

Explanatory Memorandum to The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2015.

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2015.

Huw Lewis
On behalf of minister for Natural Resources
One of the Welsh Ministers

20 August 2015

Description

1. This instrument amends certain provisions of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 to transpose aspects of Directive 2013/39/EU (“the Priority Substances Directive”).
2. The Priority Substances Directive itself amends the Environmental Quality Standards Directive¹ (“the EQS Directive”), which is a daughter Directive of the Water Framework Directive² (“WFD”), and 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.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. These Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. The Regulations are made by the Welsh Ministers and Secretary of State jointly in respect of areas partly in Wales and partly in England, and compositely otherwise. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.
4. To date, Welsh Government has tended towards transposing Directives compositely with DEFRA. This was due in part, to the fact that the Environment Agency acted as the main environment regulator for both the Welsh Government and UK Government.
5. With the creation of Natural Resources Wales in 2013, there is more scope to operate differently in Wales; however with respect to this particular Directive, there is limited scope to transpose directions differently due to the river basin areas that are partly in Wales and partly in England.
6. The Welsh Ministers have the power to give NRW directions for the implementation of EU obligations such as this. However, that power only covers river basin districts wholly in Wales. In effect this would mean if Welsh Government was to resource a separate transposition it would only apply to the Western Wales river basin, the Severn and Dee River Basins would still need to be directed jointly with DEFRA.
7. Transposing the Directive jointly also ensures there is consistency in delivery, and this is something that the European Commission is keen to see with regards to the overall Water framework Directive.

¹ Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy.

² Directive 2000/60/EC of the European Parliament and Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

8. These Regulations are made in reliance on section 2(2) of the European Communities Act 1972. By virtue of section 59(3) of the Government of Wales Act 2006, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.
9. This statutory instrument is subject to annulment of the Assembly (negative procedure). The Regulations do not amend any provision of an Assembly Act or Measure. They do not impose obligations of special importance. Accordingly, the Welsh Ministers have determined that these Regulations are to be subject to the negative resolution procedure.

Legislative background

10. The Water Framework Directive establishes an integrated approach to water management, based on river basin planning, and sets environmental objectives which are designed to protect and improve the ecological health of aquatic eco-systems as a whole.
11. The 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 which also set standards for each of those substances. Following a further review of the list 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. The resulting Priority Substances Directive, which this instrument partially transposes) 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.
12. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (“the 2003 regulations”) transposed many of the obligations of the WFD. The key amendments made to the 2003 Regulations by this instrument are set out below.
13. Regulation 3 of the 2003 regulations provide for the Secretary of State, the Welsh Ministers, and the environment agencies in England and Wales³ to exercise their relevant functions so as to secure compliance with the requirements of the WFD. The amendment to Regulation 3 provides for this requirement to apply also in relation to the requirements of the EQS Directive as amended by the Priority Substances Directive. The “relevant functions” are the functions under the 2003 Regulations and those listed in Schedule 2 to the 2003 Regulations (which this instrument updates – see below).
14. Regulations 9 and 10 of the 2003 Regulations are amended, and a new regulation 10A inserted, to transpose the new monitoring requirements of

³ The Environment Agency and the Natural Resources Body for Wales.

the Priority Substances Directive and to ensure that revised programmes of measures established for the purposes of the WFD include measures which take into account the new priority substances and the revised standards from the appropriate dates.

15. Regulation 11 is amended to set out new requirements from the Priority Substances Directive for matters to be included in river basin management plans under the WFD. Regulation 18 is amended to require the interim progress report required by the WFD to be published. Regulation 18A is inserted which sets out further requirements relating to certain substances approved under other EU instruments (relating to biocidal products and plant protection products).
16. As well as the amendments to the 2003 Regulations for the purposes of transposing the Priority Substances Directive, the instrument makes other minor updating amendments to the 2003 Regulations. These are to update the list of 'relevant functions' in Schedule 2 to the 2003 Regulations, changes references from "the Assembly" to "the Welsh Ministers", and from "English Nature" to "Natural England", where appropriate, and to remove references to the regional offices of the environment agencies.
17. These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in both Houses of the UK Parliament and the National Assembly for Wales.
18. The Welsh Ministers have the power to amend the The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 under section 2(2) of the European Communities Act 1972, having been designated in relation to water resources.

Purpose & intended effect of the legislation

19. The Water Framework Directive (WFD) 2000/60/EC⁴ provides a strategic framework for protecting and improving the water. 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.
20. Water body quality ("status") is assessed in terms of 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 the priority substances determines whether a

⁴ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090113:EN:NOT>

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.

21. Standards for general ecological indicators such as dissolved oxygen and nutrient concentrations are set by each Member State to reflect local environmental conditions. 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.
22. 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.

Consultation

23. These amending Regulations affect functions of the environment agencies, the Secretary of State and the Welsh Ministers. Since they do not have implications for industry or the public, there has been no consultation exercise. The UK, through the Water Framework Directive Technical Advisory Group adopted an approach of continuing engagement through a stakeholder group of industries likely to be affected by revised and new standards (which will be implemented through Directions to the environment agencies) from the time of the proposal to adoption of the Priority Substances Directive.

Regulatory Impact Assessment (RIA)

24. Since the amending Regulations have no direct impact on statutory duties or statutory partners, a separate impact assessment has not been prepared for this instrument.
25. 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 draft updated river basin management plans, to be submitted by the agencies to the respective Ministers in England and Wales this autumn for approval and published by 22nd December 2015. An impact assessment is being prepared for these updated river basin management plans.