

A legal perspective on the challenges of the Water Framework Directive

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[Wednesday 10 October 2007]

Timetable for Implementation – Looking Back (1)



- **22 December 2000:** entered into force (article 22)
- **22 December 2003:** Bring into force laws, regulations & administrative provisions necessary to comply with Directive (article 24)
- **22 June 2004:**
 - Provide Commission with list of competent authorities (article 3)
 - For each district, complete analysis of characteristics of the surface and ground waters, review environmental impact of human activity (industry, farming etc) and prepare economic analysis of water use (article 5); establish register or registers of protected areas (articles 6 and 7)
- **22 December 2005:** In the absence of agreement at Community level of criteria for identifying significant and sustained upward trends in groundwater pollution and for the definition of starting points for trend reversals, Member States to establish appropriate criteria (Article 17(4)); in the absence of criteria at national level, trend reversal is to start at 75% of quality standards applicable to groundwater in existing Community legislation (Article 17, 5)

Timetable for Implementation – Looking Back (2)



- 22 December 2006: make operational monitoring programmes to ensure comprehensive view of water quality status within each river basin district (article 8); publish and consult on a timetable and work programmes for the production of river basin management plans for each river basin district (article 14);
- 22 December 2006 (contd): in the absence of Community level agreement for substances to be included on the first priority list, member states to establish environmental quality standards for all surface water affected by discharges of those substances and controls on principal sources of discharges (same obligation to apply 5 years after subsequent inclusion of a priority substance in the list, in the absence of Community agreement) (article 16)

Timetable for Implementation – Looking forward (1)



- 22 December 2007: Publish and consult on an interim overview of significant water management issues for each river basin district (article 14)
- 22 December 2008: Publish and consult on drafts of the river basin management plans (at least 6 months to be allowed for comments in all the above cases) (article 14)
- 22 December 2009: Establish programmes of measures in each river basin district in order to deliver environmental objectives (article 11); publish first river basin management plan for each river basin district, including environmental objectives for each body of surface or groundwater and summaries of programmes of measures (article 13)
- 2010: Ensure proper water pricing policies are in place (article 9)

Timetable for Implementation – Looking forward (2)



- 22 December 2012: Make operational programmes of measures in each river basin district to deliver environmental objectives (article 11); interim progress reports to be prepared on progress in implementing planned programmes of measures (article 15)
- 22 December 2015: Main environmental objectives to be met (article 4)
- 22 December 2015 and every six years thereafter: Review and update plans (with same consultation and interim reporting arrangements described above) (articles 13,14 and 15)

Operative Provisions



- Are not contained within the Water Framework Directive itself
- Daughter Directives
 - Groundwater Directive (2006/118/EC)
 - Priority Substances Directive (unpublished)
- Article 16 WFD empowers the European Commission to set out a list of priority substances.... which present significant risk to it via the aquatic environment
- 33 priority substances and 8 other pollutants
(http://ec.europa.eu/environment/water/water-framework/priority_substances.htm)

The Classification System



- Surface Water (Chemical/Ecological)
- Ground Water (Chemical/Abstraction Rate)
- Ecological Status (5 point scale, High to Bad)
- Additional requirement to identify bodies of water used for abstraction intended for human consumption
- For bodies of water where abstraction $>10\text{m}^3/\text{day}$, quality of water intended for Human Consumption Directive (80/778/EEC and 98/83/EC)
- For bodies of water where abstraction $>100\text{m}^3/\text{day}$, further measurement imposed by Annex V requirements of the WFD

River Basin Management Plans



- To be published by 22 December 2009
- This is only the beginning!
- But what is the legal status of a River Basin Management Plan in law?
- Article 17 Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 establishes the RBMP as a benchmark to inform decision makers

OFWAT and the Undertakers



- *“The Secretary of State, the Assembly, the Agency and each **public body** must, in exercising their functions so far as affecting a river basin district, have regard to the river basin management plan for that district as approved”*
- OFWAT and the statutory Undertakers are caught by the 2003 regulations “public body” definition
- Implementation therefore largely falls to the Undertakers within their “have regard” obligation

Private Bodies?



- No provisions within 2003 Regulations which create obligations on private individuals or companies
- Implementation will therefore fall the planning policy guidance system for proposed developments
- Existing developments caught by pollution prevention and central permitting system and the renewal process of PPC licences

Timing and Funding



- Costs will need to be reflected through water tariffs (but what is the effect of Article 9 at EU level?)
- Price Review and Asset Management Programme cycles
- Operational Programmes do not need to be in place until 22 December 2012 (N.B. Midway through AMP 6)
- Interim Determination of K?

Conclusion



- Time to think about the assets that will be required
- When is the direction going to come to the Undertakers?
- How will the disparity in pricing cycle be overcome?