

2004 No. 99

**WATER RESOURCES, ENGLAND
WATER RESOURCES, SCOTLAND**

**The Water Environment (Water Framework Directive)
(Solway Tweed River Basin District) Regulations 2004**

Made - - - - - *19th January 2004*
Laid before Parliament *20th January 2004*
Coming into force - - *10th February 2004*

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to matters relating to water resources, in exercise of the powers conferred upon her by that section(c), hereby makes the following Regulations:

Title, commencement and extent

1.—(1) These Regulations may be cited as the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 and shall come into force on 10th February 2004.

(2) Regulation 5 has the same extent as Part 1 of the Scottish Act (protection of the water environment), and the other provisions of these Regulations extend to Great Britain and the adjacent territorial sea.

Interpretation

2.—(1) In these Regulations—

“the Agencies” means the Agency and SEPA acting jointly;

“the Agency” means the Environment Agency;

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

“coastal water”, in relation to England, has the same meaning as in the Directive and, in relation to Scotland, has the meaning given by section 3(8) of the Scottish Act (the water environment: definitions);

“the Directive” means Directive 2000/60/EC of the European Parliament and of the Council of 23rd October 2000 establishing a framework for Community action in the field of water policy, as amended(d);

“environmental objectives” means the objectives required to comply with Article 4 of the Directive (environmental objectives) including any objectives required to comply with Article 7(2) and (3) of the Directive (waters used for the abstraction of drinking water);

(a) S.I. 2003/2901.

(b) 1972 c. 68.

(c) The power of the Minister to make regulations in relation to matters as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c. 46).

(d) O.J. No. L327, 22.12.2000, p. 1; amended by Decision 2455/2001/EC of the European Parliament and of the Council of 20th November 2001 establishing the list of priority substances in the field of water policy and amending Directive 2000/60/EC (O.J. No. L331, 15.12.2001, p. 1).

“the Ministers” means the Secretary of State and the Scottish Ministers acting jointly;
“programme of measures” means the programme of measures required to comply with Article 11(2) to (6) of the Directive (programme of measures);

“public body” does not include a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975(a), the Scottish Ministers, or any body or person having functions in relation only to Scotland, but otherwise it does include—

- (a) a person holding an office—
 - (i) under the Crown;
 - (ii) created or continued in existence by public general Act of Parliament; or
 - (iii) the remuneration in respect of which is paid out of money provided by Parliament; and
- (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—

- (a) in relation to the Secretary of State and the Agency, their functions under Schedule 1 and, so far as material, the enactments listed in Parts 1 and 2 of Schedule 2 (which relate to statutes and subordinate instruments respectively); and
- (b) in relation to the Scottish Ministers and SEPA, their functions under Schedule 1 and under Part 1 of the Scottish Act (protection of the water environment) as applied by regulation 5;

“relevant offices” means—

- (a) in relation to the Agency, its principal office and the principal office for each of its regions; and
- (b) in relation to SEPA, its head office and each of its regional offices within the Solway Tweed River Basin District;

“responsible authority” has the meaning given by section 2(8) of the Scottish Act;

“river basin district” means a district which is the main unit for the management of river basins for the purposes of the Directive, being made up of a river basin or neighbouring river basins, together with associated groundwater, transitional waters and coastal water;

“the Scottish Act” means the Water Environment and Water Services (Scotland) Act 2003(c);

“the Scottish Ministers” has the meaning given by section 127 of the Scotland Act 1998(d);

“SEPA” means the Scottish Environment Protection Agency; and

“the Solway Tweed River Basin District” means the area identified by regulation 3(1).

(2) Any expression used in both these Regulations and the Directive and not otherwise defined in these Regulations has the same meaning for the purposes of these Regulations as it has for the purposes of the Directive, and the definitions contained in the Directive of expressions used in these Regulations are set out in Schedule 3 (references in those definitions to an Annex or an Article being to an Annex to, or an Article of, the Directive).

The Solway Tweed River Basin District

3.—(1) The area shown on the deposited map is identified as a river basin district for the purposes of these Regulations and shall be known as the Solway Tweed River Basin District.

(2) The Secretary of State, the Scottish Ministers, the Agency and SEPA must ensure that the deposited map is made available to the public through their websites and at the relevant places.

(a) 1975 c. 26.

(b) 1990 c. 8; section 262 was amended by the Gas Act 1995 (c. 45), section 16(1) and Schedule 4, paragraph 18(2), S.I. 1996/593 and the Transport Act 2000 (c. 38), section 37 and Schedule 5, paragraph 6.

(c) 2003 asp 3.

(d) 1998 c. 46.

- (3) The relevant places are—
- (a) in the case of the Secretary of State, the principal library of the Department for Environment, Food and Rural Affairs;
 - (b) in the case of the Scottish Ministers, the Information Centre of the Scottish Parliament; and
 - (c) in the case of the Agency and SEPA, the relevant offices.
- (4) In this regulation, “the deposited map” means the map and related information recorded on the CD-ROM which is—
- (a) entitled “The Solway Tweed River Basin District 2004”; and
 - (b) deposited in the principal library of the Department for Environment, Food and Rural Affairs.

The general duties

4. The Secretary of State, the Scottish Ministers, the Agency and SEPA must exercise their relevant functions so as to secure—
- (a) that the requirements of the Directive for the achievement of its environmental objectives, and in particular the programme of measures, are co-ordinated for the whole of the Solway Tweed River Basin District; and
 - (b) compliance in relation to that district with the other requirements of the Directive.

Application of Part 1 of the Scottish Act in relation to the Solway Tweed River Basin District

5.—(1) Part 1 of the Scottish Act (protection of the water environment) shall apply in relation to the Solway Tweed River Basin District subject to the modifications set out in Schedule 4.

(2) Nothing in paragraph (1) enables regulations made under section 20, 22, 23 or 25 to apply in relation to any part of the Solway Tweed River Basin District outside Scotland.

19th January 2004

Elliot Morley
Minister of State,
Department for Environment, Food and Rural Affairs

RIVER BASIN MANAGEMENT PLANNING

Characterisation of river basin district

1.—(1) The Agencies must in accordance with Annex II to the Directive (characterisation, etc of waters) by 22nd December 2004—

- (a) carry out an analysis of the characteristics of the Solway Tweed River Basin District; and
- (b) conduct a review of the impact of human activity on the status of surface water and groundwater in that district.

(2) The results of the work required by sub-paragraph (1) must be periodically reviewed and updated by the Agencies, initially by 22nd December 2013 and thereafter by each sixth anniversary of that date.

Economic analysis of water use in river basin district

2.—(1) The Ministers must ensure that an economic analysis of water use in the Solway Tweed River Basin District is carried out by 22nd December 2004 in accordance with Annex III to the Directive (economic analysis).

(2) The Ministers must ensure that the analysis required by sub-paragraph (1) is periodically reviewed and updated, initially by 22nd December 2013 and thereafter by each sixth anniversary of that date.

Bodies of water used for the abstraction of drinking water

3.—(1) The Ministers must identify any bodies of water within the Solway Tweed River Basin District which—

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

(2) In this paragraph, “water intended for human consumption” has the same meaning as in Council Directive 80/778/EC of 15th July 1980 relating to the quality of water intended for human consumption, as amended(a).

Register of protected areas

4.—(1) The Agencies must for the Solway Tweed River Basin District—

- (a) by 22nd December 2004 prepare, and
- (b) thereafter keep under review and up to date,

a register of the protected areas lying (whether wholly or partly) within the district.

(2) In this paragraph, “protected area” means—

- (a) a body of water which has been identified under paragraph 3; and
- (b) the areas and bodies of water for the time being designated or otherwise identified as requiring special protection under any Community 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 a Community instrument, including, in particular—
 - (i) areas designated for the protection of economically significant aquatic species;
 - (ii) bodies of water designated as recreational waters;
 - (iii) nutrient-sensitive areas; and
 - (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.

Monitoring

5.—(1) The Agencies must—

- (a) establish programmes for monitoring water status in order to establish a coherent and comprehensive overview of water status within the Solway Tweed River Basin District; and

(a) O.J. No. L229, 30.8.80, p. 11; amended by Council Directive 98/83/EC of 3rd November 1998 on the quality of water intended for human consumption (O.J. No. L330, 5.12.98, p. 32).

- (b) take such other action as is necessary to give effect to the relevant monitoring provisions of the Directive.
- (2) The monitoring programmes must cover—
 - (a) in relation to surface water—
 - (i) the volume and level or rate of flow to the extent relevant to ecological and chemical status and ecological potential; and
 - (ii) ecological and chemical status and ecological potential; and
 - (b) in relation to groundwater, chemical and quantitative status.
- (3) The monitoring programmes must be made operational by 22nd December 2006.
- (4) The relevant monitoring provisions of the Directive referred to in sub-paragraph (1) are set out in the following provisions of Annex V to the Directive—
 - (a) points 1.3 to 1.3.6 (monitoring of ecological status, chemical status and ecological potential for surface waters);
 - (b) points 1.4 to 1.4.3 (classification and presentation of ecological status, chemical status and ecological potential);
 - (c) points 2.2 to 2.2.4 (monitoring of groundwater quantitative status);
 - (d) points 2.4 to 2.4.4 (monitoring of groundwater chemical status); and
 - (e) points 2.4.5 and 2.5 (interpretation and presentation of groundwater status).

Environmental objectives and programme of measures

6.—(1) For the purposes of any river basin management plan for the Solway Tweed River Basin District which is required by paragraph 7, the Agencies must by such date as the Ministers may direct prepare and submit to the Ministers proposals for—

- (a) environmental objectives for the district; and
- (b) a programme of measures to be applied in order to achieve those objectives.
- (2) In preparing proposals under sub-paragraph (1), the Agencies must—
 - (a) take account of the characterisation of, and economic analysis of water use in, the district (and any review of the same) carried out under paragraphs 1 and 2; and
 - (b) take such steps as they think fit, or the Ministers may direct, to—
 - (i) provide opportunities for the general public and those persons likely to be interested in or affected by their proposals to participate in discussion and the exchange of information or views in relation to the preparation of those proposals;
 - (ii) publicise their draft proposals to those persons; and
 - (iii) consult those persons in respect of those proposals.
- (3) The Ministers may, having considered any proposals for environmental objectives or for a programme of measures submitted to them in relation to the Solway Tweed River Basin District and any representations received by them in relation to those proposals—
 - (a) approve the proposals, or any of them, in the form submitted;
 - (b) approve the proposals, or any of them, either with modifications or subject to such modifications as the Ministers may direct the Agencies to make; or
 - (c) reject the proposals, or any of them;
 and, in any case falling within paragraph (b) or (c), must state their reasons for doing so.
- (4) Where the Ministers reject any proposals, they must direct the Agencies to resubmit proposals, 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 Agencies consider appropriate.
- (5) The Ministers must ensure that—
 - (a) a programme of measures for the Solway Tweed River Basin District is—
 - (i) established by 22nd December 2009;
 - (ii) made operational by 22nd December 2012; and
 - (iii) periodically reviewed and where appropriate updated, initially by 22nd December 2015 and thereafter by each sixth anniversary of that date; and
 - (b) in relation to a programme of measures that is updated under paragraph (a)(iii), any new or revised measures are made operational within three years of that updating.

River basin management plan

7.—(1) The Agencies must by such date as the Ministers may direct prepare and submit to the Ministers a river basin management plan for the Solway Tweed River Basin District.

- (2) Any river basin management plan for the Solway Tweed River Basin District must—
 - (a) relate to such period as the Ministers direct; and
 - (b) include the information specified in the relevant provisions of the Directive.
- (3) The relevant provisions of the Directive for the purposes of this paragraph are—
 - (a) Article 9(2) and (4) (recovery of the costs of water services);
 - (b) Annex II, point 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); and
 - (iii) points 2.4.5 and 2.5 (presentation of monitoring results for groundwater); and
 - (d) Annex VII, Part A (elements to be covered in river basin management plans).
- (4) The Ministers must ensure that a river basin management plan for the Solway Tweed River Basin District approved under paragraph 10 is—
 - (a) published by 22nd December 2009; and
 - (b) periodically reviewed and where appropriate updated, initially by 22nd December 2015 and thereafter by each sixth anniversary of that date.

River basin management plan: public participation

8.—(1) The Agencies must in respect of the production of any river basin management plan for the Solway Tweed River Basin District—

- (a) not less than three years before the beginning of the plan period, publish a statement of—
 - (i) the steps and consultation measures they are to take in connection with the preparation of the plan; and
 - (ii) the dates by which those steps and measures are to be taken;
 - (b) not less than two years before the beginning of the plan period, publish a summary of the significant water management matters which they consider arise for consideration in relation to the district; and
 - (c) not less than one year before the beginning of the plan period, publish a draft plan.
- (2) The Agencies must publish any matter required by sub-paragraph (1) to be published in such manner as the Agencies consider appropriate for the purpose of bringing it to the attention of persons likely to be affected by it and must—
- (a) make copies of the statement, summary or draft plan accessible to the public free of charge through their websites and at the relevant offices;
 - (b) publish a notice—
 - (i) stating the fact of publication;
 - (ii) specifying the arrangements made for making copies of the statement, summary or draft plan available for public inspection; and
 - (iii) stating that any person may make representations to them in relation to the statement, summary or draft plan;
 - (c) consult the persons referred to in sub-paragraph (4);
 - (d) take such steps as they think fit, or the Ministers may direct, to provide opportunities for the general public and the persons referred to in sub-paragraph (4) to participate in discussion and the exchange of information or views in relation to the preparation of the draft plan; and
 - (e) invite the public and the persons referred to in sub-paragraph (4) to make representations in relation to the draft plan.
- (3) A notice required by sub-paragraph (2)(b) must be published—
- (a) in the London Gazette;
 - (b) in the Edinburgh Gazette; and
 - (c) at least once in each of two successive weeks, in one or more newspapers circulating in the Solway Tweed River Basin District.
- (4) The persons to be consulted are—
- (a) the Secretary of State and the Scottish Ministers;
 - (b) every responsible authority which has functions exercisable in or in relation to any part of the Solway Tweed River Basin District;
 - (c) the Director General of Water Services;
 - (d) the appropriate nature conservation bodies;
 - (e) every local authority any part of whose area is within the Solway Tweed River Basin District;
 - (f) every local planning authority in England any part of whose area is within the Solway Tweed River Basin District;

- (g) every district salmon fishery board any part of whose salmon fishery district is within the Solway Tweed River Basin District;
 - (h) the River Tweed Commissioners;
 - (i) in the case of any part of the Solway Tweed River Basin District which has been designated as a National Park, the National Park authority for that National Park;
 - (j) the harbour authority for each harbour in the Solway Tweed River Basin District;
 - (k) every navigation authority having functions in relation to any part of the Solway Tweed River Basin District;
 - (l) every water undertaker or sewerage undertaker any part of whose area is within the Solway Tweed River Basin District;
 - (m) Scottish Water;
 - (n) any local fisheries committee for a sea fisheries district any part of which lies within the Solway Tweed River Basin District;
 - (o) such persons as appear to the Agencies in relation to the Solway Tweed 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; and
 - (p) such other persons as—
 - (i) the Agencies think fit; or
 - (ii) the Ministers may direct.
- (5) In this paragraph—
- (a) “appropriate nature conservation bodies” means the Joint Nature Conservation Committee, English Nature and Scottish Natural Heritage;
 - (b) “district salmon fishery board” and “salmon fishery district” have the meanings given by section 40(1) of the Salmon Act 1986(a);
 - (c) “harbour” and “harbour authority” have the meanings given by section 57 of the Harbours Act 1964(b);
 - (d) “local authority” means, in relation to England, the council of any county, county borough or district and, in relation to Scotland, any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(c);
 - (e) “local fisheries committee” and “sea fisheries district” mean a local fisheries committee constituted, and a sea fisheries committee created, by an order under section 1 of the Sea Fisheries Regulation Act 1966(d);
 - (f) “local planning authority” has the meaning given by section 1 of the Town and Country Planning Act 1990(e);
 - (g) “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;
 - (h) “the plan period”, in relation to a plan, means the period to which a direction under paragraph 7(2)(a) requires it to relate; and
 - (i) “the River Tweed Commissioners” means the council constituted in accordance with section 6 of the Tweed Fisheries Act 1969(f).

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

River basin management plan: submission for approval

9.—(1) As soon as any river basin management plan for the Solway Tweed River Basin District is submitted to the Ministers, the Agencies must—

- (a) make copies of the plan accessible to the public free of charge through their websites and at the relevant offices; and
- (b) publish a notice—
 - (i) stating the fact of submission; and

(a) 1986 c. 62.

(b) 1964 c. 40.

(c) 1994 c. 39.

(d) 1966 c. 38.

(e) 1990 c. 8; section 1 was amended by the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28), section 187(1) and Schedule 24 and the Environment Act 1995 (c. 25), sections 78 and 120 and Schedules 10 and 24.

(f) 1969 c. 24.

- (ii) specifying the arrangements made for making copies of the plan accessible to the public.
- (2) The Agencies must ensure that a plan submitted to the Ministers is accompanied by—
- (a) a statement of the steps taken by the Agencies to comply with paragraph 8(1) and (so far as relating to the draft plan) paragraph 8(2) to (4); and
 - (b) a summary of the representations referred to in paragraph 8(6) and of any changes made to the plan in light of those representations.
- (3) If the Ministers consider in relation to a plan that further action should be taken by the Agencies under paragraph 8(2) to (4), the Ministers may direct the Agencies—
- (a) to take such further steps under those provisions as the Ministers may specify in the direction; and
 - (b) to resubmit the plan within such period, if any, as the Ministers may specify in the direction.
- (4) Where the Ministers give a direction to the Agencies under sub-paragraph (3), they must state their reasons for doing so.
- (5) This paragraph applies in relation to a river basin management plan resubmitted to the Ministers in accordance with a direction under sub-paragraph (3) as it applies to the plan as originally submitted, with the modification that, for the reference in sub-paragraph (3) to paragraph 8(2) to (4), there is substituted a reference to this paragraph.

River basin management plan: approval

- 10.—**(1) The Ministers may, having considered any river basin management plan for the Solway Tweed River Basin District submitted to them and any representations received by them 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 Ministers may direct the Agencies to make; or
 - (c) reject it;
- and, in any case falling within paragraph (b) or (c), must state their reasons for doing so.
- (2) Where the Ministers reject a plan, they must direct the Agencies 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 Agencies consider appropriate.
- (3) Where the Ministers approve a plan, the Agencies must publish the approved plan in such manner as the Agencies think 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 the Agencies' websites and at the relevant offices; 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.

River basin management plan: review

- 11.—**(1) The Agencies must review and update the river basin management plan for the Solway Tweed River Basin District (including a revised river basin management plan for the district)—
- (a) by no later than six years from the date on which it was approved under paragraph 10; or
 - (b) by such earlier date as the Ministers may direct.
- (2) Following such a review, the Agencies must prepare and submit to the Ministers a revised river basin management plan for the river basin district by such date as the Ministers may direct.
- (3) Paragraphs 7(2) and (3) and 8 to 10 apply in relation to the preparation, submission and approval of a revised river basin management plan.
- (4) The revised plan must include the information specified in Part B of Annex VII to the Directive (additional information for inclusion in updated river basin management plans) in addition to the matters required to be included by paragraph 7(2)(b) and (3).

Supplementary plans

- 12.—**(1) The Agencies may prepare supplementary plans for the purposes of supplementing any river basin management plan for the Solway Tweed River Basin District.
- (2) A plan prepared under sub-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; or
- (d) a particular description of user of water resources.

(3) The Agencies must, in relation to the preparation of a supplementary plan, consult such of the persons referred to in paragraph 8(4) and such other persons likely to be interested in or affected by that plan as they think fit, and must take into account any views expressed by those consulted.

Duty of the Secretary of State, the Agency and each public body to have regard to the river basin management plan and any supplementary plan

13. The Secretary of State, the Agency and each public body must, in exercising their functions so far as affecting the Solway Tweed River Basin District, have regard to—

- (a) the river basin management plan for that district as approved under paragraph 10; and
- (b) any supplementary plan prepared under paragraph 12.

Publication of information

14.—(1) The Agencies must make accessible to the public at their principal offices—

- (a) the results of the work required by paragraph 1 (characterisation of river basin district);
- (b) maps showing bodies of water identified under paragraph 3 (bodies of water used for the abstraction of drinking water);
- (c) the register prepared under paragraph 4 (register of protected areas);
- (d) the results of the programmes established under paragraph 5 (monitoring);
- (e) the environmental objectives and programme of measures proposed or approved under paragraph 6 (environmental objectives and programme of measures); and
- (f) any supplementary plan prepared under paragraph 12 (supplementary plans).

(2) Where the Ministers approve (with or without modifications) proposals made by the Agencies under paragraph 6(1), the Agencies 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 Ministers must make accessible to the public through their websites and at their principal offices the results of the analysis conducted under paragraph 2 (economic analysis of water use in river basin district).

Provision of information and assistance to the Agency and Secretary of State

15.—(1) A public body must, on being requested to do so by the Agency, provide the Agency with such information in its possession or under its control and such assistance as the Agency may reasonably seek in connection with the exercise of any of the 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) shall have effect as if functions under these Regulations were functions under the water pollution provisions of that Act.

Directions and guidance to public bodies by the Secretary of State

16.—(1) Sections 40 and 122 of the Environment Act 1995(a) (directions to the new Agencies) shall have effect as if the power in section 40(2) to give directions included a power—

- (a) for the Secretary of State to give directions to any public body; and
- (b) for the Scottish Ministers to give directions to any responsible authority,

for the purposes of giving effect to the Directive.

(2) The Secretary of State and the Scottish Ministers may give guidance with respect to the practical implementation of the Directive—

- (a) to the Agency or to any other public body, in the case of the Secretary of State; and
- (b) to SEPA or to any responsible authority, in the case of the Scottish Ministers,

and the body or authority to whom guidance is issued shall have regard to it.

(a) 1995 c. 25.

RELEVANT FUNCTIONS

PART 1

STATUTES

1. Section 2(2) of the European Communities Act 1972(a).
2. The Salmon and Freshwater Fisheries Act 1975(b).
3. Part 2 of the Food and Environment Protection Act 1985(c) (deposits in the sea).
4. Parts 1, 2 and 2A of the Environmental Protection Act 1990(d) (integrated pollution control and air pollution control by local authorities; waste on land; contaminated land).
5. Part 4 of the Water Industry Act 1991(e) (sewerage services).
6. 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).
7. The Environment Act 1995.

PART 2

SUBORDINATE INSTRUMENTS

8. The Sludge (Use in Agriculture) Regulations 1989(f).
9. The Surface Waters (Dangerous Substances) (Classification) Regulations 1989(g).
10. The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991(h).
11. The Bathing Waters (Classification) Regulations 1991(i) and the National Rivers Authority (Bathing Waters) Directions 1992(j).
12. The Surface Waters (Dangerous Substances) (Classification) Regulations 1992(k).
13. The Waste Management Licensing Regulations 1994(l).
14. The Urban Waste Water Treatment (England and Wales) Regulations 1994(m).
15. The Protection of Water Against Agricultural Nitrate Pollution (England and Wales) Regulations 1996(n).
16. The Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996(o) and the Surface Waters (Abstraction for Drinking Water) Directions 1996(p).

(a) 1972 c. 68.

(b) 1975 c. 51.

(c) 1985 c. 48.

(d) 1990 c. 43.

(e) 1991 c. 56.

(f) S.I. 1989/1263, amended by S.I. 1990/1880, 1996/593 and 2000/656.

(g) S.I. 1989/2286.

(h) S.I. 1991/324, amended by S.I. 1997/547.

(i) S.I. 1991/1597, amended by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 233 and S.I. 2003/1238.

(j) Copies are available from the Water Quality Division, Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London SW1E 6DE.

(k) S.I. 1992/337.

(l) S.I. 1994/1056, amended by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 233; relevant amending instruments are S.I. 1994/1137, 1995/288, 1995, 1996/593, 634, 972, 1279, 1998/606, 2746, 2000/1973, 2002/674, 1559, 2980 and 2003/595.

(m) S.I. 1994/2841, amended by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 233 and S.I. 2003/1788.

(n) S.I. 1996/888; relevant amending instruments are S.I. 1998/1202 and 2002/2614.

(o) S.I. 1996/3001, amended by S.I. 2000/3184; there is another amending instrument but it is not relevant.

(p) Copies are available from the Water Quality Division, Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London SW1E 6DE.

17. The Surface Waters (Fishlife) (Classification) Regulations 1997(a) and the Surface Waters (Fishlife) Directions 1997(b).

18. The Surface Waters (Shellfish) (Classification) Regulations 1997(c) and the Surface Waters (Shellfish) Directions 1997(d).

19. The Surface Waters (Dangerous Substances) (Classification) Regulations 1997(e).

20. The Surface Waters (Dangerous Substances) (Classification) Regulations 1998(f).

21. The Action Programme for Nitrate Vulnerable Zones (England and Wales) Regulations 1998(g).

22. The Groundwater Regulations 1998(h).

23. The Pollution Prevention and Control (England and Wales) Regulations 2000(i).

24. The Landfill (England and Wales) Regulations 2002(j).

25. The Nitrate Vulnerable Zones (Additional Designations) (England) (No. 2) Regulations 2002(k).

26. The Bathing Waters (Classification) (England) Regulations 2003(l).

27. The Urban Waste Water Treatment (England and Wales) (Amendment) Regulations 2003(m).

SCHEDULE 3

Regulation 2(2)

DIRECTIVE DEFINITIONS

“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(n) is measured, extending where appropriate up to the outer limit of transitional waters.

“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.

“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 its chemical status.

“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 territorial waters is measured.

“Lake” means a body of standing inland surface water.

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

(a) S.I. 1997/1331, amended by S.I. 2003/1053.

(b) Amended by the Surface Waters (Fishlife) (Amendment) Directions 2003. Copies of both Directions are available from the Water Quality Division, Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London SW1E 6DE.

(c) S.I. 1997/1332.

(d) Copies are available from the Water Quality Division, Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London SW1E 6DE.

(e) S.I. 1997/2560.

(f) S.I. 1998/389.

(g) S.I. 1998/1202, amended by S.I. 2002/2614.

(h) S.I. 1998/2746, amended by S.I. 2000/1973.

(i) S.I. 2000/1973; relevant amending instruments are S.I. 2001/503, 2002/275, 1559, 1702, 2688, 2980 and 2003/1699.

(j) S.I. 2002/1559.

(k) S.I. 2002/2614.

(l) S.I. 2003/1238.

(m) S.I. 2003/1788.

(n) The relevant baseline, for the purposes of this definition and the definition of “inland water”, if that from which the breadth of the territorial sea is measured and is established by section 1 of the Territorial Sea Act 1987 (c. 49) and the Territorial Waters Order in Council (1965 III, p. 6452A).

“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.

“Transitional waters” are 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 flows.

“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 under Article 5 and Annex II having a significant impact on the status of water.

SCHEDULE 4

Regulation 5(1)

MODIFICATION OF THE SCOTTISH ACT IN ITS APPLICATION IN RELATION TO THE SOLWAY TWEED RIVER BASIN DISTRICT

1. Part 1 of the Scottish Act in its application in relation to the Solway Tweed River Basin District is modified as follows.

2. Sections 4 to 15, 17 and 19 (river basin management planning) shall not apply.

3. Section 16 (duty to have regard to river basin management plans and sub-basin plans) shall have effect as if—

(a) references to a river basin district, within the meaning of section 28(1) of the Scottish Act, included references to the Solway Tweed River Basin District; and

(b) in relation to that district—

(i) in paragraph (a), the reference to the river basin management plan, within the meaning of section 28(1) of the Scottish Act, were a reference to the river basin management plan for that district as approved under paragraph 10 of Schedule 1 to these Regulations and any supplementary plan prepared under paragraph 12 of that Schedule; and

(ii) paragraphs (b) and (c) were omitted.

4. Section 18(1) and (2) (power to obtain information and documents etc.) shall have effect as if references to SEPA’s functions under Chapter 2 of Part 1 (protection of the water environment) included references to SEPA’s relevant functions and its duty under regulation 4.

5. Sections 20(2)(b) (regulation of controlled activities) and 22(1) (remedial and restoration measures) and paragraph 2(2) of Schedule 2 (regulators to exercise functions with a view to achieving environmental objectives set out in river basin management plans) shall have effect as if references to environmental objectives set out in river basin management plans included references to environmental objectives set out in any river basin management plan for the Solway Tweed River Basin District approved under paragraph 10 of Schedule 1 to these Regulations.

6. Section 26 (annual report on implementation of Directive) shall have effect as if—

(a) in paragraph (a), the reference to Part 1 (protection of the water environment) included a reference to that Part as applied by regulation 5; and

(b) in paragraph (b), the reference to section 9 (environmental objectives and programmes of measures) included a reference to paragraph 6 of Schedule 1 to these Regulations.

7. Section 27 shall have effect as if the reference to Part 1 (protection of the water environment) included a reference to that Part as applied by regulation 5.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the purpose of implementing for the Solway Tweed River Basin District Directive 2000/60/EC of the European Parliament and of the Council of 23rd October 2000 establishing a framework for Community action in the field of water policy (O.J. No. L327, 22.12.2000, p. 1), known as the Water Framework Directive (“the Directive”). The Directive is accessible by using the weblink <http://europa.eu.int/eur-lex/en>.

The Solway Tweed River Basin District (“the district”; identified in regulation 3(1)) is partly in England and partly in Scotland. These Regulations give effect to the Directive’s requirements in respect of the district as a whole, and do so in part by applying with modifications provisions of the Water Environment and Water Services (Scotland) Act 2003 (2003 asp 3; “the Scottish Act”). The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (S.I. 2003/3242) make provision in relation to river basin districts that are wholly in England, wholly in Wales, or partly in England and partly in Wales; the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245) do the same for the Northumbria River Basin District (which includes a small area of Scotland); and the Scottish Act otherwise applies in relation to river basin districts that are wholly in Scotland.

These Regulations require a new strategic planning process to be established for the purposes of managing, protecting and improving the quality of water resources in the whole district. That process mirrors the process set out in the principal Regulations and in the Scottish Act, with adaptations to accommodate the district’s cross-border character.

General responsibility for ensuring that the Directive is given effect in relation to the district is placed on “the Ministers” (regulation 2(1) and Schedule 1): the Secretary of State and the Scottish Ministers, acting jointly. Related general duties are imposed by regulation 4 and section 2 of the Scottish Act (applied by regulation 5) on the Secretary of State, the Scottish Ministers and “the Agencies” (the Environment Agency and the Scottish Environment Protection Agency).

The Agencies are required to carry out detailed monitoring and analysis in relation to each river basin district (Schedule 1, paragraphs 1 and 5), and the Ministers must ensure that appropriate economic analysis is also carried out (paragraph 2). Certain waters used for the abstraction of drinking water must be identified (paragraph 3) and a register must be established of those waters and certain other protected areas (paragraph 4).

This analytical and preparatory work must then inform the preparation by the Agencies of proposals for environmental objectives and a programme of measures in relation to the district (Schedule 1, paragraph 6). Those objectives will translate the generic environmental objectives set out in the Directive to the particular situation in the district as a whole. The preparation of such proposals must include public involvement and consultation. Proposals themselves are subject to approval by the Ministers.

The results of the Agencies’ technical work, the environmental objectives and proposals for a programme of measures must be brought together in the preparation of a river basin management plan for the district (Schedule 1, paragraphs 7 to 11). The Agencies are to prepare a draft plan, after public involvement and consultation (paragraphs 7 and 8). That plan must contain details of the results of the technical and planning work that will have been done, along with the environmental objectives and programme of measures proposed for the district. The plan is subject to approval by the Ministers and must be reviewed periodically (paragraphs 9 to 11). The Agencies may also prepare supplementary plans, which are not subject to approval by the Ministers (paragraph 12).

The Secretary of State, the Environment Agency, the Scottish Ministers, the Scottish Environment Protection Agency and certain other bodies are required to have regard to the river basin management plan for the district, and to any supplementary plans, in exercising their functions in relation to the district (Schedule 1, paragraph 13; section 16 of the Scottish Act, applied by regulation 5 as modified by Schedule 4, paragraph 3).

The Regulations also make supplementary provision in respect of the publication of information, the provision of information and assistance, the giving of guidance or directions for the purpose of giving effect to the Directive (Schedule 1, paragraphs 14 to 16; section 18 of the Scottish Act, applied by regulation 5 as modified by Schedule 4, paragraph 4), and in relation to the further application of Part 1 of the Scottish Act (regulation 5, Schedule 4).

A Regulatory Impact Assessment has been prepared in connection with the implementation of the Directive in England and Wales, and a Transposition Note in relation to these Regulations has also been prepared. A copy of each has been placed in the library of each House of Parliament and copies can also be obtained from the Water Quality Division, Department for Environment, Food and Rural Affairs, Zone 3/H16, Ashdown House, 123 Victoria Street, London SW1E 6DE, or by using the weblink <http://defra.gov.uk/environment/water/wfd/index.htm>. The map of the district is also accessible through that link, and at the principal library of the Department for Environment, Food and Rural Affairs at Nobel House, 17 Smith Square, London SW1 3JR.

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