

2010 No.

ENVIRONMENTAL PROTECTION

The Marine Strategy Regulations 2010

Made - - - - ***

Laid before Parliament ***

Coming into force - - - - *15th July 2010*

The Secretary of State is designated(a) for the purposes of making Regulations under section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(b) in relation to the environment.

It appears to the Secretary of State that it is expedient for references to Annexes I, III, IV or V of Directive 2008/56/EC of the European Parliament and of the Council of 17th June 2008 establishing a framework for Community action in the field of marine environmental policy(c) to be construed as a reference to those provisions as amended from time to time.

The Secretary of State makes these Regulations in exercise of the powers conferred by that section.

PART 1

Preliminary and interpretation

Citation, commencement and application

1.—(1) These Regulations may be cited as the Marine Strategy Regulations 2010 and come into force on 15th July 2010.

(2) These Regulations apply only in relation to the marine strategy area.

Interpretation

2.—(1) In these Regulations—

“baseline” means the baseline from which the breadth of the territorial sea is measured;

“coastal water” has the meaning given by the Water Framework Directive (and set out in Part 3 of Schedule 2);

(a) S.I. 2008/301.

(b) 1972 c. 68. Under section 57(1) of the Scotland Act (c.46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in relation to devolved matters in Scotland, the function of the Secretary of State in relation to implementing these obligations continues to be exercisable by the Secretary of State as regards Scotland.

(c) OJ L No 164, 25.06.08, p 19.

“the Commission” means the European Commission;

“competent authority” means—

(a) in relation to the Scottish inshore region [and the Scottish offshore region], the Scottish Ministers;

(b) in relation to the Welsh inshore region, the Welsh Ministers;

(c) in relation to the Northern Ireland inshore region, the Department of the Environment in Northern Ireland;

(d) in relation to all other areas within the marine strategy area, the Secretary of State;

“devolved functions”, in relation to the marine strategy area, means any functions which are not retained functions as respects that area;

“devolved marine area” means—

(a) in relation to any function exercisable by the Scottish Ministers, the Scottish inshore region, [and the Scottish offshore region],

(b) in relation to any function exercisable by the Welsh Ministers, the Welsh inshore region, and

(c) in relation to any function exercisable by the Department of the Environment in Northern Ireland, the Northern Ireland inshore region;

“devolved policy authority” means the Scottish Ministers, the Welsh Ministers and the Department of the Environment in Northern Ireland;

“the Directive” means Directive 2008/56/EC of the European Parliament and of the Council of 17th June 2008 establishing a framework for Community action in the field of marine environmental policy(a);

“local authority” means—

(a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in relation to Scotland, a council for any local government area constituted under section 2(1) of the Local Government etc. (Scotland) Act 1994(b);

(c) in relation to Wales, a county council, a county borough council or a community council;

(d) in relation to Northern Ireland, a district council;

“marine strategy” has the meaning given by Part 2 of Schedule 2;

“marine strategy area” has the meaning given by regulation 3;

“Northern Ireland body” means the Foyle, Carlingford and Irish Lights Commission and the following Departments in Northern Ireland: the Department of Agriculture and Rural Development; the Department of Culture, Arts and Leisure; the Department of Enterprise, Trade and Investment; the Department for Regional Development;

“Northern Ireland inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Northern Ireland;

“Northern Ireland Minister” has the same meaning as in the Northern Ireland Act 1998(c), but includes a reference to the First Minister and the deputy First Minister, within the meaning of that Act;

“Northern Ireland offshore region” means so much of the Northern Ireland zone as lies beyond the seaward limits of the territorial sea;

(a) OJ L No 164, 25.06.08, p 19.

(b) 1994 c. 39.

(c) 1998 c. 47.

“Northern Ireland public authority” means any public authority so far as exercising functions in relation to which functions are exercisable by a Northern Ireland Minister or a Northern Ireland department;

“Northern Ireland zone” has the same meaning as in the Northern Ireland Act 1998(a) (see section 98(1) and (8) of that Act);

“public authority” means a public body or public office holder, other than—

- (a) a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975(b);
- (b) a government department;
- (c) the Scottish Ministers;
- (d) the Welsh Ministers;
- (e) a Northern Ireland Minister; or
- (f) a Northern Ireland department;

“public body” includes—

- (a) a local authority;
- (b) a local planning authority; and
- (c) a statutory undertaker;

“public office holder” means a person holding any of the following offices—

- (a) an office under the Crown;
- (b) an office created or continued in existence by a public general Act or by legislation passed by the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly;
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament or a devolved legislature;

“relevant function” means a function under these Regulations or, so far as material, a function under any other enactment, including in particular, an enactment specified in Schedule 1;

“retained functions” has the meaning given in Part 1 of Schedule 2;

“Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;

“Scottish offshore region” means so much of the Scottish zone as lies beyond the seaward limits of the territorial sea, and areas of sea within the marine strategy area which lie outside the Scottish zone but which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom;

“Scottish public authority” means any public authority so far as exercising functions in relation to which functions are exercisable by the Scottish Ministers;

“Scottish zone” has the same meaning as in the Scotland Act 1998(c) (see section 126(1) and (2) of that Act);

“secondary devolved functions” means—

- (a) as respects the Scottish inshore region or the Scottish offshore region, any secondary devolved Scottish functions;
- (b) as respects the Welsh inshore region or the Welsh offshore region, any secondary devolved Welsh functions;
- (c) as respects the Northern Ireland inshore region or the Northern Ireland offshore region, any secondary devolved Northern Ireland functions;

(a) 1998 c. 47
(b) 1975 c. 26.
(c) 1998 c. 46.

“secondary devolved Northern Ireland functions” means any of the following—

- (a) any functions exercisable by a Northern Ireland public authority,
 - (b) any functions exercisable by any other public authority, so far as relating to transferred or reserved matters (within the meaning of the Northern Ireland Act 1998(a)),
- other than functions in relation to which functions are exercisable by a Minister of the Crown or government department;

“secondary devolved Scottish functions” means any of the following—

- (a) any functions exercisable by a Scottish public authority,
 - (b) any functions exercisable by any other public authority, so far as not relating to reserved matters (within the meaning of the Scotland Act 1998(b)),
- other than functions in relation to which functions are exercisable by a Minister of the Crown or government department;

“secondary devolved Welsh functions” means any of the following—

- (a) any functions exercisable by a Welsh public authority,
 - (b) any functions conferred or imposed on a public authority by or under a Measure or Act of the National Assembly for Wales,
 - (c) any functions exercisable by a public authority, so far as relating to matters within the legislative competence of the National Assembly for Wales,
- other than functions in relation to which functions are exercisable by a Minister of the Crown or government department;

“statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990(c), Part 10 of the Town and Country Planning (Scotland) Act 1997(d) or the Planning (Northern Ireland) Order 1991(e);

“transitional waters” has the meaning given by the Water Framework Directive (and set out in Part 3 of Schedule 2);

“Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of Council of 23rd October 2000 establishing a framework for Community action in the field of water policy, as amended(f);

“Welsh inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Wales;

“Welsh offshore region” means so much of the Welsh zone as lies beyond the seaward limits of the territorial sea;

“Welsh public authority” means any public authority so far as exercising functions in relation to which functions are exercisable by the Welsh Ministers;

“Welsh zone” has the same meaning as in the Government of Wales Act 2006(g) (see section 158(1) and (3) of that Act);

(2) Any expression used both in these Regulations and in the Directive and not otherwise defined in these Regulations has the same meaning for the purposes of these Regulations as it has for the purposes of the Directive, and the definitions contained in the Directive of expressions used in these Regulations are set out in Schedule 2.

(a) 1998 c. 47.

(b) 1998 c. 46.

(c) 1990 c. 8.

(d) 1997 c. 8.

(e) S.I. 1991/1220 (N.I.11).

(f) OJ L No 327, 22.12.00, p 1.

(g) 2006 c. 32. Section 158(1) was amended, and section 158(3) was substituted by section 43 of the Marine and Coastal Access Act 2009 (c.XX). The sea adjacent to Wales relevant for the purposes of the definition of “the Welsh zone” in section 158(1) of the Government of Wales Act 2006 was specified by S.I. 2010/XXX.

(3) References in these Regulations to an Annex or an Article are to an Annex to, or an Article of, the Directive.

(4) References in these Regulations to Annex I, III, IV or V are references to that Annex as amended from time to time.

Marine strategy area

3.—(1) For the purpose of these Regulations, the “marine strategy area” means—

- (a) the area of sea, the sea bed and its subsoil within the seaward limits of the territorial sea adjacent to the United Kingdom;
- (b) any area of sea, the sea bed and its subsoil within the limits of the [exclusive economic zone/renewable energy zone]; and
- (c) the sea bed and its subsoil within the limits of any areas designated under section 1(7) of the Continental Shelf Act 1964(a) (so far as not falling within the area mentioned in paragraph (b)).

(2) In this regulation, “sea” includes coastal water, but does not include any transitional waters.

(3) For the purpose of these Regulations, the “relevant part of the marine strategy area” means—

- (a) in relation to any relevant function of the Scottish Ministers, the Scottish inshore region [and Scottish offshore region];
- (b) in relation to any relevant function of the Welsh Ministers, the Welsh inshore region;
- (c) in relation to any relevant function of the Department of Environment in Northern Ireland, the Northern Ireland inshore region; and
- (d) in relation to any relevant function of the Secretary of State, any other area within the marine strategy area not falling within sub-paragraphs (a) to (c).

PART 2

General duties

The general duties

4. Each competent authority and Northern Ireland body must exercise its relevant functions so as to secure compliance with the requirements of the Directive, including the requirement to take necessary measures to achieve or maintain good environmental status of marine waters within the marine strategy area by 31st December 2020.

Functions of the Secretary of State

5.—(1) The Secretary of State must develop a marine strategy for the marine strategy area in order to—

- (a) protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems in areas where they have been adversely affected; and
 - (b) prevent and reduce inputs into the marine environment, with a view to phasing out pollution, so as to ensure they do not give rise to any significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea.
- (2) The marine strategy must consist of the elements required by regulations 11 to 15.

(a) 1964 c. 29. Section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982, section 37 and Schedule 3, paragraph 1. Areas have been designated under section 1(7) by S.I. 1987/1265, 2000/3062 and 2001/3670.

Functions of the devolved policy authorities

6.—(1) In order to assist the Secretary of State in the development of the marine strategy under regulation 5, each devolved policy authority must provide the Secretary of State with—

- (a) proposals for the establishment, review or update of—
 - (i) the monitoring programmes for the devolved marine area; and
 - (ii) the determination of a programme of measures for the devolved marine area;
- (b) information, including information for any review or update, to support—
 - (i) the assessment of marine waters for the devolved marine area;
 - (ii) the determination of the characteristics of good environmental status for any area within the devolved marine area which is distinct as regards its hydrological, oceanographic and biogeographic features; and
 - (iii) the development of environmental targets and indicators for any area within the devolved marine area which is distinct as regards its hydrological, oceanographic and biogeographic features; and
- (c) such other information as the Secretary of State may reasonably require for the purpose of securing compliance with the Directive.

(2) The information required under paragraph (1) must be sent to the Secretary of State by such date as the Secretary of State may direct.

Co-ordination between competent authorities

7. In taking such steps as are necessary for the purpose of compliance with regulation 6(1)(a), the competent authorities must exercise their functions under these Regulations so as to secure consistency in relation to the development of a marine strategy in the marine strategy area, and carry out such co-ordination amongst themselves as is necessary for the purpose of securing such consistency.

Requirement for consents

8.—(1) Each devolved policy authority must obtain the consent of the Secretary of State for inclusion within the proposals required by regulation 6(1)(a) of any proposal which affects or is likely to affect the exercise of any retained function.

(2) Before adopting or revising any element of the marine strategy which affects or is likely to affect the exercise of any devolved function, the Secretary of State must obtain the consent of the relevant devolved policy authority.

Cooperation in implementation

9.—(1) The competent authorities must co-operate in exercising any relevant function in relation to the implementation of the marine strategy in the marine strategy area including—

- (a) in relation to the exercise of any relevant function of the Secretary of State in respect of any activity carried out within the devolved marine area; and
- (b) in relation to the exercise of any relevant function of a devolved policy authority or Northern Ireland body in respect of any activity carried out within the Northern Ireland offshore region, [the Scottish offshore region] or the Welsh offshore region.

(2) A devolved policy authority must obtain the consent of the Secretary of State before it exercises any relevant function for the purpose of implementing the Directive, where the exercise of that function relates to any activity which affects or is likely to affect the exercise of any retained functions.

(3) The Secretary of State must obtain the consent of the relevant devolved policy authority before the Secretary of State exercises any relevant function for the purpose of implementing the Directive,

where the exercise of that function relates to any activity which affects or is likely to affect the exercise of any devolved functions.

Duty to have regard to the marine strategy

10. Each competent authority, Northern Ireland body and public authority must, in exercising any functions so far as affecting the marine strategy area, have regard to any marine strategy developed under regulation 5.

PART 3

Elements of the marine strategy

Assessment of marine waters

11.—(1) By 15th July 2012, the Secretary of State must carry out an assessment of the marine waters within the marine strategy area in accordance with Article 8.

(2) The assessment must, in particular, include an economic and social analysis of the use of those waters and the cost of degradation of the marine environment.

(3) The Secretary of State must periodically review and update the results of the assessment required by paragraph (1), by each sixth anniversary of the date on which that assessment was published.

Determination of good environmental status

12.—(1) By 15th July 2012, the Secretary of State must determine the characteristics of good environmental status for the marine waters in the marine strategy area in accordance with Article 9—

- (a) in consultation with the devolved policy authorities; and
- (b) in accordance with regulation 8(2).

(2) The characteristics must be determined on the basis of the qualitative descriptors in Annex 1.

(3) The Secretary of State must take account of—

- (a) the list of elements in Table 1 of Annex III; and
- (b) the impact of human activity in the marine strategy area, having regard to the list of pressures and impacts in Table 2 of that Annex.

(4) The Secretary of State must periodically review and update the characteristics of good environmental status determined under paragraph (1), in consultation with the devolved policy authorities and in accordance with regulation 8(2), by each sixth anniversary of the date on which those characteristics of good environmental status are determined, to ensure that those characteristics are kept up to date.

Environmental targets and indicators

13.—(1) By 15th July 2012, the Secretary of State must establish environmental targets and indicators for the marine waters in the marine strategy area to help secure good environmental status for those waters, in accordance with Article 10—

- (a) in consultation with the devolved policy authorities; and
- (b) in accordance with regulation 8(2).

(2) In establishing targets and indicators, the Secretary of State must take account of the indicative lists of pressure and impacts in Table 2 of Annex III and the characteristics in Annex IV.

(3) The Secretary of State must periodically review and update the environmental targets and indicators established pursuant to paragraph (1), in consultation with the devolved policy authorities

and in accordance with regulation 8(2), by each sixth anniversary of the date of the establishment of those targets and indicators, to ensure that the targets and indicators are kept up to date.

Monitoring

14.—(1) By 15th July 2014, each competent authority must establish and implement a programme for monitoring the environmental status of the relevant part of the marine strategy area, in accordance with Article 11.

(2) In establishing and implementing a monitoring programme, a competent authority must base the monitoring programme on—

- (a) the indicative lists of elements in Annex III; and
- (b) the requirements in Annex V.

(3) The competent authority must periodically review the monitoring programme by each sixth anniversary of the date on which that monitoring programme was established, to ensure that the monitoring programme is kept up to date.

Programme of measures

15.—(1) By 31st December 2015, each competent authority must publish a programme of measures necessary to achieve or maintain good environmental status for the relevant part of the marine strategy area, in accordance with Article 13.

(2) The competent authority must develop the programme of measures on the basis of the assessment required by regulation 11 taking account of—

- (a) the environmental targets and indicators required by regulation 13;
- (b) the control measures listed in Annex VI; and
- (c) the social and economic impact of any proposed measure.

(3) Any programme of measures must include spatial protection measures, to contribute to coherent and representative networks of marine protected areas, in accordance with Article 13(4).

(4) By 31st December 2013, each competent authority must publish information on marine protected areas for the relevant part of the marine strategy area.

(5) The competent authority must include in the programme of measures a description of how the measures will be implemented and how they will contribute to the achievement of environmental targets established under regulation 13.

(6) Before the programme of measures comes into operation, the competent authority must—

- (a) satisfy itself that the measures proposed are cost-effective and technically feasible;
- (b) carry out an impact assessment, including a cost-benefit analysis, of any proposed measure; and
- (c) consult on any proposed measure in accordance with regulation 18.

(7) The competent authority must ensure that the programme of measures is made operational by 31st December 2016 or one year after the publication of the programme of measures, whichever is earlier.

(8) The competent authority must periodically review the programme of measures required by paragraph (1), by each sixth anniversary after the date of its publication, to ensure that the programme of measures is kept up to date.

(9) The Secretary of State may from time to time request a review of all or part of the programme of measures, where those measures affect or are likely to affect retained functions.

(10) A devolved policy authority may from time to time request a review of all or part of the programme of measures, where those measures affect or are likely to affect devolved functions.

(11) Where a request is made to the SoS or the devolved policy authority under paragraph (9) or (10), the SoS or the authority (as the case may be) must comply with it before the next sixth anniversary of the publication of the programme of measures.

(12) Nothing in paragraph (9) or 10 requires a review in response to a request unless the request is reasonable.

Exceptions

16.—(1) The duty referred to in regulation 4 to take necessary measures to achieve or maintain good environmental status within the marine strategy area is subject to any exceptional cases which the competent authority identifies in accordance with Article 14(1), of a kind set out in Schedule 3.

(2) In identifying any such exceptional case, a competent authority must consider the consequences for other member states in the marine region or subregion concerned.

(3) Any such exceptional cases must be clearly identified in the programme of measures.

(4) The Secretary of State must notify the Commission of the justification for any such exceptional cases identified by any competent authority.

(5) The duty under these Regulations, including under regulations 4 and 5, to develop or (as the case may be) implement any element of the marine strategy, other than the assessment of marine waters, does not require the taking of any steps—

(a) in so far as the omission to take steps would pose no significant risk to the marine environment, or

(b) the costs would be disproportionate taking account of the risks to the marine environment, provided that the omission to take those steps does not result in deterioration of the marine waters concerned and that the achievement of good environmental status is not permanently compromised.

(6) Where a competent authority relies on either exception under paragraph (5), the Secretary of State must provide the Commission with the necessary justification.

(7) Nothing in these Regulations affects activities the sole purpose of which is defence or national security, but the Secretary of State must endeavour to ensure that such activities are conducted in a manner that is compatible, so far as reasonable and practicable, with the objectives of the Directive.

PART 4

Procedural requirements

Notification

17.—(1) The Secretary of State must notify the Commission of—

(a) an assessment under regulation 11 within 3 months of the determination of the characteristics of good environmental status under regulation 12;

(b) the determination of the characteristics of good environmental status under regulation 12 within 3 months of that determination;

(c) the environmental targets and indicators established under regulation 13 within 3 months of the establishment of those targets and indicators;

(d) the monitoring programme established under regulation 14 within 3 months of its establishment;

(e) the programme of measures published under regulation 15 within 3 months of its publication; and

(f) any changes made to any element of the marine strategy within 3 months of the publication of any review.

(2) The Secretary of State must provide the Commission with a brief interim report describing the progress made in implementing the programme of measures within 3 years of its publication and within 3 years of any update to the programme of measures.

Public participation

18.—(1) Each competent authority must consult the public to ensure the public is given an early opportunity to participate in the preparation, modification or review of any—

- (a) monitoring programmes required by regulation 14; or
 - (b) programme of measures required by regulation 15.
- (2) The Secretary of State must consult the public to ensure the public is given an early opportunity to participate in the preparation, modification or review of any—

- (a) assessment required by regulation 11;
- (b) determination of good environmental status required by regulation 12; or
- (c) environmental targets and indicators required by regulation 13.

(3) The competent authority must—

- (a) inform the public as to its proposal, including a summary of the relevant element of the marine strategy mentioned in paragraph (1) or (2), any relevant background information, and the right of the public to participate in the relevant decision-making process;
- (b) specify the means by which the public can participate in the consultation, including an address for responses, and a reasonable timescale for the consultation; and
- (c) take account of the consultation responses in making any relevant decision.

(4) The competent authority must take such steps as they consider appropriate to secure that the proposals contained in the consultation draft are brought to the attention of the public, including any persons appearing to the relevant authorities to be likely to be interested in, or affected by, the proposed policies.

(5) If the consultation includes proposals relating to retained functions, it may be published only with the agreement of the Secretary of State.

(6) If the consultation includes proposals relating to devolved functions, it may be published only with the agreement of the relevant devolved policy authority.

(7) Where the competent authority takes a decision in relation to its proposal, following a consultation, it must—

- (a) inform the public of that decision;
- (b) provide information as to the reasons and considerations on which that decision is based; and
- (c) provide a statement of the steps taken by the competent authority to comply with paragraphs (1) to (4), as appropriate.

PART 5

Directions and guidance

Directions to, and assistance from, public authorities

19.—(1) The Secretary of State may give directions to any public authority for the purpose of implementing the Directive.

(2) But the Secretary of State may only give directions in respect of the Scottish inshore region, Scottish offshore region, Welsh inshore region, Welsh offshore region, Northern Ireland inshore region or Northern Ireland offshore region in relation to the exercise by a public authority of retained functions.

(3) The Scottish Ministers may give directions to any public authority in respect of the Scottish inshore region and Scottish offshore region in relation to the exercise by that authority of secondary devolved Scottish functions.

(4) The Welsh Ministers may give directions to any public authority in respect of the Welsh inshore region and Welsh offshore region in relation to the exercise by that authority of secondary devolved Welsh functions.

(5) Where any proposal to give directions under paragraph (1), (3) or (4) includes directions in respect of retained and devolved functions, those directions may be given jointly by the Secretary of State and the relevant devolved policy authority.

(6) The Secretary of State may not give directions in relation to any decision on an application for an order granting development consent under the Planning Act 2008(a).

(7) Any direction given under these Regulations must be in writing and may be varied or revoked by a further direction.

(8) For the purpose of this regulation, a direction—

- (a) may be of a general or specific character for the purpose of giving effect to the Directive; and
- (b) without prejudice to the generality of sub-paragraph (a), may direct a public authority to exercise or not to exercise—
 - (i) specified powers;
 - (ii) its powers in specified circumstances; or
 - (iii) its powers in a specified manner.

(9) Directions given under this regulation must be publicised in such manner as the body giving the directions considers appropriate for the purpose of bringing the matters to which the directions relate to the attention of persons likely to be affected by them.

(10) A public authority must comply with any direction which is given to it under this regulation.

(11) A Northern Ireland public authority and a Northern Ireland body must provide the Department of the Environment in Northern Ireland with—

- (a) any information in its possession or under its control, and
- (b) such assistance as may reasonably be sought by that Department,

in connection with the exercise of any functions exercisable by a Northern Ireland public authority or Northern Ireland body which may relate to the implementation of the Directive, on the request of the Department of the Environment in Northern Ireland.

(12) The Department of the Environment in Northern Ireland must consult the relevant Northern Ireland body on proposals to prepare, modify or review any element of the marine strategy which may affect the functions of the relevant Northern Ireland body.

Guidance

20.—(1) The Secretary of State may give guidance to any person with respect to the practical implementation of the Directive.

(2) The Scottish Ministers may give guidance to any public authority in respect of the Scottish inshore region and Scottish offshore region in relation to the exercise by that public authority of secondary devolved Scottish functions.

(3) The Welsh Ministers may give guidance to any public authority in respect of the Welsh inshore region and Welsh offshore region in relation to the exercise by that authority of secondary devolved Welsh functions.

(4) In respect of the Northern Ireland inshore region and the Northern Ireland offshore region, the Department of the Environment in Northern Ireland may give guidance to—

- (a) a Northern Ireland body in relation to the exercise by that body of reserved or transferred functions; or
- (b) a Northern Ireland public authority in relation to the exercise by that authority of secondary devolved Northern Ireland functions.

(a) 2008 c. 29.

(5) Where any proposal to give guidance under paragraphs (1) to (4) includes guidance in respect of both retained and devolved functions, that guidance must be given jointly by the Secretary of State and the relevant devolved policy authority.

(6) Any person to whom guidance is given under this regulation must have regard to it.

Date Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 2(1)

Enactments in relation to which duty in regulation 4 applies

The Whaling Industry (Regulation) Act 1934**(a)**

section 34 of the Coast Protection Act 1949 (restriction of works detrimental to navigation)**(b)**

The Harbours Act 1964**(c)**

The Harbours Act (Northern Ireland) 1970**(d)**

The Prevention of Oil Pollution Act 1971**(e)**

sections 36 and 37 of the Wildlife and Countryside Act 1981**(f)**

Part 2 of the Food and Environment Protection Act 1985 (deposits in the sea)**(g)**

The Water Resources Act 1991

The Radioactive Substances Act 1993**(h)**

The Environment Act 1995

sections 128 and 129 of the Merchant Shipping Act 1995**(i)** (prevention of pollution from ships and further provision for prevention of pollution from ships)

The Pollution Prevention and Control Act 1999**(j)**

The Water Environment and Water Services (Scotland) Act 2003**(k)**

The Environmental Assessment (Scotland) Act 2005**(l)**

The Planning Act 2008

[The Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992 – to be repealed by Marine and Coastal Access Bill]

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- (a) 1934 c. 49.
(b) 1949 c. 74.
(c) 1964 c. 40.
(d) 1970 c. 1.
(e) 1971 c. 60.
(f) 1981 c. 69.
(g) 1985 c. 48.
(h) 1993 c. 12.
(i) 1995 c. 21.
(j) 1999 c. 24.
(k) 2003 asp3.
(l) 2005 asp 15.

The Conservation (Natural Habitats, &c.) Regulations 1994**(a)**

The Urban Waste Water Treatment (England and Wales) Regulations 1994**(b)**

The Urban Waste Water Treatment (Scotland) Regulations 1994**(c)**

The Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995**(d)**

The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996**(e)**

The Surface Waters (Shellfish) (Classification) Regulations 1997**(f)**

The Surface Waters (Shellfish) (Classification) (Scotland) Regulations 1997**(g)**

The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998**(h)**

The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001**(i)**

The Offshore Installations (Emergency Pollution Control) Regulations 2002**(j)**

The Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003**(k)**

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

The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003**(m)**

The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003**(n)**

The Water Environment and Water Services (Scotland) Act 2003 (Designation of Scotland River Basin District) Order 2003**(o)**the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004**(p)**

The Environmental Assessment of Plans and Programmes Regulations 2004**(q)**

The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004**(r)**

The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004**(s)**

2004**(s)**

The Water and Sewerage Services (Northern Ireland) Order 2006**(t)**

The Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007**(u)**

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- (a)** S.I. 1994/2716.
 - (b)** S.I. 1994/2841.
 - (c)** S.I. 1994/2842.
 - (d)** S.I. 1995/380.
 - (e)** S.I. 1996/2154.
 - (f)** S.I. 1997/1332.
 - (g)** S.I. 1997/2471.
 - (h)** S.I. 1998/1056.
 - (i)** S.I. 2001/1754.
 - (j)** S.I. 2002/1861.
 - (k)** S.I. 2003/1809.
 - (l)** S.I. 2003/3242.
 - (m)** S.I. 2003/3245.
 - (n)** S.R. 2003/544.
 - (o)** S.S.I. 2003/610.
 - (p)** S.I. 2004/99.
 - (q)** S.I. 2004/1633.
 - (r)** S.I. 2004/1656.
 - (s)** S.I. 2004/280.
 - (t)** S.I. 2006/3336 (N.I.21).
 - (u)** S.I. 2007/79.

The Water Supply (Water Quality) (Northern Ireland) Regulations 2007**(a)**
The Urban Waste Water Treatment (Northern Ireland) Regulations 2007**(b)**
The Marine Works (Environmental Impact Assessment) Regulations 2007**(c)**
The Offshore Marine Conservation (Natural Habitats) Regulations 2007**(d)**
The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007**(e)**
The Sulphur Content of Liquid Fuels (Scotland) Regulations 2007**(f)**
The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007**(g)**
The Fishery Products (Official Controls Charges) (Scotland) Regulations 2007**(h)**
The Bathing Waters (Scotland) Regulations 2008**(i)**
The Bathing Water Regulations 2008**(j)**
The Quality of Bathing Water Regulations (Northern Ireland) 2008**(k)**

SCHEDULE 2

Regulation 2(1) and (2)

Definitions

PART 1

Meaning of (a) “retained functions” and (b) functions in relation to which functions are exercisable by a Minister of the Crown or Government Department

1. In these Regulations, “retained functions” means as respects the Scottish inshore region, the Scottish offshore region, the Welsh inshore region, the Welsh offshore region, the Northern Ireland inshore region and the Northern Ireland offshore region, any function of a Minister of the Crown, government department, Northern Ireland department or public authority other than—

- (a) Scottish Ministerial functions;
- (b) Welsh Ministerial functions;
- (c) Northern Ireland government functions;
- (d) secondary devolved functions; or
- (e) relevant ancillary functions.

2.—(1) For the purpose of paragraph 1(a) to (c)—

- (a) “Northern Ireland government functions” means—

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- (a) S.I. 2007/147.
 - (b) S.I. 2007/187.
 - (c) S.I. 2007/1518.
 - (d) S.I. 2007/1842.
 - (e) S.I. 2007/1067.
 - (f) S.S.I. 2007/27.
 - (g) S.S.I. 2007/485.
 - (h) S.I. 2007/537.
 - (i) S.S.I. 2008/170.
 - (j) S.I. 2008/2349.
 - (k) S.I. 2008/231.

- (i) any functions exercisable by a Northern Ireland Minister or a Northern Ireland department, other than joint functions and concurrent functions;
 - (ii) any concurrent function, so far as exercised by a Northern Ireland Minister or a Northern Ireland department;
 - (iii) the function exercised by a Northern Ireland Minister or a Northern Ireland department when exercising a joint function;
- (b) “Scottish Ministerial functions” means—
- (i) any functions exercisable by the Scottish Ministers, other than joint functions and concurrent functions;
 - (ii) any concurrent functions, so far as exercised by the Scottish Ministers;
 - (iii) the function exercised by the Scottish Ministers when exercising a joint function;
- (c) “Welsh Ministerial functions” means—
- (i) any functions exercisable by the Welsh Ministers, other than joint functions and concurrent functions;
 - (ii) any concurrent functions, so far as exercised by the Welsh Ministers;
 - (iii) the function exercised by the Welsh Ministers when exercising a joint function;
- (d) “concurrent function” means a function exercisable concurrently with a Minister of the Crown or government department;
- (e) “joint function” means a function exercisable jointly with a Minister of the Crown or government department.

3. For the purpose of paragraph 1(e), “relevant ancillary functions” means any functions exercisable by a public authority in relation to any of the following—

- (a) a Scottish Ministerial function,
- (b) a Welsh Ministerial function,
- (c) a Northern Ireland government function,
- (d) a secondary devolved function,

other than functions in relation to which functions are exercisable by a Minister of the Crown or government department.

4. Functions are not to be regarded as exercisable by a Minister of the Crown or government department in relation to functions of a public authority merely because—

- (a) the agreement of a Minister of the Crown or government department is required to the exercise of a function of the public authority;
- (b) a Minister of the Crown or government department must be consulted by the public authority, or by the Scottish Ministers, the Welsh Ministers, a Northern Ireland Minister or a Northern Ireland department, about the exercise of a function of the public authority; or
- (c) a Minister of the Crown or government department may exercise functions falling within paragraph 5 in relation to functions of the public authority.

5. The functions mentioned in paragraph 4 are—

- (a) functions under section 2(2) of the European Communities Act 1972(**a**);
- (b) functions by virtue of section 57(1) of the Scotland Act 1998(**b**) (Community obligations) or under section 58 of that Act (international obligations);
- (c) functions under section 26 or 27 of the Northern Ireland Act 1998(**c**) (international obligations and quotas for international obligations);

(a) 1972 c. 68.
 (b) 1998 c. 46.
 (c) 1998 c. 47.

- (d) functions by virtue of section 80(3) of, or paragraph 5 of Schedule 3 to, the Government of Wales Act 2006(a) (Community obligations) or under section 82 of that Act (international obligations etc);
- (e) functions under section 152 of that Act (intervention in case of functions relating to water etc).

PART 2

Directive definitions

1.—(1) In these Regulations—

“criteria” means distinctive technical features that are closely linked to qualitative descriptors;

“environmental status” means the overall state of the environment in marine waters, taking into account the structure, function and processes of the constituent marine ecosystems together with natural physiographic, geographic, biological, geological and climatic factors, as well as physical, acoustic and chemical conditions, including those resulting from human activities inside or outside the area concerned;

“environmental target” means a qualitative or quantitative statement on the desired condition of the different components of, and pressures and impacts on, marine waters in respect of each marine region or subregion. Environmental targets are established in accordance with Article 10;

“good environmental status” means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations, i.e.:

(a) the structure, functions and processes of the constituent marine ecosystems, together with the associated physiographic, geographic, geological and climatic factors, allow those ecosystems to function fully and to maintain their resilience to human-induced environmental change. Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance;

(b) hydro-morphological, physical and chemical properties of the ecosystems, including those properties which result from human activities in the area concerned, support the ecosystems as described above. Anthropogenic inputs of substances and energy, including noise, into the marine environment do not cause pollution effects;

Good environmental status shall be determined at the level of the marine region or subregion as referred to in Article 4, on the basis of the qualitative descriptors in Annex I. Adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status;

"marine region" means a sea region which is identified under Article 4. Marine regions and their subregions are designated for the purpose of facilitating implementation of this Directive and are determined taking into account hydrological, oceanographic and biogeographic features;

“marine strategy” means the strategy to be developed and implemented in respect of each marine region or subregion concerned as laid down in Article 5;

"marine waters" means:

(a) waters, the seabed and subsoil on the seaward side of the baseline from which the extent of territorial waters is measured extending to the outmost reach of the area where a Member State has

(a) 2006 c. 32.

and/or exercises jurisdictional rights, in accordance with the Unclos(a), with the exception of waters adjacent to the countries and territories mentioned in Annex II to the Treaty and the French Overseas Departments and Collectivities; and

(b) coastal waters as defined by Directive 2000/60/EC, their seabed and their subsoil, in so far as particular aspects of the environmental status of the marine environment are not already addressed through that Directive or other Community legislation;

“Pollution” means the direct or indirect introduction into the marine environment, as a result of human activity, of substances or energy, including human-induced marine underwater noise, which results or is likely to result in deleterious effects such as harm to living resources and marine ecosystems, including loss of biodiversity, hazards to human health, the hindering of marine activities, including fishing, tourism and recreation and other legitimate uses of the sea, impairment of the quality for use of sea water and reduction of amenities or, in general, impairment of the sustainable use of marine goods and services;

“Regional cooperation” means cooperation and coordination of activities between Member States and, whenever possible, third countries sharing the same marine region or subregion, for the purpose of developing and implementing marine strategies.

PART 3

Water Framework Directive definitions

“coastal water” means surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters;

“transitional waters” means bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

For this purpose—

“groundwater” means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“inland water” means all standing or flowing water on the surface of the land, and all groundwater on the landward side of the baseline from which the breadth of territorial waters is measured;

“surface water” means inland waters, except groundwater; transitional waters and coastal waters, except in respect of chemical status for which it shall also include territorial waters.

SCHEDULE 3

Regulation 16(1)

Identification of exceptional cases under Article 14(1)

A Member State may identify instances within its marine waters where, for any of the reasons listed under points (a) to (d), the environmental targets or good environmental status cannot be achieved in every aspect through measures taken by that Member State, or, for reasons referred to under point (e), they cannot be achieved within the time schedule concerned:

(a) action or inaction for which the Member State concerned is not responsible;

(a) United Nations Convention on the Law of the Sea of 10 December 1982 available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm.

(b) natural causes;

(c) force majeure;

(d) modifications or alterations to the physical characteristics of marine waters brought about by actions taken for reasons of overriding public interest which outweigh the negative impact on the environment, including any transboundary impact;

(e) natural conditions which do not allow timely improvement in the status of the marine waters concerned.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2008/56/EC of the European Parliament and of the Council of 17th June 2008 establishing a framework for Community action in the field of marine environmental policy^(a). These Regulations extend to the United Kingdom.

[To be inserted]

An impact assessment has been prepared and placed in the library of each House of Parliament. Copies can be obtained from the Marine Environment Policy Division, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR or from Defra's website [insert address].

A transposition note has also been prepared in relation to the Directive, and copies can be obtained from the same address.

(a) OJ L No.164, 25.06.08, p.19.