

SCHEDULES

SCHEDULE 15

Section 169

AMENDMENTS OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017: ASSUMPTIONS ABOUT NUTRIENT POLLUTION STANDARDS

PART 1

INTRODUCTORY

- 1 Part 6 of the Conservation of Habitats and Species Regulations 2017 ([S.I. 2017/1012](#)) (assessment of plans and projects) is amended as set out in this Schedule.

PART 2

PLANNING

- 2 Chapter 2 of Part 6 of those Regulations (assessment of plans and projects: planning) is amended as follows.
- 3 In regulation 70 (grant of planning permission), after paragraph (4) insert—
 - “(5) See regulation [85A](#) for the assumptions about nutrient pollution standards to be made in certain circumstances.”
- 4 In regulation 71 (planning permission: duty to review), after paragraph (9) insert—
 - “(10) See regulation [85A](#) for the assumptions about nutrient pollution standards to be made in certain circumstances.”
- 5 In regulation 77 (general development orders: approval of local planning authority), after paragraph (7) insert—
 - “(8) See regulation [85B](#) for the assumptions about nutrient pollution standards to be made in certain circumstances.”
- 6 In regulation 79 (special development orders), after paragraph (5) insert—
 - “(6) See regulation [85A](#) for the assumptions about nutrient pollution standards to be made in certain circumstances.”
- 7 In regulation 80 (local development orders), after paragraph (5) insert—
 - “(6) See regulation [85A](#) for the assumptions about nutrient pollution standards to be made in certain circumstances.”
- 8 In regulation 81 (neighbourhood development orders), after paragraph (5) insert—
 - “(5A) See regulation [85A](#) for the assumptions about nutrient pollution standards to be made in certain circumstances.”

Status: This is the original version (as it was originally enacted).

- 9 In regulation 82 (simplified planning zones), after paragraph (6) insert—
 “(7) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.”
- 10 In regulation 83 (enterprise zones), after paragraph (6) insert—
 “(7) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.”
- 11 After regulation 85 insert—

Assumptions to be made about nutrient pollution standards: general

“85A(1) Paragraph (2) applies where—

- (a) a competent authority makes a relevant decision,
 - (b) the potential development includes development in England,
 - (c) the competent authority is required to make a relevant assessment before the decision is made,
 - (d) waste water from any potential development would be dealt with by a plant in England that, at the time of the decision, is—
 - (i) a nitrogen significant plant, or
 - (ii) a phosphorus significant plant, and
 - (e) the decision is made—
 - (i) where the plant is a non-catchment permitting area plant, before the upgrade date, or
 - (ii) where the plant is a catchment permitting area plant, before the applicable date.
- (2) In making the relevant assessment, the competent authority must assume—
- (a) in a case within paragraph (1)(d)(i) and (e)(i), that the plant will meet the nitrogen nutrient pollution standard on and after the upgrade date;
 - (b) in a case within paragraph (1)(d)(ii) and (e)(i), that the plant will meet the phosphorus nutrient pollution standard on and after the upgrade date;
 - (c) in a case within paragraph (1)(d)(i) and (e)(ii), that the plant will meet the nitrogen nutrient pollution standard on and after the applicable date;
 - (d) in a case within paragraph (1)(d)(ii) and (e)(ii), that the plant will meet the phosphorus nutrient pollution standard on and after the applicable date.
- (3) Paragraph (2)—
- (a) is subject to regulation 85C (direction that assumptions are not to apply), and
 - (b) does not prevent the competent authority, in making a relevant assessment, from having regard to outperformance, or expected outperformance, by a plant that is a non-catchment permitting area plant.
- (4) In paragraph (1) “relevant decision” means—

- (a) where any of the following provides that the assessment provisions apply in relation to doing a thing, the decision whether or not to do it—
 - (i) regulation 70 (grant of planning permission),
 - (ii) regulation 79 (special development orders),
 - (iii) regulation 80 (local development orders),
 - (iv) regulation 81 (neighbourhood development orders),
 - (v) regulation 82 (simplified planning zones), or
 - (vi) regulation 83 (enterprise zones), or
 - (b) where any of the following provides that the review provisions apply in relation to a matter, a decision under regulation 65(1)(b) on a review of the matter—
 - (i) regulation 71 (planning permission: duty to review),
 - (ii) regulation 79 (special development orders),
 - (iii) regulation 80 (local development orders),
 - (iv) regulation 81 (neighbourhood development orders),
 - (v) regulation 82 (simplified planning zones), or
 - (vi) regulation 83 (enterprise zones);

but this does not apply to a matter mentioned in regulation 71(4) (any review of which would be conducted in accordance with another Chapter).
- (5) In paragraph (1) “potential development”, in relation to a relevant decision, means development—
- (a) that could be carried out by virtue of the planning permission, development order or scheme to which the decision relates, or
 - (b) to which the decision otherwise relates.
- (6) In this regulation “relevant assessment” means—
- (a) where the assessment provisions apply and an appropriate assessment of the implications of the plan or project for a site is required by regulation 63(1), that assessment;
 - (b) where the review provisions apply and an appropriate assessment is required by regulation 65(2), that assessment.

Assumptions to be made about nutrient pollution standards: general development orders

85B (1) This regulation applies where—

- (a) a local planning authority (within the meaning given by regulation 78(1)) makes a decision on an application under regulation 77 (general development orders: approval of local planning authority) for approval as mentioned in regulation 75 relating to proposed development in England,
- (b) the authority is required by regulation 77(6) to make an appropriate assessment of the implications of the proposed development,
- (c) any waste water from the proposed development would be dealt with by a plant in England that, at the time of the decision, is—
 - (i) a nitrogen significant plant, or

Status: This is the original version (as it was originally enacted).

- (ii) a phosphorus significant plant, and
- (d) the decision is made—
 - (i) where the plant is a non-catchment permitting area plant, before the upgrade date, or
 - (ii) where the plant is a catchment permitting area plant, before the applicable date.
- (2) In making the relevant assessment the local planning authority must assume—
 - (a) in a case within paragraph (1)(c)(i) and (d)(i), that the plant will meet the nitrogen nutrient pollution standard on and after the upgrade date;
 - (b) in a case within paragraph (1)(c)(ii) and (d)(i), that the plant will meet the phosphorus nutrient pollution standard on and after the upgrade date;
 - (c) in a case within paragraph (1)(c)(i) and (d)(ii), that the plant will meet the nitrogen nutrient pollution standard on and after the applicable date;
 - (d) in a case within paragraph (1)(c)(ii) and (d)(ii), that the plant will meet the phosphorus nutrient pollution standard on and after the applicable date.
- (3) Paragraph (2)—
 - (a) is subject to regulation 85C (direction that assumptions are not to apply), and
 - (b) does not prevent the local planning authority, in making a relevant assessment, from having regard to any outperformance, or expected outperformance, by a plant that is a non-catchment permitting area plant.

Direction that assumptions are not to apply

- 85C (1) The assumptions in regulations 85A(2) and 85B(2) do not apply in relation to a particular plant and a particular nutrient pollution standard if the Secretary of State so directs.
- (2) A direction under this regulation may be made in relation to a plant and a standard only if the Secretary of State is satisfied—
 - (a) where the plant is a non-catchment permitting area plant, that the plant will not be able to meet the standard by the upgrade date;
 - (b) where the plant is a catchment permitting area plant—
 - (i) that the plant will not be able to meet the standard by the applicable date, or
 - (ii) that the first effect described in paragraph (4) will, on the applicable date, be more significant than the second effect described in that paragraph.
 - (3) The Secretary of State may revoke a direction under this regulation if satisfied—
 - (a) where the plant is a non-catchment permitting area plant, that the plant will meet the standard by the upgrade date;

Status: This is the original version (as it was originally enacted).

- (b) where the plant is a catchment permitting area plant—
 - (i) that the plant will meet the standard by the applicable date, or
 - (ii) that the first effect described in paragraph (4) will, on the applicable date, be the same or less significant than the second effect described in that paragraph.
- (4) For the purposes of paragraphs (2)(b) and (3)(b)—
 - (a) the “first effect” is the overall effect on the habitats site associated with the catchment permitting area of nutrients in treated effluent discharged by all plants that discharge into the area;
 - (b) the “second effect” is the overall effect on the site of nutrients in treated effluent that would be discharged by all plants that discharge into the area if—
 - (i) the upgrade date that applied to nutrient significant plants that discharge into the area was the same as the applicable date,
 - (ii) the standard concentration (of nutrients) applied to those nutrient significant plants, and
 - (iii) those nutrient significant plants were (on that basis) meeting the nutrient pollution standard on the applicable date.
- (5) In deciding whether to make a direction under this regulation in relation to a plant and a standard, the Secretary of State may, in particular, have regard—
 - (a) where the plant is a non-catchment permitting area plant, to when the plant can be expected to meet the standard;
 - (b) where the plant is a catchment permitting area plant, to when—
 - (i) the plant can be expected to meet the standard, and
 - (ii) the sewerage undertaker for the plant can be expected to be in compliance with conditions in the environmental permit for the plant imposed in pursuance of section 96G(3)(b) of the Water Industry Act 1991.
- (6) Before making or revoking a direction under this regulation, the Secretary of State must consult—
 - (a) the Environment Agency,
 - (b) Natural England,
 - (c) the Water Services Regulation Authority,
 - (d) any local planning authority who it appears to the Secretary of State would be affected by the direction or revocation,
 - (e) the sewerage undertaker whose sewerage system includes the plant, and
 - (f) any other persons that the Secretary of State considers appropriate.
- (7) A direction or revocation under this regulation—
 - (a) is to be made in writing, and
 - (b) takes effect—
 - (i) on the day specified in the direction or revocation, or
 - (ii) if none is specified, on the day on which it is made.

Status: This is the original version (as it was originally enacted).

- (8) As soon as practicable after making or revoking a direction under this regulation, the Secretary of State must—
- (a) notify—
 - (i) the Environment Agency,
 - (ii) Natural England,
 - (iii) every local planning authority who appears to the Secretary of State to be affected by the direction or revocation, and
 - (iv) any other persons that the Secretary of State considers appropriate, and
 - (b) publish the direction or revocation.

Regulations 85A to 85C: interpretation

85D(1) In regulations 85A to 85C and this regulation, the following terms have the meanings given by section 96L of the Water Industry Act 1991—

- “catchment permitting area”;
 - “environmental permit”;
 - “habitats site”;
 - “nitrogen significant plant”;
 - “nitrogen nutrient pollution standard”;
 - “nutrient pollution standard”;
 - “nutrient significant plant”;
 - “phosphorus significant plant”;
 - “phosphorus nutrient pollution standard”;
 - “plant”;
 - “sensitive catchment area”;
 - “sewerage system”, in relation to a sewerage undertaker;
 - “standard concentration”;
 - “treated effluent”;
 - “upgrade date”.
- (2) In regulations 85A to 85C and this regulation—
- “catchment permitting area plant” means a nutrient significant plant that discharges (or will discharge) treated effluent into a catchment permitting area;
 - “non-catchment permitting area plant” means a nutrient significant plant that discharges (or will discharge) treated effluent into a sensitive catchment area other than a catchment permitting area.
- (3) For the purposes of regulations 85A and 85B, “outperformance” by a plant, which is a non-catchment permitting area plant and in relation to a nutrient pollution standard, occurs where—
- (a) the plant meets the standard before the upgrade date, or
 - (b) the total nitrogen concentration (in the case of a nitrogen significant plant), or total phosphorus concentration (in the case of a phosphorus significant plant), in treated effluent that it discharges is less than the concentration specified in section 96F(1)(a)(i) or (2)(a)(i), under section 96C(4)(e) or 96D(5) or by virtue of regulations made

under [section 96D\(11\)](#) (as the case may be) of the Water Industry Act 1991 that applies to the plant.

- (4) For the purposes of regulations [85A](#) and [85B](#), the “applicable date”, in relation to a catchment permitting area, is to be determined in accordance with [section 96G\(6\)\(a\)](#) of the Water Industry Act 1991.
- (5) For the purposes of regulation [85C\(4\)](#)—
- (a) a habitats site is “associated” with a catchment permitting area if water released into the area would drain into the site;
 - (b) “nutrients”—
 - (i) in relation to an area designated under [section 96C\(1\)](#) of the Water Industry Act 1991, means nutrients comprising nitrogen or compounds of nitrogen;
 - (ii) in relation to an area designated under [section 96C\(2\)](#) of that Act, means nutrients comprising phosphorus or compounds of phosphorus.”

PART 3

LAND USE PLANS

- 12 Chapter 8 of Part 6 (assessment of plans and projects: land use plans) is amended as follows.
- 13 In regulation 105 (assessment of implications for European sites and European offshore marine sites), after paragraph (6) insert—
- “(7) See regulation [110A](#) for the assumptions about nutrient pollution standards to be made in certain circumstances.”
- 14 In regulation 106 (assessment of implications for European site: neighbourhood development plans), after paragraph (3) insert—
- “(3A) See regulation [110A](#) for the assumptions about nutrient pollution standards to be made in certain circumstances.”
- 15 In regulation 110 (national policy statements), in paragraph (3)(a), for “and 108” substitute “, 108 and [110A](#)”.
- 16 After regulation 110 insert—

Assessments under this Chapter: required assumptions

- “110A) This regulation applies where—
- (a) a plan-making authority makes a relevant decision in relation to a land use plan relating to an area in England,
 - (b) the authority is required to make a relevant assessment before the decision is made,
 - (c) waste water from the area to which the plan relates could be dealt with by a plant in England that, at the time of the decision, is—
 - (i) a nitrogen significant plant, or
 - (ii) a phosphorus significant plant, and
 - (d) the decision is made—

Status: This is the original version (as it was originally enacted).

- (i) where the plant is a non-catchment permitting area plant, before the upgrade date, or
 - (ii) where the plant is a catchment permitting area plant, before the applicable date.
- (2) In making the relevant assessment, the authority must assume—
- (a) in a case within paragraph (1)(c)(i) and (d)(i), that the plant will meet the nitrogen nutrient pollution standard on and after the upgrade date;
 - (b) in a case within paragraph (1)(c)(ii) and (d)(i), that the plant will meet the phosphorus nutrient pollution standard on and after the upgrade date;
 - (c) in a case within paragraph (1)(c)(i) and (d)(ii), that the plant will meet the nitrogen nutrient pollution standard on and after the applicable date;
 - (d) in a case within paragraph (1)(c)(ii) and (d)(ii), that the plant will meet the phosphorus nutrient pollution standard on and after the applicable date.
- (3) Paragraph (2)—
- (a) is subject to regulation 110B (direction that assumptions are not to apply), and
 - (b) does not prevent the authority, in making a relevant assessment, from having regard to any outperformance, or expected outperformance, by a plant that is a non-catchment permitting area plant.
- (4) In paragraph (1) “relevant decision” means—
- (a) a decision whether to give effect to a land use plan, or
 - (b) a decision whether to modify or revoke a neighbourhood development plan.
- (5) In this regulation “relevant assessment”, in relation to a land use plan, means—
- (a) in relation to a decision within paragraph (4)(a), where an appropriate assessment of the implications for a site of the land use plan is required by regulation 105(1), that assessment;
 - (b) in relation to a decision within paragraph (4)(b), where such an assessment is required by regulation 105(1) as applied by regulation 106(3), that assessment.

Direction that assumptions are not to apply

- 110B(1) The assumptions in regulation 110A(2) do not apply in relation to a particular plant and a particular nutrient pollution standard if the Secretary of State so directs.
- (2) A direction under this regulation may be made in relation to a plant and a standard only if the Secretary of State is satisfied—
- (a) where the plant is a non-catchment permitting area plant, that the plant will not be able to meet the standard by the upgrade date;
 - (b) where the plant is a catchment permitting area plant—

- (i) that the plant will not be able to meet the standard by the applicable date, or
 - (ii) that the first effect described in paragraph (4) will, on the applicable date, be more significant than the second effect described in that paragraph.
- (3) The Secretary of State may revoke a direction under this regulation if satisfied—
 - (a) where the plant is a non-catchment permitting area plant, that the plant will meet the standard by the upgrade date;
 - (b) where the plant is a catchment permitting area plant—
 - (i) that the plant will meet the standard by the applicable date, or
 - (ii) that the first effect described in paragraph (4) will, on the applicable date, be the same or less significant than the second effect described in that paragraph.
- (4) For the purposes of paragraphs (2)(b) and (3)(b)—
 - (a) the “first effect” is the overall effect on the habitats site associated with the catchment permitting area of nutrients in treated effluent discharged by all plants that discharge into the area;
 - (b) the “second effect” is the overall effect on the site of nutrients in treated effluent that would be discharged by all plants that discharge into the area if—
 - (i) the upgrade date that applied to nutrient significant plants that discharge into the area was the same as the applicable date,
 - (ii) the standard concentration (of nutrients) applied to those nutrient significant plants, and
 - (iii) those nutrient significant plants were (on that basis) meeting the nutrient pollution standard on the applicable date.
- (5) In deciding whether to make a direction under this regulation in relation to a plant and a standard, the Secretary of State may, in particular, have regard—
 - (a) where the plant is a non-catchment permitting area plant, to when the plant can be expected to meet the standard;
 - (b) where the plant is a catchment permitting area plant, to when—
 - (i) the plant can be expected to meet the standard, and
 - (ii) the sewerage undertaker for the plant can be expected to be in compliance with conditions in the environmental permit for the plant imposed in pursuance of section 96G(3)(b) of the Water Industry Act 1991.
- (6) Before making or revoking a direction under this regulation, the Secretary of State must consult—
 - (a) the Environment Agency,
 - (b) Natural England,
 - (c) the Water Services Regulation Authority,
 - (d) any plan-making authority who it appears to the Secretary of State would be affected by the direction or revocation,

Status: This is the original version (as it was originally enacted).

- (e) the sewerage undertaker whose sewerage system includes the plant, and
 - (f) any other persons that the Secretary of State considers appropriate.
- (7) A direction or revocation under this regulation—
- (a) is to be made in writing, and
 - (b) takes effect—
 - (i) on the day specified in the direction or revocation, or
 - (ii) if none is specified, on the day on which it is made.
- (8) As soon as practicable after making or revoking a direction under this regulation, the Secretary of State must—
- (a) notify—
 - (i) the Environment Agency,
 - (ii) Natural England,
 - (iii) every plan-making authority who appears to the Secretary of State to be affected by the direction or revocation, and
 - (iv) any other persons that the Secretary of State considers appropriate, and
 - (b) publish the direction or revocation.

Regulations 110A and 110B: interpretation

110(1) In regulations 110A and 110B and this regulation, the following terms have the meanings given by section 96L of the Water Industry Act 1991—

“catchment permitting area”;

“environmental permit”;

“habitats site”;

“nitrogen significant plant”;

“nitrogen nutrient pollution standard”;

“nutrient pollution standard”;

“nutrient significant plant”;

“phosphorus significant plant”;

“phosphorus nutrient pollution standard”;

“plant”;

“sensitive catchment area”;

“sewerage system”, in relation to a sewerage undertaker;

“standard concentration”;

“treated effluent”;

“upgrade date”.

(2) In regulations 110A and 110B and this regulation—

“catchment permitting area plant” means a nutrient significant plant that discharges (or will discharge) treated effluent into a catchment permitting area;

“non-catchment permitting area plant” means a nutrient significant plant that discharges (or will discharge) treated effluent into a sensitive catchment area other than a catchment permitting area.

- (3) For the purposes of regulation 110A, “outperformance” by a plant, which is a non-catchment permitting area plant and in relation to a nutrient pollution standard, occurs where—
- (a) the plant meets the standard before the upgrade date, or
 - (b) the total nitrogen concentration (in the case of a nitrogen significant plant), or total phosphorus concentration (in the case of a phosphorus significant plant), in treated effluent that it discharges is less than the concentration specified in section 96F(1)(a)(i) or (2)(a)(i), under section 96C(6)(e) or 96D(5) or by virtue of regulations made under section 96D(11) (as the case may be) of the Water Industry Act 1991 that applies to the plant.
- (4) For the purposes of regulations 110A and 110B, the “applicable date”, in relation to a catchment permitting area, is to be determined in accordance with section 96G(6)(a) of the Water Industry Act 1991.
- (5) For the purposes of regulation 110B(4)—
- (a) a habitats site is “associated” with a catchment permitting area if water released into the area would drain into the site;
 - (b) “nutrients”—
 - (i) in relation to an area designated under section 96C(2) of the Water Industry Act 1991, means nutrients comprising nitrogen or compounds of nitrogen;
 - (ii) in relation to an area designated under section 96C(3) of that Act, means nutrients comprising phosphorus or compounds of phosphorus.”