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STATUTORY INSTRUMENTS

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**2017 No. 407**

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

PART 5

Environmental objectives and programmes of measures

**Procedure for setting environmental objectives and programmes of measures**

**12.**—(1) The appropriate agency must, by such date as the appropriate authority may direct, prepare and submit to the authority proposals for—

- (a) environmental objectives for each river basin district, in accordance with regulation 13, and
- (b) a programme of measures to be applied in order to achieve those objectives, in accordance with regulation 20.

(2) In preparing proposals under paragraph (1), the appropriate agency must—

- (a) take account of the characterisation of, and economic analysis of water use in, the relevant river basin district carried out or updated under regulations 5 and 7, and
- (b) take such steps as the appropriate agency thinks fit, or the appropriate authority may direct, to—
  - (i) provide opportunities for the general public and those persons likely to be interested in or affected by the appropriate agency's proposals to participate in discussion and the exchange of information or views in relation to the preparation of those proposals,
  - (ii) publicise the appropriate agency's draft proposals to those persons, and
  - (iii) consult those persons in respect of those proposals.

(3) The appropriate authority may, having considered any proposals for environmental objectives or for a programme of measures submitted to it and any representations received by the authority in relation to those proposals—

- (a) approve them, or any of them, in the form submitted,
- (b) approve them, or any of them, either with modifications or subject to such modifications as the authority may direct the appropriate agency to make, or
- (c) reject them, or any of them.

(4) In any case falling within paragraph (3)(b) or (c), the appropriate authority must state its reasons.

(5) Where the appropriate authority rejects any proposals, it must direct the appropriate agency to resubmit proposals by such time as the direction may specify with—

- (a) modifications of such nature as the direction may specify, and
- (b) any further modifications which the appropriate agency considers appropriate.

(6) The appropriate authority must ensure that, for each river basin district, the environmental objectives and programme of measures are periodically reviewed and, where appropriate, updated—

- (a) by 22nd December 2021, and
- (b) subsequently, by 22nd December of the sixth year following that date and of each sixth year following that.

(7) Where a programme of measures is updated under paragraph (6), any new or revised measures must be made operational within three years of that updating.

### **The environmental objectives**

**13.**—(1) The environmental objectives referred to in regulation 12 are, subject to regulations 14 to 19, the following objectives for the relevant type of water body or area.

(2) For surface water bodies, the objectives are to—

- (a) prevent deterioration of the status of each body of surface water;
- (b) protect, enhance and restore each body of surface water (other than an artificial or heavily modified water body) with the aim of achieving good ecological status and (subject to paragraph (3)) good surface water chemical status, if not already achieved, by 22nd December 2021;
- (c) protect and enhance each artificial or heavily modified water body with the aim of achieving good ecological potential and (subject to paragraph (3)) good surface water chemical status, if not already achieved, by 22nd December 2021;
- (d) aim progressively to reduce pollution from priority substances and aim to cease or phase out emissions, discharges and losses of priority hazardous substances.

(3) The objectives in paragraph (2)(b) and (c) are to be read as though they referred to achieving good surface water chemical status—

- (a) in relation to substances 2, 5, 15, 20, 22, 23 and 28 in the table of priority substances, by 22nd December 2021;
- (b) in relation to substances 34 to 45 in the table of priority substances, by 22nd December 2027.

(4) For shellfish water protected areas, in addition to the objectives under paragraph (2) for the surface water bodies in which they are located, the objectives are such objectives as are necessary or desirable to improve or protect the shellfish water protected area in order to support shellfish life and growth and to contribute to the high quality of shellfish products suitable for human consumption as the appropriate authority may direct.

(5) For groundwater bodies, the objectives are to—

- (a) prevent deterioration of the status of each body of groundwater;
- (b) prevent or limit the input of pollutants into groundwater;
- (c) protect, enhance and restore each body of groundwater, and ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater chemical status and good groundwater quantitative status, if not already achieved, by 22nd December 2021;
- (d) reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order to progressively reduce pollution of groundwater.

(6) For each protected area, other than a shellfish water protected area, the objective is to achieve compliance with any standards and objectives required by or under any EU instrument under which the area or body is protected—

- (a) by 22nd December 2021, if not already achieved, or
- (b) if different, by any date for compliance set in that EU instrument.

(7) Where two or more objectives set under this regulation apply to the same body of water, or the same part of a body of water, the most stringent objective applies.

#### **Environmental objectives: application of regulations 15 to 19**

**14.** Regulations 15 to 19 must be applied in a way that—

- (a) does not permanently exclude or compromise the achievement of the environmental objectives set in relation to any other water body within the same river basin district;
- (b) is not inconsistent with the implementation of any other EU instrument;
- (c) guarantees at least the same level of protection for bodies of water as the EU instruments repealed by Article 22 of the WFD.

#### **Artificial or heavily modified water bodies**

**15.—**(1) The appropriate agency may designate a body of surface water as artificial or heavily modified if it considers that—

- (a) the changes to the hydromorphological characteristics of that body which would be necessary for achieving good ecological status would have significant adverse effects on—
  - (i) the wider environment,
  - (ii) navigation, including port facilities, or recreation,
  - (iii) activities for the purposes of which water is stored, such as drinking water supply, power generation or irrigation,
  - (iv) water regulation, flood protection, land drainage, or
  - (v) other sustainable human development activities which the appropriate agency considers are of equal importance to the matters in paragraphs (i) to (iv), and
- (b) the beneficial objectives served by the artificial or modified characteristics of the water body cannot, for reasons of technical feasibility or disproportionate cost, reasonably be achieved by other means which are a significantly better environmental option.

(2) Designations under this regulation, and an explanation for them, must be included in the relevant river basin management plan, and reviewed (and where necessary revised) when that plan is updated under Part 6.

#### **Extended deadlines for environmental objectives**

**16.—**(1) The deadline by which an environmental objective referred to in regulation 13(2)(b) or (c), (5)(c) or (6) must be achieved may be extended for the purposes of the phased achievement of the environmental objectives for a body of water if the conditions in paragraphs (2) and (3) are or will be met.

(2) The condition is that no further deterioration occurs in the status of the affected body of water.

(3) The condition is that all the necessary improvements in the status of the body of water cannot reasonably be achieved within the timescales set out in the provisions of regulation 13 mentioned in paragraph (1) for one or more of the following reasons—

- (a) the scale of improvements required can only be achieved in phases exceeding the timescale for reasons of technical feasibility;
- (b) completing the improvements within the timescale would be disproportionately expensive;

(c) natural conditions do not allow timely improvement in the status of the body of water.

(4) Subject to paragraph (5), a deadline must not be extended beyond 22nd December 2027, except in cases where the natural conditions are such that the environmental objectives cannot be achieved by that date.

(5) Paragraph (4) does not apply to the deadline specified in regulation 13(2) for an objective of aiming to achieve good surface water chemical status—

(a) in relation to substances 2, 5, 15, 20, 22, 23 and 28 in the table of priority substances, which may be extended until 22nd December 2033;

(b) in relation to substances 34 to 45 in the table of priority substances, which may be extended until 22nd December 2039.

(6) Where a deadline is extended under paragraph (1), the relevant river basin management plan must set out—

(a) the extended deadline and the reasons for it,

(b) a summary of the measures to be applied to achieve the environmental objectives set pursuant to regulation 12 which are envisaged as necessary to bring the body of water progressively to the required status by the extended deadline, and

(c) the reasons for any significant delay in making these measures operational and the expected timetable for their implementation.

(7) Following an extension under paragraph (1), the next update of the relevant river basin management plan must include a review of the implementation of the measures referred to in paragraph (6)(b) and a summary of any additional measures necessary for the purpose set out in that paragraph.

### **Setting less stringent environmental objectives**

17.—(1) Less stringent environmental objectives than those required by regulation 13(2)(b) or (c), (4), (5)(c) or (6) may be set for a specific body of water where—

(a) that body of water is so affected by human activity or its natural condition is such that the achievement of the environmental objectives set would be infeasible or disproportionately expensive, and

(b) all the conditions in paragraphs (2) to (5) are or will be met.

(2) The condition is that the environmental and socio-economic needs served by such human activity cannot be achieved by other means which are a significantly better environmental option not entailing disproportionate costs.

(3) The condition is that where the body of water is a body of surface water, the highest ecological and chemical status possible is achieved, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution.

(4) The condition is that where the body of water is a body of groundwater, the least possible changes to good groundwater status occur, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution.

(5) The condition is that no further deterioration occurs in the status of the affected body of water.

(6) Where a less stringent environmental objective is set under paragraph (1)—

(a) that objective, and the reasons for it, must be set out in the relevant river basin management plan;

(b) the review of that objective in accordance with regulation 12(6) must include consideration of whether a less stringent objective should continue to be set.

### **Natural causes or force majeure**

**18.**—(1) A temporary deterioration in the status of a body of water is not a breach of the environmental objectives set for it under regulation 12 if—

- (a) it is the result of—
  - (i) circumstances of natural cause or force majeure which are exceptional or could not reasonably have been foreseen, in particular extreme floods or prolonged droughts, or
  - (ii) circumstances due to accidents which could not reasonably have been foreseen, and
- (b) all the conditions in paragraphs (2) to (4) are or will be met.

(2) The condition is that all practicable steps are taken—

- (a) to prevent further deterioration in the status of the affected body of water, and
- (b) so as not to compromise the achievement of the environmental objectives for any body of water not affected by the circumstances mentioned in paragraph (1)(a).

(3) The condition is that the river basin management plan sets out the conditions under which circumstances are exceptional or could not reasonably have been foreseen including the adoption of the appropriate indicators.

(4) The condition is that the measures to be taken under such exceptional circumstances are included in the programme of measures to be applied to the body of water and will not compromise the recovery of the quality of that body of water once the circumstances are over.

(5) Where paragraph (1) applies, the effects of the circumstances mentioned in paragraph (1) (a) must be reviewed annually and, subject to regulation 16, all practicable measures must be taken with the aim of restoring the body of water as soon as reasonably practicable to its status prior to the effects of the circumstances.

(6) The next update of the relevant river basin management plan must include a summary of the effects of the circumstances referred to in paragraph (1)(a), and of the measures taken or to be taken.

### **Modifications to physical characteristics of water bodies**

**19.**—(1) A failure to achieve good groundwater status, good ecological status or (where relevant) good ecological potential, or to prevent deterioration in the status of a body of surface water or groundwater, is not a breach of the environmental objectives set for it under regulation 12 if—

- (a) the failure is the result of new modifications to the physical characteristics of the body of surface water or alterations to the level of the body of groundwater, and
- (b) all the conditions in paragraphs (3) to (5) are or will be met.

(2) A failure to prevent deterioration from high status to good status of a body of surface water is not a breach of the environmental objectives set for it under regulation 12 if—

- (a) the failure is the result of new sustainable development activities, and
- (b) all the conditions in paragraphs (3) to (5) are or will be met.

(3) The condition is that all practicable steps are taken to mitigate the adverse impact on the status of the body of water.

(4) The condition is that one or both of the following is the case—

- (a) the reasons for the modifications or alterations, or for the sustainable development activities, are of overriding public interest;
- (b) the benefits to the environment and to society of achieving the environmental objectives are outweighed by the benefits of the new modifications or alterations, or of the sustainable

development activities, to human health, to the maintenance of human safety, or (in the case of modifications or alterations) to sustainable development.

(5) The condition is that the beneficial objectives served by the modifications or alterations, or by the sustainable development activities, cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means which are a significantly better option.

(6) Where paragraph (1) or (2) applies, the reasons for the modifications or alterations, or for the sustainable development activities, must be set out and explained in the river basin management plan, and the environmental objectives must be reviewed every six years.

### **Content of programmes of measures**

**20.**—(1) Each programme of measures proposed and approved under regulation 12 must include basic measures and, where necessary, supplementary measures (see paragraph (4)).

(2) The basic measures must comply with Article 11.3 of the WFD and must, in particular, include the following—

- (a) measures required to implement the EU instruments for the protection of water listed in Schedule 3;
- (b) measures in accordance with regulation 21(1) (charges for water services);
- (c) measures to promote an efficient and sustainable water use to avoid compromising the achievement of the environmental objectives;
- (d) the measures required by regulation 8(2) (drinking water protected areas);
- (e) measures to control the abstraction of fresh surface water and groundwater, and the impoundment of fresh surface water, including a register of water abstractions and a requirement for prior authorisation for abstraction and impoundment;
- (f) measures to control the artificial recharge or augmentation of groundwater bodies, including a requirement for prior authorisation;
- (g) for point source discharges liable to cause pollution, a requirement for prior regulation or prior authorisation which sets emission controls for the pollutants concerned;
- (h) for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants;
- (i) measures to address any other significant adverse impacts on the status of water, including in particular measures to ensure that the hydromorphological conditions of each body of surface water are consistent with the achievement of the required ecological status (or good ecological potential for artificial or heavily modified water bodies);
- (j) a prohibition of direct discharges of pollutants into groundwater, except for the following discharges which may be authorised—
  - (i) injection of water containing substances resulting from operations for exploration and extraction of hydrocarbons or mining activities, and injection of water for technical reasons, into geological formations—
    - (aa) from which hydrocarbons or other substances have been extracted, or
    - (bb) which for natural reasons are permanently unsuitable for other purposes;
  - (ii) reinjection of pumped groundwater from mines and quarries or associated with the construction or maintenance of civil engineering works;
  - (iii) injection of natural gas or liquefied petroleum gas for storage purposes into—
    - (aa) geological formations which for natural reasons are permanently unsuitable for other purposes;

- (bb) geological formations where there is an overriding need for security of gas supply, and where the injection is such as to prevent any present or future danger of deterioration in the quality of any receiving groundwater;
- (iv) injection of carbon dioxide streams for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that such injection is—
  - (aa) made in accordance with [Directive 2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide<sup>(1)</sup>, or
  - (bb) excluded from the scope of that Directive under Article 2(2) of that Directive;
- (v) construction, civil engineering and building works and similar activities on or in the ground which come into contact with groundwater;
- (vi) discharges of small quantities of substances for scientific purposes for characterisation, protection or remediation of a body of water limited to the amount strictly necessary for the purposes concerned;
- (k) measures to eliminate pollution of surface waters by priority substances and to progressively reduce pollution by other substances which would otherwise prevent the achievement of the environmental objectives for bodies of surface water;
- (l) measures required to—
  - (i) prevent significant losses of pollutants from technical installations;
  - (ii) prevent or reduce the impact of accidental pollution incidents, such as from floods.
- (3) The measures required by paragraph (2)(l) may include—
  - (a) systems to detect or give warning of events which may lead to accidental pollution;
  - (b) appropriate measures to reduce the risk to aquatic ecosystems from accidents which cannot reasonably be foreseen.
- (4) Where necessary, each programme of measures must include any other supplementary measures designed and implemented with the aim of achieving the environmental objectives set under regulation 12.

### **Charges for water services**

- 21.**—(1) The appropriate authority must ensure—
- (a) that water pricing policies provide adequate incentives to use water resources efficiently, and
  - (b) an adequate contribution by industry, households and agriculture, and such other sectors as the appropriate authority considers appropriate, to the recovery of the costs of water services, based on the economic analysis conducted under regulation 7.
- (2) In complying with paragraph (1), the appropriate authority—
- (a) must take account of environmental and resource costs and the polluter pays principle;
  - (b) may have regard to the social, environmental and economic effects of the cost recovery and the geographical and climatic conditions of the region or regions affected.
- (3) The appropriate authority may, in accordance with established practices, disapply paragraph (1) in relation to a particular water use activity, provided the authority considers that this does not otherwise compromise the purposes and achievement of the objectives of the WFD.

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(1) OJ No L 140, 5.6.2009, p114, as last amended by [Directive 2011/92/EU](#) (OJ No L 26, 28.1.2012, p1).



### **Further programmes of measures in relation to certain priority substances**

**22.**—(1) The appropriate agency must, by 22nd December 2018, establish a preliminary programme of measures for each river basin district in relation to substances 34 to 45 in the table of priority substances.

(2) For the purposes of a programme of measures to be updated by 22nd December 2021 under regulation [12\(6\)\(a\)](#), the appropriate agency must, by such date as the appropriate authority directs, prepare and submit to the appropriate authority proposals for a final programme of measures for the purposes of aiming to achieve good surface water chemical status in relation to substances 34 to 45 in the table of priority substances by 22nd December 2027 and preventing deterioration in the chemical status of each body of surface water in relation to those substances.

(3) Regulation [12\(2\)](#) applies to the preparation by the appropriate agency of its proposals under paragraph (2) as it does to the preparation of proposals under regulation [12\(1\)](#).

(4) Without prejudice to the existing obligations, the appropriate authority must ensure that, for each river basin district, the programme of measures updated under regulation [12\(6\)\(a\)](#) by 22nd December 2021 contains measures for the purposes of aiming to achieve good surface water chemical status in relation to substances 34 to 45 in the table of priority substances by 22nd December 2027 and preventing deterioration in the chemical status of each body of surface water in relation to those substances.

(5) Regulation [12\(3\)](#) to (5) applies in relation to proposals for a programme of measures submitted to the appropriate authority under paragraph (2) as it does to proposals submitted under regulation [12\(1\)](#).

(6) The appropriate authority must ensure that the measures referred to in paragraph (4) are made operational as soon as possible after 22nd December 2021, and at the latest by 22nd December 2024.

(7) In paragraph (4), “existing obligations” means the obligations (on environmental quality standards in the field of water policy) under the EQSD (“the original Directive”) before it was amended by [Directive 2013/39/EU](#) of the European Parliament and of the Council as regards priority substances in the field of water policy<sup>(2)</sup> including, in particular, the achievement of good surface water chemical status in relation to the substances and the associated environmental quality standards listed in the original Directive.

### **Action in relation to plant protection and biocidal products**

**23.**—(1) This regulation applies where the results of a report under Article 7a of the EQSD show that additional measures at European Union or member State level may be necessary in order to facilitate compliance with the WFD in relation to a particular substance approved pursuant to Regulation [\(EC\) No 1107/2009](#) of the European Parliament and of the Council concerning the placing of plant protection products on the market<sup>(3)</sup> or Regulation [\(EU\) No 528/2012](#) of the European Parliament and of the Council concerning the making available on the market and use of biocidal products<sup>(4)</sup>.

(2) The competent authority must apply Article 44 of Regulation [\(EC\) No 1107/2009](#) or Article 48 of Regulation [\(EU\) No 528/2012](#), as appropriate, to the relevant substance referred to in paragraph (1), or products containing that substance.

(3) In applying the provisions referred to in paragraph (2), the competent authority must take into account any risk evaluations and socio-economic or cost-benefit analyses required under Regulation [\(EC\) No 1107/2009](#) or Regulation [\(EU\) No 528/2012](#), including as regards the availability of alternatives.

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(2) OJ No L 226, 24.8.2013, p1.

(3) OJ No L 309, 24.11.2009, p1, as last amended by Regulation [\(EU\) No 652/2014](#) (OJ No L 189, 27.6.2014, p1).

(4) OJ No L 167, 27.6.2012, p1, as last amended by Regulation [\(EU\) No 334/2014](#) (OJ L 103, 5.4.2014, p22).



(4) The competent authority for the purposes of this regulation is the person defined as the competent authority for England or Wales—

- (a) in respect of Regulation (EC) No 1107/2009, under regulation 3 of the Plant Protection Products Regulations 2011<sup>(5)</sup>;
- (b) in respect of Regulation (EU) No 528/2012, under regulation 5 of the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013<sup>(6)</sup>.

### **Implementation of programmes of measures**

24.—(1) The appropriate authority or, in the exercise of its relevant functions, the appropriate agency must ensure that the implementation of measures required under regulations 20 and 22 does not lead—

- (a) to increased pollution of marine waters;
- (b) directly or indirectly to increased pollution of surface waters.

(2) Paragraph (1) does not apply to the extent that compliance with it would result in increased pollution of the environment as a whole.

### **Action where environmental objectives are unlikely to be achieved**

25. Where monitoring or other data indicate that the environmental objectives set for a body of water under regulation 12 are unlikely to be achieved, the appropriate agency or, where relevant, the appropriate authority must ensure that—

- (a) the causes of the possible failure are investigated,
- (b) relevant permits and authorisations are examined and reviewed as appropriate,
- (c) the monitoring programmes under regulation 11 are reviewed and adjusted as appropriate, and
- (d) such additional measures as may be necessary to achieve those objectives (subject to the application of regulations 15 to 19) are included in the programme of measures applying to that body of water.

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<sup>(5)</sup> S.I. 2011/2131, to which there are amendments not relevant to these Regulations.

<sup>(6)</sup> S.I. 2013/1506, to which there are amendments not relevant to these Regulations.