

The Shellfish Water Protected Areas (England and Wales) Directions 2016

Made - - - -

9th February 2016

Coming into force - -

3rd March 2016

The Secretary of State, in exercise of the powers conferred by section 40(2) of the Environment Act 1995(a), and having consulted the Welsh Ministers to the extent that there is any effect in those parts of Wales that are within the catchment areas of the rivers Dee, Severn and Wye, and having also consulted the Environment Agency, gives the following Directions to the Environment Agency.

The Welsh Ministers, in exercise of the powers conferred by article 11 of the Natural Resources Body for Wales (Establishment) Order 2012(b), and having consulted the Secretary of State to the extent that there is any effect in those parts of England that are within the catchment areas of the rivers Dee, Severn and Wye, and having also consulted the Natural Resources Body for Wales, give the following Directions to the Natural Resources Body for Wales.

These Directions are given for the purposes of implementing Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(c).

Citation, commencement, application and revocation

1.—(1) These Directions may be cited as the Shellfish Water Protected Areas (England and Wales) Directions 2016 and come into force on 3rd March 2016.

(2) These Directions apply in relation to in England and Wales.

(3) The following Directions are revoked—

- (a) The Surface Waters (Fishlife) Directions 1997;
- (b) The Surface Waters (Shellfish) Directions 2010.

Interpretation

2. In these Directions—

“the appropriate agency” means—

- (a) in relation to a river basin district that is wholly in England, the Environment Agency (“the Agency”);
- (b) in relation to a river basin district that is wholly in Wales, the Natural Resources Body for Wales (“NRBW”);
- (c) in relation to a river basin district that is partly in England and partly in Wales, the Agency and NRBW acting jointly;
- (d) in relation to a river basin district that is partly in England and partly in Scotland, the Agency (in respect of the part which is in England).

“river basin district” means—

(a) 1995 c.25.

(b) S.I. 2012/1903 (W. 230), amended by S.I. 2013/755 (W.90).

(c) O.J. No. L.327, 22.12.2000, p1; as last amended by Directive 2014/101/EU (O.J. No. L. 311, 31.10.2014, p.32).

- (a) an area identified by regulation 4(1) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (“the 2003 Regulations”)(a);
 - (b) the area identified in regulation 3(1) of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (“the Solway Tweed Regulations”)(b);
 - (c) the area identified in regulation 3(1) of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(c);
- “shellfish water protected area” means—
- (a) an area designated under regulation 7A of the 2003 Regulations;
 - (b) an area designated under paragraph 3A of Schedule 1 of the Solway Tweed Regulations.

Microbial standard

3.—(1) For the purposes of meeting the water quality objectives referred to in paragraph (b) of the definition of environmental objectives in regulation 2 of the 2003 Regulations and paragraph (b) of the definition of environmental objectives in regulation 2 of the Solway Tweed Regulations, the appropriate agency must endeavour to observe the microbial standard in all shellfish water protected areas.

(2) The microbial standard is 300 or fewer colony forming units of *Escherichia coli* per 100 ml of shellfish flesh and intravalvular liquid.

Compliance with the microbial standard

4.—(1) A shellfish water protected area complies with the microbial standard if—

- (a) 75 per cent of the samples taken within any period of 12 months contain 300 or fewer colony forming units of *Escherichia coli* per 100 ml of shellfish flesh and intravalvular liquid;
- (b) all the samples comply with the requirements of article 5.

(2) A sample which does not meet the requirements in sub-paragraph (1)(a) may be disregarded for the purposes of that sub-paragraph if the appropriate agency considers that—

- (a) the failure to meet the requirements is as a result of a disaster; and
- (b) it is therefore appropriate for the sample to be disregarded.

(3) Paragraph (4) applies in any case where—

- (a) a shellfish water protected area has not been commercially harvested for a continuous period of 12 months; and
- (b) no samples have been taken by the appropriate agency during that period.

(4) In any case to which paragraph (3) applies—

- (a) the obligation in article 3(1) shall not apply, and
- (b) the appropriate agency must record the shellfish water protected area as having no samples available.

Sampling and analysis

5.—(1) The appropriate agency must ensure that each shellfish water protected area is sampled for the purposes of assessing compliance with the microbial standard and that samples are collected and analysed in accordance with paragraphs (2) to (4).

(a) S.I. 2003/3242, amended by S.I. 2013/755, S.I. 2015/1623 and S.I. 2016/XXXX.
 (b) S.I. 2004/99.
 (c) S.I. 2003/3245.

(2) Sampling may be carried out at any time and must be carried out at least at quarterly intervals where the shellfish water protected area is being commercially harvested.

(3) Where sampling shows that the microbial standard has not been complied with, the appropriate agency must establish whether this is the result of chance, a natural phenomenon or pollution.

(4) Samples must be analysed using the reference methods of analysis specified in ISO/TS 16649-3: 2004 or methods which are at least as reliable as those reference methods.

Derogations

6. The appropriate agency may derogate from the requirements of these Directions where it considers such action appropriate in the event of exceptional weather or geographical conditions.

Solway Tweed river basin district

7.—(1) In relation to the Solway Tweed River Basin District, in order to ensure a common approach, the Environment Agency must act jointly with the Scottish Environmental Protection Agency and may, as necessary, adapt the requirements of these Directions for that purpose.

(2) In this Direction, “Solway Tweed River Basin District” means the area identified in regulation 3 of the Solway Tweed Regulations 2004.

Signed by the Authority of the Secretary of State

9/2/2016 *David Cooper*
A Senior Civil Servant, for and on behalf of the Secretary of State for Environment,
Food and Rural Affairs

9/2/2016 *Carl Sargeant*
The Minister for Natural Resources, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Direction)

Following the repeal of the Shellfish Waters Directive (Directive 2006/113/EC), the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (“the 2003 Regulations”) have been amended by S.I. 2016/138, and the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (“the Solway Tweed Regulations”) and the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 have been amended by S.I. 2016/139 to ensure that protections under that Directive are continued.

This Direction requires the Environment Agency and Natural Resources Wales (the “Agencies”) to endeavour to observe the microbial standard in a shellfish water protected area. A shellfish water protected area is an area designated by the Secretary of State or the Welsh Ministers under new regulation 7A of the 2003 Regulations or an area designated by the Secretary of State under new paragraph 3A of Schedule 1 of the Solway Tweed Regulations. The Direction sets the microbial standard and also requires the Agencies to assess compliance against that standard to monitor microbial pollution. This Direction applies to England and Wales, including the parts of the Solway Tweed River Basin District and Northumbria River Basin District which are in England.