WATER FRAMEWORK DIRECTIVE AND BREXIT

WENDY FURGUSSON
Associate
BSc (Hons) MSc CGeol CSci C.WEM FGS MCIWEM
OUTLINE

• Background to Water Framework Directive
• How fits into UK planning and permitting system
• Brexit mechanisms for change
• Implications
Water Framework Directive
WHAT IS GOOD?

**Environmental Quality Standards**
- Characteristics similar to undisturbed conditions

**Maximum ecological quality possible given constraints**

**Surface Water**
- Quality tests (GWQSs, saline, wetlands, DrWPA)
- Quantitative status tests (saline, wetlands, water balance)

**Ecology**
- When both ecological status and chemical status are at least good

**Groundwater**
- Chemical
- Quantity
- When both quantitative status and chemical status are good
EUROPEAN LEGAL SETTING

Water Framework Directive 2000/60/EC

**REPEALED**
- Surface Water Directive 75/440/EEC
- Shellfish Directive 2006/113/EC
- Freshwater Fish Directive 2006/44/EC
- Dangerous Substances Directive 2006/11/EC

**“PROTECTED AREAS”**
- Drinking Water Directive 98/83/EC
- Urban Wastewater Directive 91/271/EEC
- Nitrates Directive 91/676/EEC
- Habitats Directive 92/43/EEC
- Birds Directive 2009/147/EC
- Bathing Water Directive 2006/7/EC

**CONNECTIONS TO**
- Floods Directive 2007/60/EC
- EIA Directive 2014/52/EU
IMPLEMENTATION INTO EUROPE & THE UK

**Water Framework Directive 2000/60/EC**
- Groundwater Directive on the Protection of Groundwater Against Pollution & Deterioration
  - 2006/118/EC + 2014/80/EU
- Environmental Quality Standards Directive
  - 2008/105/EC
- Priority Substances in the Water Environment Directive
  - 2013/39/EU

**The Water Environment (WFD) (England and Wales) Regulations**
- Implement requirements of WFD
- Set objectives
- Reflects changes to WFD due to EQS and Priority Substances Directives

**The Environmental Permitting (England and Wales) (Amendment) Regulations**
- Revoked Groundwater Regulations 2009
- Empowers EA to take measures
- Re-transposes elements of WFD that can be implemented through permitting
If activity could affect a water body that is at high status or high status morphology.

Or specific types of work:
• Channel modifications
• Structure impoundment
• Hydropower schemes
• Sediment management
• Groundwater activities

Planning Process
TCPA/HRO/TWAO/NSIP

Planning Process
TCPA/HRO/TWAO/NSIP

Nitrate offsetting

WFD Assessment

Environmental permits
(bespoke flood risk activities)

EIA

Design

CEMP

Catchment partnerships
Habitat restoration
Agricultural schemes
Flood risk management
## EXIT FROM THE EU: EXIT OPTION IMPLICATIONS

### Norway Model
- UK subject to vast majority of EU env’l laws
- Subject to similar non-UK jurisdiction

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<th>WFD</th>
<th>Drinking Water Directive</th>
<th>Urban Waste water Directive</th>
<th>EU enforcement of water directives</th>
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<td>Yes</td>
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EXIT FROM THE EU: LEGISLATIVE SETTING (DEAL)

Political Declaration
Develop into formal agreement

Draft Withdrawal Agreement
Allows WA to be agreed and ratified as treaty between UK and EU

Full implementation early 2021*

* Subject to extension agreement

EU-UK

UK
EU-UK AGREEMENTS

WITHDRAWAL AGREEMENT

- Non-regression of environmental protection relating to:
  - Protection and preservation of the aquatic and marine environments
  - EIA, nature and biodiversity conservation
- Recognises environmental principles such as polluter pays, preventative action to avoid damage, sustainable development
- Monitoring/enforcement of environmental laws – creation of new body
- Creates a new category of domestic law for the United Kingdom: “retained EU law”

POLITICAL DECLARATION

- Gives UK autonomy about how regulates environmental matters
EXIT FROM THE EU: LEGISLATIVE SETTING (DEAL)

Political Declaration

Draft Withdrawal Agreement

Draft Environment (Principles and Governance) Bill 2018

European Union (Withdrawal) Act 2018

EU-UK

Develop into formal agreement

Allows WA to be agreed and ratified as treaty between UK and EU

BREXIT DATE

Full implementation Dec 2020*

25 Year Environment Plan

UK

2043

* Unless extension agreed
UK LEGISLATIVE MEASURES

EUROPEAN UNION (WITHDRAWAL) ACT 2018
- Converts EU legislation into UK law on exit day
- Requires environmental principles to be set out in UK legislation
- Requires creation of independent oversight body

DRAFT ENVIRONMENT (PRINCIPLES AND GOVERNANCE) BILL 2018/ACT 2019
- Will be enacted into law in 2019
- Transposes environmental principles from WA into UK law
- Creates Office for Environmental Protection (OEP)
- Makes the 25 Year Environmental Plan statutory
25 YEAR ENVIRONMENT PLAN

Sets framework of strategic goals.

Clean and plentiful water:

- “at least three quarters of our waters to be close to their natural state as soon as is practicable by”:
  - Reducing the damaging abstraction
  - Reaching or exceeding objectives
  - Improving bathing waters

Network of land, water and sea

- Restoring 75% of our 1M hectares of terrestrial and freshwater protected sites to favourable condition
- Reversing the loss of marine biodiversity and, where practicable, restoring it
- Enforcing regulations for new farming rules for water
EXIT FROM THE EU: LEGISLATIVE SETTING (DEAL)

**Political Declaration**

- Develop into formal agreement

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**EU-UK**

**Develop into formal agreement**

**EU**

- European Union (Withdrawal) Act 2018

**25 Year Environment Plan**

- 25 Year Environment Plan 2043

**Draft Environment (Principles and Governance) Bill 2018**

**BREXIT DATE**

- The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019
- The Environment (Amendment etc.) (EU Exit) Regulations 2019
- The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019

**Environment (Principles and Governance) Act 2019**

**2018**

- EU

**UK**

- Full implementation Dec 2020*

*Unless extension agreed
EXIT FROM THE EU: NO DEAL

- Business as usual
- No transition period
- Initially no judicial oversight
- High risk due to:
  - Lack of historical drive to protect water environment
  - Poor progress rates with respect to WFD compliance
  - Long term issues with nitrates in groundwater
  - 75% target ("close to natural state")

"Current legislation would be amended to:

- correct references to EU legislation
- transfer powers from EU institutions to domestic institutions; and
- ensure we meet international agreement obligations"

Source: Friends of the Earth
IMPLICATIONS FOR THE WFD (SOME FORM OF DEAL!)

POSITIVES/OPPORTUNITIES

- WFD fully transposed into UK law and thus will be remain in place following Brexit
- International convention obligations
- Trade deal obligations
- Cross boundary areas – difficult to slack off
- Focus after Brexit
- Environmental organisation involvement
- Opportunity to measure compliance in more practical way
- 25 Year Plan shows more integrated approach
- Active environmental lobby
IMPLICATIONS FOR THE WFD

THREATS

• EU water legislation “Fitness Check“:
  • TP - UK will have to abide by any changes made to WFD
  • Includes the ‘2027 question’

• Tightening of EA, Defra etc funding

• Annual funding cycle for catchment based approach

• If leave with no deal focus on trade agreements and economy lower priority of environment

• OEP remit currently unclear and appears to “lack teeth”
  • No legal requirement on public bodies to comply with the decisions of the OEP
  • OEP board appointed and budget set by the Environment Secretary, and not report directly to parliament
  • Unclear how links with planning and marine systems

• Consistent non-regression across the UK would require common environmental framework
CONCLUSIONS

• WFD fully transposed into UK law and thus will be remain in place following Brexit
• Short term policy alignment
• Environment Agency unlikely to want to lower standards
• Likely to be “business as usual” for us

But

• Other pressures may try to exert change
• Government aspirations are unclear
• OEP abilities to ensure compliance are unsure
• Devolution may result in differing levels of regulation across the UK
THANK YOU