

The Surface Waters (Shellfish) Directions 2010

2010 No.7

These Directions revoke the Surface Waters (Shellfish) Directions 1997. The Secretary of State, and the Welsh Ministers, with the agreement of the Secretary of State to the extent that there is any effect in England or those parts of Wales which are within the catchment areas of the rivers Dee, Wye and Severn, in exercise of the powers conferred by section 40 of the Environment Act 1995(a) and now vested in them(b), and having consulted the Environment Agency as required by section 40(6) of that Act, concurrently give the Environment Agency the following Directions:

Citation, commencement, revocation and interpretation

1.—(1) These Directions may be cited as the Surface Waters (Shellfish) Directions 2010 and come into force on 19 February 2010.

(2) These Directions revoke the Surface Waters (Shellfish) Directions 1997 .

(3) Expressions used in these Directions which are also used in Directive 2006/113/EC of the European Parliament and of the Council (the quality of shellfish waters)(c) have the same meaning as in that Directive.

(4) References in these Directions to the Surface Waters (Shellfish) (Classification) Regulations 1997 are to those Regulations as amended(d).

Guideline values and no deterioration principle

2.—(1) In discharging its pollution control functions in relation to any waters classified under the Surface Waters (Shellfish) (Classification) Regulations 1997(e), the Environment Agency must—

- (a) endeavour to observe the guideline values and comments in the Schedule to these Directions; and
- (b) take into account the principle that implementation of measures taken pursuant to Directive 2006/113/EC may on no account lead, either directly or indirectly, to increased pollution of controlled waters which are coastal or brackish waters for the purposes of that Directive.

(2) In this paragraph, “pollution control functions” has the same meaning as in section 5 of the Environment Act 1995.

Compliance with standards

3.—(1) Subject to sub-paragraphs (2) and (3), any waters classified under the Surface Waters (Shellfish) (Classification) Regulations 1997, in relation to any period of twelve months must be

(a) 1995 c.25.

(b) By the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1, the functions under section 40 of the Environment Act 1995 are exercisable by the Secretary of State and the National Assembly for Wales concurrently in relation to the Environment Agency as a cross border body. The functions of the National Assembly for Wales are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32). The Welsh Ministers may exercise these functions only with the agreement of the Secretary of State where such exercise would have an effect in England or where the exercise of the functions relates to matters including water resources management, control of pollution of water resources and rivers and watercourses, in those parts of Wales which are within the catchment areas of the rivers Dee, Wye or Severn.

(c) OJ No L376, 27.12.2006, p 14.

(d) S.I. 1997/1332 as amended by S.I. 2009/1266.

(e) S.I. 1997/1332.

treated as complying with any standard for any parameter adopted as a result of paragraph 2 if in that period in relation to those waters—

- (a) in the case of the parameter for organohalogenated substances or metals, 100 per cent of the samples taken for that parameter in accordance with paragraph 4 below comply with the standard;
- (b) in the case of the parameter for salinity or dissolved oxygen, 95 per cent of the samples taken for that parameter in accordance with paragraph 4 below comply with the standard;
- (c) in the case of any other parameter, 75 per cent of the samples taken for that parameter in accordance with paragraph 4 below comply with the standard.

(2) Where in accordance with paragraph 4(4) the frequency of sampling for any parameter is reduced in relation to any waters classified under the Surface Waters (Shellfish) (Classification) Regulations 1997, 100 per cent of samples taken for that parameter in accordance with paragraph 4 in relation to those waters must comply if the waters are to be treated as meeting the standard adopted as a result of paragraph 2.

(3) Non-compliant samples are to be ignored for the purposes of sub-paragraphs (1) and (2) if they are the result of a disaster.

Sampling and analysis

4.—(1) The Environment Agency must ensure that waters classified under the Surface Waters (Shellfish) (Classification) Regulations 1997 are sampled in relation to any standards adopted as a result of paragraph 2 and samples are analysed in accordance with the following provisions of this paragraph.

(2) Samples in relation to any waters classified under the Surface Waters (Shellfish) (Classification) Regulations 1997 must always be taken at the same sampling point and at the same depth as samples taken in relation to those waters under those Regulations.

(3) Subject to sub-paragraphs (4) and (5), sampling for any parameter must be carried out at least at the minimum frequency specified in the Schedule to these Directions in relation to that parameter.

(4) Where records show that the quality of any waters classified under the Surface Waters (Shellfish) (Classification) Regulations 1997 is appreciably higher for any parameter than the minimum required by those Regulations and the standards adopted as a result of paragraph 2 of these Directions, the Environment Agency may reduce the sampling frequency for that parameter or, if there is no pollution and no risk of deterioration of its quality, it may dispense with sampling for that parameter altogether.

(5) Where sampling shows that the standards adopted as a result of paragraph 2 are not being met, the Environment Agency must establish whether this is the result of chance, a natural phenomenon or pollution and must adopt appropriate measures.

(6) Samples for any parameter must be analysed using the reference methods of analysis specified in the Schedule to these Directions in relation to that parameter or methods which are at least as reliable as the reference methods.

Derogations

5. The Environment Agency may derogate from the requirements of these Directions in the event of exceptional weather or geographical conditions.

Programmes

6. The Environment Agency must ensure that programmes are established for all waters classified under the Surface Waters (Shellfish) (Classification) Regulations 1997 in order to reduce pollution and to ensure that—

- (a) those waters conform, within 6 years following designation, to the criteria set out in Schedule 1 to those Regulations; and

- (b) the Agency's pollution control functions are discharged in accordance with paragraph 2(1)(a).

Registers

7.—(1) The Environment Agency must maintain on its registers under section 190(1) of the Water Resources Act 1991 (pollution control register) full details of—

- (a) sampling points fixed under regulation 4(3) of the Surface Waters (Shellfish) (Classification) Regulations 1997;
- (b) results of analysis of samples taken under those Regulations and these Directions;
- (c) standards adopted by the Agency as a result of paragraph 2 in relation to any waters classified under those Regulations;
- (d) derogations under regulation 5 of those Regulations or under paragraph 5 of these Directions; and
- (e) programmes under paragraph 6.

(2) The Environment Agency must make information entered on its registers under sub-paragraph (1), and facilities for obtaining copies of entries, available to members of the public at the same times, in the same manner and on the same terms as information and facilities provided by virtue of section 190 of the Water Resources Act 1991.

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for Environment, Food and Rural Affairs

18 February 2010

Claire Bennett

A Senior Civil Servant, for and on behalf of the Welsh Ministers

18 February 2010

SCHEDULE

Paragraphs 2 and 4

GUIDELINE VALUES IN RELATION TO THE QUALITY OF SHELLFISH WATERS

No. in Annex to 2006/113/EC	Parameter	Units	Guideline values and comments	Reference methods of analysis	Minimum sampling and measuring frequency
2	Temperature	°C	A discharge affecting shellfish waters must not cause the temperature of the waters to exceed by more than 2°C the temperature of waters not so affected	Thermometry Measured <i>in situ</i> at the time of sampling	Quarterly
5	Salinity	‰	12 to 38 ‰	Conductimetry	Monthly
6	Dissolved oxygen	Saturation %	≥80 %	Winkler's method Electrochemical method	Monthly, with a minimum of one sample representative of low oxygen conditions on the day of sampling. However, where major daily variations are suspected, a minimum of two samples in one day must be taken

No. in Annex to 2006/113/EC	Parameter	Units	Guideline values and comments	Reference methods of analysis	Minimum sampling and measuring frequency
8	Organohalogenated substances		The concentration of each substance in shellfish flesh must be so limited that it contributes, in accordance with Article 1 of Directive 2006/113/EC, to the high quality of shellfish products	Gas chromatography after extraction with suitable solvents and purification	Half-yearly
9	Metals Silver Ag Arsenic As Cadmium Cd Chromium Cr Copper Cu Mercury Hg Nickel Ni Lead Pb Zinc Zn	mg/l	The concentration of each substance in the shellfish flesh must be so limited that it contributes in accordance with Article 1 of Directive 2006/113/EC, to the high quality of shellfish products	Spectrometry of atomic absorption preceded, where appropriate, by concentration and/or extraction	Half-yearly
10	Faecal coliforms	/100ml	≤300 in the shellfish flesh and intervalvular liquid	Method of dilution with fermentation in liquid substrates in at least 3 tubes in 3 dilutions. Subculturing of the positive tubes on a confirmation medium. Count according to MPN (most probable number). Incubation temperature 44 °C ± 0.5 °C	Quarterly

