

EXPLANATORY MEMORANDUM TO
THE WATER ENVIRONMENT (WATER FRAMEWORK DIRECTIVE) (ENGLAND
AND WALES) (AMENDMENT) REGULATIONS 2016

2016 No. 138

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations amend the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (“the 2003 Regulations”) to provide specific powers for the designation of transitional and coastal waters where shellfish are harvested to contribute to a high quality shellfish product for human consumption and to place requirements regarding the monitoring of any designated waters. These amendments are made following the repeal of the Shellfish Waters Directive (79/923/EEC) by the Water Framework Directive (2000/60/EC) and are intended to ensure that the protections provided by the Shellfish Waters Directive continue. These Regulations also revoke the Surface Waters (Shellfish) (Classification) Regulations 1997, which implemented the Shellfish Waters Directive.

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.

4. Legislative Context

- 4.1 The Shellfish Waters Directive (79/923/EEC as amended) was implemented in England and Wales by the Surface Waters (Shellfish) (Classification) Regulations 1997 (S.I. 1997/1332). In December 2013 the Shellfish Waters Directive was repealed by the Water Framework Directive (2000/60/EC). Article 4.9 of the Water Framework Directive sets out that it offers a level of protection at least equal to any directive which it repeals. The 2003 Regulations transpose many of the Water Framework Directive obligations and impose most of the water quality standards and obligations which were required by the Shellfish Directive. These amending Regulations make additional amendments to the 2003 Regulations to ensure shellfish waters can continue to be identified, protected and monitored.
- 4.2 A set of statutory Directions 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 2012¹ in relation to Wales) will require the environment agencies to endeavour to observe the microbial standard in shellfish water protected areas. The microbial standard is a non-mandatory faecal organism indicator which was contained in the Shellfish Waters Directive².

- 4.3 This composite instrument applies to England and Wales and is subject to negative resolution procedure in both Houses of Parliament and in the National Assembly for Wales.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
5.2 The territorial application of this instrument is England and Wales.

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 Shellfish Waters Directive aimed to protect shellfish growth and contribute to a high quality product for human consumption. It has now been repealed by the Water Framework Directive.
- 7.2 The Water Framework Directive is designed to protect the ecological health of the water body, and as a result, the shellfish growing within it. Technical advice from the UK technical advisory group for the implementation of the Water Framework Directive, and the European Commission, indicate 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.
- 7.3 However the Water Framework Directive 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 protects human health from poor quality shellfish. These hygiene rules are the responsibility of the Food Standards Agency.
- 7.4 The amendments to the 2003 Regulations create a power to identify waters where shellfish are commercially harvested (“shellfish water protected areas”) (“new regulation 7A). The amendments also ensure that additional water quality objectives are set to improve or protect shellfish water protected areas in order to support shellfish life and growth (the new definition of “environmental objectives” in regulation 2(1)) and place a requirement to include those protected areas in the water quality planning regime of the Water Framework Directive (amendment to regulation 8). There is no substantive change to policy as the overall effect of the amendments is to replicate requirements from the Shellfish Regulations 1997. Retaining these protections is important as shellfish are bio accumulators of pollution in the

¹ S.I. 2012/1903 (W.230).

² Shellfish Waters Protected Areas (England and Wales) Directions 2016.

environment, and in order to protect and improve their quality, environmental standards for water quality are required to protect them from pollution from point and diffuse sources.

- 7.5 The only change to policy is to subject water quality improvements for shellfish waters to an explicit test of cost and benefit, which is a fundamental part of the Water Framework Directive.

Consolidation

- 7.6 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 2003 Regulations give effect to existing policy.

9. Guidance

- 9.1 No new guidance is needed as the instrument reflects existing policy

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
10.2 There is no impact on the public sector.
10.3 An Impact Assessment has not been prepared for this instrument.

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 Water Framework Directive requires ongoing monitoring and review of all measures, and River Basin Management Plans are reviewed and updated on a six-year planning cycle.

13. Contact

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