Maresh@defra.gsi.gov.uk can answer any queries regarding the instrument.

Parliamentary Scrutiny

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE OUTCOME OF THE REVIEW OF ANNEX X TO DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PRIORITY SUBSTANCES IN THE FIELD OF WATER POLICY.

PROPOSAL AMENDING DIRECTIVES 2000/60/EC AND 2008/105/EC AS REGARDS PRIORITY SUBSTANCES IN THE FIELD OF WATER POLICY.

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVES 2000/60/EC AND 2008/105/EC AS REGARDS PRIORITY SUBSTANCES IN THE FIELD OF WATER POLICY.

**EM 11816/06 dated 3 October 2006
Council Regulation (EC) No – 2008/105**

Scrutiny Committees' Recommendations:

Commons	Lords
Reported twice, reports 40, 05/06 and 25, 07/07 and recommended proposal for debate. The debate was held in European Standing Committee A on 25 June 2007	Sifted to sub-Committee D (sift 1203) and it was cleared following correspondence with Ministers on 14 June 2007

EM 6018/12 - 6019/12 date 31 January 2012

Commons:	Lords
Cleared following correspondence	Cleared following correspondence.
Reports: http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86xxv/86xxv.pdf http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83iv/83iv.pdf	Report: http://www.parliament.uk/documents/lords-committees/eu-sub-com-d/cwm/cwm2013-14/cwmsubd09may2013-30june2013-.pdf