

**EXPLANATORY MEMORANDUM TO**  
**THE WATER ENVIRONMENT (WATER FRAMEWORK DIRECTIVE)**  
**(NORTHUMBRIA AND SOLWAY TWEED RIVER BASIN DISTRICTS)**  
**(AMENDMENT) REGULATIONS 2016**

**2016 No. 139**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for 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) (Northumbria River Basin District) Regulations 2003<sup>1</sup> (“the Northumbria Regulations”) and the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004<sup>2</sup> (“the Solway Tweed Regulations”) to complete the transposition of the Priority Substances Directive 2013/39/EU for river basins that are partly in England and partly in Scotland.
- 2.2 The Priority Substances Directive amended the Environmental Quality Standards Directive 2008/105/EC (“the EQS Directive”). The EQS Directive 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.
- 2.3 This instrument also amends certain provisions of the Solway Tweed Regulations to provide powers for the designation of “shellfish water protected areas” where shellfish are commercially harvested, and to impose requirements regarding the monitoring of any designated waters
- 2.4 This instrument also makes minor technical amendments to both the Northumbria and Solway Tweed Regulations.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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<sup>1</sup> Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 No. 3245

<sup>2</sup> Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 No 99

#### **4. Legislative Context**

- 4.1 The Water Framework Directive 2000/60/EC (“the WFD”) introduced a comprehensive river basin management planning system to protect and improve the quality of our rivers, lakes, estuaries, coastal waters and groundwater. The WFD was transposed in England and Wales by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (“the England and Wales Regulations 2003”).
- 4.2 The Northumbria Regulations and Solway Tweed Regulations transposed the WFD for river basin districts that are partly in England and partly in Scotland.
- 4.3 A 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 in 2008 which also set standards for each of those substances. Following a further review 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.
- 4.4 The proposal was subject to scrutiny by Parliament and consultation in the UK prior to adoption in 2013 (see attached annex). The resulting Priority Substances Directive, which this instrument partially transposes for the Northumbria and Solway Tweed river basin districts, 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. The deadline for transposition of the Priority Substances Directive was 14<sup>th</sup> September 2015 (the PSD was transposed for the rest of the UK by that date).
- 4.5 The Shellfish Waters Directive (79/923/EEC) was transposed in England and Wales by the Surface Waters (Shellfish) (Classification) Regulations 1997. In December 2013 the Shellfish Waters Directive was repealed by the WFD. Article 4(9) of the WFD states that it offers a level of protection at least equivalent to any Directive which it repeals. The WFD ensures that most of the protections contained in the Shellfish Directive continue. The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2016<sup>3</sup> (“Amendment Regulations 2016”) amend the England and Wales Regulations 2003 to provide powers to designate shellfish water protected areas and set additional water quality objectives to support shellfish life. The amendments to the England and Wales 2003 Regulations ensure that the protections that were provided by the Shellfish Waters Directive continue.

##### Amendments to the Northumbria Regulations

- 4.6 Schedule 1 to this instrument sets out the amendments to the Northumbria Regulations. The Northumbria Regulations apply the England and Wales Regulations to the Northumbria river basin district, with modifications to reflect the involvement of Scottish Ministers and SEPA in that river basin district.
- 4.7 Regulation 4 is amended to include in the general duty on Ministers, the EA and SEPA to exercise their relevant functions so as to secure the requirements of the WFD, a requirement for the relevant functions to be exercised so as to secure the requirements of the EQS Directive (and, for completeness, the Groundwater Directive (2006/118 EC)).

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<sup>3</sup> S.I. 2016/138.

- 4.8 A range of amendments are made to regulation 5 (which in turn apply and modify the England and Wales 2003 Regulations to the Northumbria river basin district). The amendments ensure that the provisions of the England and Wales Regulations 2003, as amended, which transpose the amended EQS Directive, and the provisions enabling shellfish water protected areas to be designated and monitored, also apply in the Northumbria river basin district. The Northumbria Regulations need to apply the most up-to-date amended version of the England and Wales 2003 Regulations, and this is the reason why the amendments made by this instrument to the Northumbria Regulations come into force immediately after the Amendment Regulations 2016.
- 4.9 The amendments to the Northumbria Regulations also make various minor changes, including updating references to certain statutory bodies.

#### Amendments to the Solway Tweed Regulations

- 4.10 Schedule 2 to this instrument makes amendments to the Solway Tweed Regulations. Some of the amendments are for the purposes of transposing the revised EQS Directive. Paragraph 1 inserts various amendments to the definitions to supplement other amendments. Paragraph 2 makes updating amendments to regulation 3 of the Solway Tweed Regulations in respect of the area shown on the official map of the river basin district. Regulation 4 is amended to include in the general duty to exercise the relevant functions so as to secure the requirements of the WFD, a requirement for the relevant functions to be exercised so as to secure the requirements of the EQSD (and, for completeness, the Groundwater Directive (2006/118EC)).
- 4.11 Paragraphs 8 and 9 amend paragraphs 5 and 6 of Schedule 2 to transpose new monitoring requirements of the EQSD, and requirements of the Groundwater Directive, and Shellfish Waters Directive; and to ensure that revised programmes of measures established for the purposes of the WFD include measures which take into account new priority substances and revised standards from the appropriate dates.
- 4.12 Paragraph 10 of Schedule 2 inserts new paragraph 6A to require a further programme of measures in relation to certain priority substances. Paragraph 14 of Schedule 2 is amended to require the interim progress report required by the WFD to be published. A new paragraph 14A is inserted by paragraph 15 to transpose the coordination requirement where results of a report under Article 7a of the EQS Directive show that additional measures at EU or Member State level may be necessary in respect of compliance with the Priority Substances Directive.
- 4.13 Other amendments made by Schedule 2 are for the purposes of ensuring the ongoing protection of shellfish waters. Paragraph 6 of Schedule 2 inserts new paragraph 3A to provide powers to designate shellfish water protected areas in the English part of the Solway Tweed river basin district, reflecting analogous amendments which are made to the England and Wales 2003 Regulations by the Amendment Regulations 2016. Other amendments ensure that additional water quality objectives to support shellfish life must be set for shellfish water protected areas, and that a monitoring programme will be established for those areas..
- 4.14 Finally, some further minor and updating amendments are made to the Solway Tweed Regulations, including to the list of ‘relevant functions’ in Schedule 2.
- 4.15 A set of statutory Directions<sup>4</sup> made under section 40 of the Environment Act 1990 in relation to England (and under article 11 of the Natural Resources Body for Wales

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<sup>4</sup> The Shellfish Waters Protected Areas (England and Wales) Directions 2016.

(Establishment) Order 2012 in relation to Wales) will require the environment agencies, when meeting the new water quality objectives, to endeavour to meet the microbial standard in shellfish protected waters. The microbial standard is a non-mandatory faecal organism indicator which was contained in the Shellfish Directive. Directions<sup>5</sup> for shellfish protected waters in Scotland where made in 2015.

- 4.16 In addition, 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 (also 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.
- 4.17 These Regulations will apply to the Northumbria and Solway Tweed river basin districts, including the parts that are in Scotland and are subject to negative resolution procedure in both Houses of the UK Parliament.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Great Britain.
- 5.2 This instrument applies to the Northumbria and Solway Tweed river basin districts, including the parts that are in Scotland.

## **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**

### *What is being done and why*

- 7.1 The WFD 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. It came 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 by 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 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.

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<sup>5</sup> The Scotland River Basin District (Quality of Shellfish Water Protected Areas) (Scotland) Directions 2015 (made under s40 of the Environment Act 1995 and section 2(6) of the Water Environment and Water Services (Scotland) Act 2003 direct the Scottish Environment Protection Agency how to classify and protect shellfish water protected areas in Scotland, including in the Scottish part of the Solway Tweed river basin district.

- 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. The setting of standards for the priority substances (chemicals with a high level of toxicity 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 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.
- 7.5 The WFD is also designed to protect the ecological health of the water body and, as a result, shellfish growing within it. Technical advice from the UK technical advisory group for the implementation of the WFD and the European Commission indicates that the physical and chemical parameters set down within the WFD for protecting water quality are equivalent or better than the requirements which were set in the Shellfish Waters Directive.
- 7.6 However the WFD does not include the non-mandatory faecal indicator organism standard which was contained in the Shellfish Waters Directive. The aim of the faecal indicator organism standard is to contribute to a high quality shellfish product for human consumption. Shellfish hygiene rules set quality standards for human consumption based on faecal indicator organisms and protect human health from poor quality shellfish. These hygiene rules are the responsibility of the Food Standards Agency.
- 7.7 The amendments to the England and Wales 2003 Regulations bring shellfish water protected areas into the WFD regime in England and Wales. These amendment Regulations ensure the same for Northumbria and Solway Tweed River Basin Districts.

#### ***Consolidation***

- 7.8 There are no current plans to consolidate this legislation.

### **8. Consultation outcome**

- 8.1 No consultation has been carried out as these amendments to the Northumbria Regulations and the Solway Tweed Regulations give effect to existing policy.

### **9. Guidance**

- 9.1 No guidance is needed as the instrument imposes no obligations on business.

### **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 A separate impact assessment has not been prepared for this instrument. The potential costs of implementing the new priority substances standards were assessed in the initial impact assessment developed for consideration in UK of the Commission proposal. Costs to the UK environment agencies relating to new monitoring requirements have been estimated as £27.3 - £45.3 million over 20 years.

10.3 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 updated river basin management plans, which will be published in February 2016. An impact assessment has been prepared for these updated river basin management plans.

## **11. Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

12.1 The WFD 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 Priority Substances 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**

13.1 Jenny Maresh at the Department for Environment Food and Rural Affairs. Tel: 020 8026 3347 or email: [Jenny.Maresh@defra.gsi.gov.uk](mailto:Jenny.Maresh@defra.gsi.gov.uk) can answer any queries regarding the instrument.

13.2 Elaine Connolly at the Department for Environment, Food and Rural Affairs Tel: 020 8026 3079 or email: [shellfishwater@defra.gsi.gov.uk](mailto:shellfishwater@defra.gsi.gov.uk) can answer any queries regarding the instrument.

**ANNEX**  
**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: <a href="http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86xxv/86xxv.pdf">http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86xxv/86xxv.pdf</a> <a href="http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-iv/83iv.pdf">http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-iv/83iv.pdf</a>	Report: <a href="http://www.parliament.uk/documents/lords-committees/eu-sub-committees/cwm/cwm2013-14/cwmsubd09may2013-30june2013-.pdf">http://www.parliament.uk/documents/lords-committees/eu-sub-committees/cwm/cwm2013-14/cwmsubd09may2013-30june2013-.pdf</a>