

## **TRANPOSITION NOTE regarding the Water Framework Directive 2000/60/EC, which repealed Directive 2006/113/EC (concerning the quality required of shellfish waters)**

### **Introduction**

1. Directive 2006/113/EC<sup>1</sup> of the European Parliament and of the Council of 12 December 2006 made provision about the quality required of shellfish waters. In particular, it made provision for the protection of shellfish and for the improvement of shellfish waters in order to support shellfish (bivalve and gastropod molluscs) life and growth and thus to contribute to the high quality of shellfish products directly edible by man. Article 22 of Directive 2000/60/EC<sup>2</sup> (“the WFD”) provides that the Shellfish Waters Directive 2006/113/EC was automatically revoked on 22 December 2013.

### **Relevant provisions of the WFD**

2. Recital 51 WFD states:-

*“The implementation of this Directive is to **achieve a level of protection of waters at least equivalent** to that provided in certain earlier acts, which should therefore be repealed once the relevant provisions of this Directive have been fully implemented”.*

Article 4.9 WFD provides *“Steps must be taken to ensure that the application of the new provisions, including the application of paragraphs 3, 4, 5, 6 and 7, **guarantees at least the same level of protection** as the existing Community legislation”.*

### **Shellfish Flesh Standard**

3. Bacterial pollution of shellfish waters is assessed in the shellfish flesh, rather than from the quality of water. Article 3(2) of the Shellfish Waters Directive set a requirement to endeavour to observe a standard based on the number of faecal coliforms present in shellfish flesh. The modern faecal organism indicator for public health protection in the food hygiene regime for assessing pollution levels is now by reference to the number of E.Coli present in shellfish flesh.<sup>3</sup>

### **Transposition**

#### **In the following text:**

**“England and Wales Regulations”** means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, S.I. 2003/3242, as amended by the Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2016, S.I. 2016/138.

**“Solway Tweed Regulations”** means the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004, S.I. 2004/99, as amended by the Water Environment (Water Framework Directive) (Northumbria and Solway Tweed River Basin Districts) Regulations 2016, S.I. 2016/139.

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0014:0020:EN:PDF>

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

<sup>3</sup> <https://www.food.gov.uk/enforcement/monitoring/shellfish>

### **The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003**

4. New paragraph 7A of the England and Wales Regulations provides power for the Secretary of State to designate shellfish water protected areas. This reflects article 4(1) of the Shellfish Waters Directive which provided that *“Member States shall designate shellfish waters and may subsequently make additional designations”*.
5. The new definition of “environmental objectives” in regulation 2 of the England and Wales Regulations now includes water quality objectives which are necessary or desirable to improve or protect that shellfish water protected area in order to support shellfish life and growth. The Shellfish Water Protected Areas (England and Wales) Directions 2016 require that the Agencies endeavour to observe the microbial standard (i.e. the modern faecal organism indicator in shellfish flesh) in shellfish water protected areas (as provided for by article 3(2) of the Shellfish Waters Directive) and also sets requirements for how samples will be taken (article 7).

### **The Water Environment (Water Framework Directive) (Northumbria and Solway Tweed River Basin Districts) (Amendment) Regulations 2016**

6. As discussed above, the transposition of the WFD for England and Wales was achieved through amendments to the England and Wales Regulations made by S.I. 2016/138. The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245) are amended to apply the England and Wales Regulations (as amended) to the Northumbria river basin district, with modifications to reflect the involvement of Scottish Ministers and SEPA in that river basin district.
7. New paragraph 3A of the Solway Tweed Regulations provides power for the Secretary of State to designate shellfish water protected areas in the Solway Tweed River Basin District.
8. The new definition of “environmental objectives” in regulation 2 of the Solway Tweed Regulations also now includes water quality objectives which are necessary or desirable to improve or protect that shellfish water protected area in order to support shellfish life and growth. The Shellfish Water Protected Areas (England and Wales) Directions 2016 also apply to the English part of the Solway Tweed River Basin District.

### **Water Quality Standards**

9. Annex 1 of the Shellfish Waters Directive set out a number of water quality standards for the protection of designated shellfish waters and most of these standards have been replaced by standards under the Water Framework Directive. Some of the standards contained in the Shellfish Waters Directive are now no longer best scientific practice and are not contained in the Water Framework Directive.<sup>4</sup> Accordingly, these standards have not been transposed.

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<sup>4</sup> Technical advice was obtained from the UK Technical Advisory group on the Water Framework Directive following which some standards were not included in the Water Framework Directive: these are Colouration (parameter 3), Silver (parameter 9), and “Substance affecting the taste of shellfish” (parameter 11).