



Levelling-up and Regeneration Act 2023

2023 CHAPTER 55

PART 7

NUTRIENT POLLUTION STANDARDS

168 Nutrient pollution standards to apply to certain sewage disposal works

(1) After section 96A of the Water Industry Act 1991 insert—

“96B Nutrient pollution standards to apply to certain sewage disposal works

- (1) A sewerage undertaker whose area is wholly or mainly in England must—
- (a) in the case of each nitrogen significant plant comprised in its sewerage system—
 - (i) secure that, by the upgrade date, the plant will be able to meet the nitrogen nutrient pollution standard, and
 - (ii) on and after the upgrade date, secure that the plant meets that standard;
 - (b) in the case of each phosphorus significant plant comprised in its sewerage system—
 - (i) secure that, by the upgrade date, the plant will be able to meet the phosphorus nutrient pollution standard, and
 - (ii) on and after the upgrade date, secure that the plant meets that standard.
- (2) In carrying out the duty under subsection (1), a sewerage undertaker must consider whether nature-based solutions, technologies and facilities relating to sewerage and water could be used to meet the standard.
- (3) “Nitrogen significant plant” means a plant in England that—
- (a) discharges treated effluent into a nitrogen sensitive catchment area, and

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- (b) is not an exempt plant in relation to the nitrogen nutrient pollution standard.
- (4) “Phosphorus significant plant” means a plant in England that—
 - (a) discharges treated effluent into a phosphorus sensitive catchment area, and
 - (b) is not an exempt plant in relation to the phosphorus nutrient pollution standard.

96C Sensitive catchment areas

- (1) Where the Secretary of State considers that a habitats site that is wholly or partly in England is in an unfavourable condition by virtue of pollution from nutrients in water comprising nitrogen or compounds of nitrogen, the Secretary of State may designate the catchment area for the habitats site as a nitrogen sensitive catchment area.
- (2) Where the Secretary of State considers that a habitats site that is wholly or partly in England is in an unfavourable condition by virtue of pollution from nutrients in water comprising phosphorus or compounds of phosphorus, the Secretary of State may designate the catchment area for the habitats site as a phosphorus sensitive catchment area.
- (3) In determining—
 - (a) whether a habitats site is in an unfavourable condition by virtue of pollution from nutrients comprising nitrogen, phosphorus or compounds of nitrogen or phosphorus,
 - (b) the catchment area for a habitats site, or
 - (c) whether to exercise the power in subsection (4)(e),
 the Secretary of State may take into account, in particular, advice from, or guidance published by, Natural England, the Environment Agency or the Joint Nature Conservation Committee.
- (4) A designation under subsection (1) or (2)—
 - (a) must be in writing,
 - (b) must be published as soon as practicable after being made,
 - (c) takes effect—
 - (i) on the day specified in the designation, or
 - (ii) if none is specified, on the day on which it is made,
 (the “designation date”),
 - (d) if it takes effect after the end of the initial period, must specify the upgrade date (see section 96E(1)(b)), and
 - (e) may specify the concentration that applies to a plant (which discharges into the catchment area) in relation to a nutrient pollution standard instead of the standard concentration.
- (5) A date specified under subsection (4)(d) as the upgrade date must be at least 7 years after the designation date.
- (6) Before specifying a concentration under subsection (4)(e), the Secretary of State must consult the Environment Agency.

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- (7) A concentration specified under subsection (4)(e) ceases to have effect if, after the day on which the designation is made, the plant becomes an exempt plant.
- (8) A designation under this section may not be revoked; and it is immaterial for the purposes of the continued designation of an area whether subsection (1) or (2) continues to be satisfied in relation to it.
- (9) In this section “catchment area”, in relation to a habitats site, means the area where water, if released, would drain into the site.

96D Exempt sewage disposal works

- (1) A plant is exempt in relation to a nutrient pollution standard if—
 - (a) it has a capacity of less than a population equivalent of 2000 when the designation of the associated catchment area takes effect,
 - (b) it has been designated by the Secretary of State as exempt in relation to the standard, or
 - (c) it is exempt in relation to the standard under regulations under subsection (8).

This is subject to subsection (2).

- (2) The Secretary of State may designate a plant as not being exempt in relation to a nutrient pollution standard, unless—
 - (a) the plant has a capacity of less than a population equivalent of 250, and
 - (b) the designation takes effect after the designation of the associated catchment area takes effect.
- (3) A designation under subsection (1)(b) or (2)—
 - (a) must be in writing,
 - (b) must be published as soon as practicable after being made, and
 - (c) takes effect—
 - (i) on the day specified in the designation, or
 - (ii) if none is specified, on the day on which it is made.
- (4) A designation under subsection (2) that takes effect after the designation of the associated catchment area takes effect must specify the upgrade date (see section 96E(2)(a)).

The upgrade date must be at least 7 years after the designation under subsection (2) takes effect.
- (5) A designation under subsection (2) may specify the concentration that applies to a plant in relation to a nutrient pollution standard instead of the standard concentration.
- (6) Before specifying a concentration under subsection (5), the Secretary of State must consult the Environment Agency.
- (7) A concentration specified under subsection (5) ceases to have effect if, after the day on which the designation is made, the plant again becomes an exempt plant.

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- (8) The Secretary of State may by regulations specify plants or descriptions of plant that are to be exempt in relation to a nutrient pollution standard.
- (9) Subsections (10) and (11) apply where a plant that is exempt under regulations under subsection (8) can, by virtue of the regulations, cease to be exempt.
- (10) The regulations must specify or provide for determining the upgrade date (see section 96E(2)(b)) in relation to any plant that ceases, by virtue of the regulations, to be an exempt plant in relation to a standard after the designation of the associated catchment area takes effect.
The upgrade date must be at least 7 years after the plant ceases to be exempt in relation to the standard.
- (11) The regulations may provide for the Secretary of State to specify the concentration that applies to a plant that ceases, by virtue of the regulations, to be an exempt plant in relation to a nutrient pollution standard instead of the standard concentration; and, if such provision is made, the regulations must—
 - (a) require that the Secretary of State consult the Environment Agency before specifying a concentration;
 - (b) provide for any specified concentration to cease to have effect if, after the day on which the plant ceases to be an exempt plant, the plant again becomes an exempt plant.
- (12) A designation under subsection (2) in relation to a plant and a nutrient pollution standard is of no effect if the plant ceases, by virtue of regulations under subsection (8), to be exempt in relation to the standard before, or at the same time as, the designation would otherwise take effect.
- (13) In this section “population equivalent” has the meaning given by regulation 2(1) of the Urban Waste Water Treatment (England and Wales) Regulations 1994 (S.I. 1994/2841).
- (14) References in this section to the designation of an associated catchment area are to its designation as a sensitive catchment area.

96E Upgrade date

- (1) The upgrade date, in relation to a nutrient significant plant, is, unless subsection (2) or (3) applies—
 - (a) 1 April 2030, if the designation of the associated catchment area takes effect during the initial period;
 - (b) the date specified under section 96C(4)(d), if the designation of the associated catchment area takes effect after the end of the initial period.
- (2) But, if the plant becomes a nutrient significant plant after the designation of the associated catchment area takes effect, the upgrade date is—
 - (a) the date specified under section 96D(4), where it becomes a nutrient significant plant by virtue of a designation under section 96D(2);
 - (b) the date specified by or determined under provision made by virtue of section 96D(10), where it becomes a nutrient significant plant on ceasing, by virtue of regulations under section 96D(8), to be exempt.

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- (3) Where the associated catchment area has ceased to be a catchment permitting area and a date has been specified under section 96H(4)(c), that date is the upgrade date.
- (4) “The initial period” means the period of 3 months beginning with the date on which the Levelling-up and Regeneration Act 2023 is passed.
- (5) References in this section to the designation of an associated catchment area are to its designation as a sensitive catchment area.

96F Nutrient pollution standards

- (1) A nitrogen significant plant meets the nitrogen nutrient pollution standard if—
 - (a) where the associated catchment area is not a catchment permitting area (see section 96G), the concentration of total nitrogen in treated effluent that the plant discharges is not more than—
 - (i) 10 mg/l, or
 - (ii) where a different concentration applies to the plant under section 96C(4)(e) or 96D(5) or by virtue of regulations made under section 96D(11), that concentration;
 - (b) where the associated catchment area is a catchment permitting area, the sewerage undertaker is complying with any condition in the environmental permit for the plant imposed in pursuance of section 96G(3)(b).
- (2) A phosphorus significant plant meets the phosphorus nutrient pollution standard if—
 - (a) where the associated catchment area is not a catchment permitting area, the concentration of total phosphorus in treated effluent that the plant discharges is not more than—
 - (i) 0.25 mg/l, or
 - (ii) where a different concentration applies to the plant under section 96C(4)(e) or 96D(5) or by virtue of regulations made under section 96D(11), that concentration;
 - (b) where the associated catchment area is a catchment permitting area, the sewerage undertaker is complying with any condition in the environmental permit for the plant imposed in pursuance of section 96G(3)(b).
- (3) “Treated effluent”, in relation to a plant, means any effluent discharged by the plant, other than anything discharged—
 - (a) from a storm overflow, or
 - (b) by an emergency discharge.
- (4) For the purposes of subsection (3), in relation to a plant—
 - (a) “storm overflow” means any structure or apparatus comprised in the plant which, when the capacity of relevant parts of the sewerage system is exceeded, relieves them by discharging the excess contents into inland waters, underground strata or the sea, where—
 - “relevant parts of the sewerage system” means—
 - (a) storage tanks at the plant, and

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- (b) other parts of the sewerage system downstream of the plant;

“the sewerage system” means the undertaker’s sewerage system of which the plant forms part;
- (b) “emergency discharge” means a discharge in circumstances where the plant’s normal treatment process has failed because of—
 - (i) electrical power failure, or
 - (ii) mechanical breakdown of duty and standby pumps.
- (5) Regulations made by the Secretary of State may specify how the concentration of total nitrogen or concentration of total phosphorus in treated effluent is to be determined.
- (6) Regulations under subsection (5) may, in particular—
 - (a) make provision for requiring regular sampling of the treated effluent that a plant discharges to ascertain the concentration of total nitrogen or concentration of total phosphorus;
 - (b) make provision for regarding a nutrient pollution standard as being met by a plant if, for example—
 - (i) it is met, with at least the frequency specified in the regulations, in samples taken in accordance with the regulations, or
 - (ii) the average concentration, calculated in accordance with the regulations, of total nitrogen or of total phosphorus in samples taken in accordance with the regulations would meet the standard;
 - (c) make provision for determining generally, or in a particular case, whether anything is, or is not, to be regarded as treated effluent discharged by a plant;
 - (d) make provision in relation to section 96G, including—
 - (i) the determination of compliance with conditions in environmental permits imposed in pursuance of section 96G(3)(b);
 - (ii) in connection with any kind of plant;
 - (e) confer any function on the Secretary of State, the Authority, the Environment Agency, statutory undertakers or any other person;
 - (f) make different provision for different purposes or different areas (including different plants within an area).

96G Nutrient pollution standards determined through environmental permitting

- (1) The Secretary of State may designate a sensitive catchment area as a catchment permitting area.
- (2) In determining whether to make a designation under subsection (1) or to revoke such a designation under section 96H(3)(c), the Secretary of State may take into account, in particular, advice from, or guidance published by, the Environment Agency or Natural England.

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- (3) Where the Secretary of State makes a designation under subsection (1), the Environment Agency must—
 - (a) review the environmental permits for the plants that discharge treated effluent into the catchment permitting area that are—
 - (i) nutrient significant plants, and
 - (ii) such other plants that the Environment Agency considers appropriate (including such plants within an area that may be determined by the Environment Agency), and
 - (b) impose conditions on those permits relating to nutrients in treated effluent discharged by those plants—
 - (i) under Chapter 3 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016, and
 - (ii) for the relevant purpose.
- (4) The “relevant purpose” is ensuring that, on and after the applicable date, the overall effect on the habitats site associated with the catchment permitting area of nutrients in treated effluent discharged by all the plants that discharge treated effluent into the catchment permitting area is less significant or the same as the overall effect on the site of nutrients in treated effluent that would be discharged by those plants if—
 - (a) the standard concentration applied to nutrient significant plants, and
 - (b) the nutrient significant plants were (on that basis) meeting the nutrient pollution standard on and after the applicable date.
- (5) For that purpose, a condition imposed on an environmental permit in pursuance of subsection (3)(b) may, in particular—
 - (a) require, or have the effect of requiring, that the concentration of nutrients in treated effluent discharged by a plant is higher or lower than, or equal to, the standard concentration;
 - (b) relate to any or all of the plants mentioned in subsection (3)(a), including the concentration of nutrients in treated effluent discharged by those plants.
- (6) In subsection (4)—
 - (a) the “applicable date” means—
 - (i) where the designation under section 96C(1) or (2) of the area that is the catchment permitting area takes effect during the initial period, 1 April 2030, or
 - (ii) where that designation takes effect after the initial period, the date specified under section 96C(4)(d) in that designation;
 - (b) a habitats site is “associated” with a catchment permitting area if water released into the area would drain into the site.
- (7) The duty in subsection (3) applies in relation to the grant of an environmental permit for a plant that discharges (or will discharge) treated effluent into the catchment permitting area as if—
 - (a) paragraph (a) were omitted, and
 - (b) in paragraph (b)—
 - (i) for “those permits” there were substituted “the permit”;
 - (ii) for “those plants” there were substituted “the plant”;

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(iii) for “Chapter 3” there were substituted “Chapter 2”.

- (8) It is for the Environment Agency to determine the overall effect on a habitats site of nutrients in treated effluent.
- (9) Regulations made by the Secretary of State may specify how such determinations are to be made.
- (10) In this section “nutrients”, in relation to an area designated under—
 - (a) section 96C(1), means nutrients in water comprising nitrogen or compounds of nitrogen;
 - (b) section 96C(2), means nutrients in water comprising phosphorus or compounds of phosphorus.

96H Section 96G: procedure and revocations

- (1) A designation under section 96G(1) or revocation of such a designation under subsection (3)(c)—
 - (a) must be in writing,
 - (b) must be published as soon as practicable after being made, and
 - (c) takes effect in accordance with subsection (3) or (4) (as appropriate).
- (2) A designation under section 96G(1) may be made at the same time, or at any time after the time, that the designation under section 96C(1) or (2) of the area as a sensitive catchment area is made.
- (3) A designation under section 96G(1)—
 - (a) if made before the time that the designation under section 96C(1) or (2) takes effect, takes effect at the same time as that designation;
 - (b) if made after the time that the designation under section 96C(1) or (2) takes effect, takes effect on the day specified in it;
 - (c) may be revoked.
- (4) A revocation under subsection (3)(c)—
 - (a) takes effect—
 - (i) on the day specified in the revocation, or
 - (ii) if none is specified, on the day on which it is made;
 - (b) has no effect in relation to the designation of the area under section 96C(1) or (2);
 - (c) may specify the upgrade date that is to apply in relation to nutrient significant plants (see section 96E(3)).
- (5) In determining whether an upgrade date should be specified under subsection (4)(c), the Secretary of State may take into account, in particular, advice from, or guidance published by, Natural England or the Environment Agency.

96I Information about catchment areas and nutrient significant plants

- (1) The Secretary of State must maintain and publish online a map showing—
 - (a) all the nitrogen sensitive catchment areas, and
 - (b) all the phosphorus sensitive catchment areas.

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- (2) As soon as practicable after making a designation under section 96C (sensitive catchment areas), the Secretary of State must publish the revised map online.
- (3) The Secretary of State must maintain and publish online a document listing—
 - (a) all plants that are or have been—
 - (i) nitrogen significant plants, or
 - (ii) phosphorus significant plants;
 - (b) in relation to each plant listed under paragraph (a)—
 - (i) the upgrade date that applies for the time being;
 - (ii) if the plant becomes, or ceases to be, an exempt plant in relation to the related nutrient pollution standard, that fact and the date on which it occurred;
 - (iii) where the associated catchment area for a plant is not a catchment permitting area, the figure specified in section 96F(1)(a)(i) or (2)(a)(i), under section 96C(4)(e) or 96D(5) or by virtue of regulations made under section 96D(11) (total nitrogen concentration or total phosphorus concentration) that applies to the plant;
 - (iv) where a direction relating to the plant and the related nutrient pollution standard is made or revoked under regulation 85C or 110B of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (disapplication of assumption that the plant will meet the standard on and after the upgrade date or applicable date), that fact and the date on which the direction or revocation takes effect;
 - (c) all catchment permitting areas.
- (4) Where any change occurs in the information required to be listed, the Secretary of State must, as soon as practicable, publish a revised document online.

96J Section 96B: enforcement and interaction with other provisions

- (1) The duty of a sewerage undertaker under section 96B is enforceable under section 18—
 - (a) by the Secretary of State, or
 - (b) with the consent of, or in accordance with a general authorisation given by, the Secretary of State, by the Authority.
- (2) The Environment Agency must exercise its functions (whether under environmental permitting regulations or otherwise) so as to secure compliance by sewerage undertakers with the duty imposed by section 96B; those functions include, in particular, functions of determining—
 - (a) whether to grant or vary any permit under environmental permitting regulations, or
 - (b) any conditions to be included in any such permit.
- (3) The Environment Agency must exercise its functions under the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 2015/810) so as to secure compliance by sewerage undertakers with the duties imposed by those regulations to prevent and remediate

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environmental damage (within the meaning of those regulations) that is treated as occurring by regulation 9A of those regulations (nutrient significant sewage disposal works: environmental damage).

- (4) Nothing in section 96B or 96G or this section affects—
- (a) any other obligation of a sewerage undertaker relating to nutrient levels in treated effluent of a plant, or any remedy available in respect of contravention of any such obligation;
 - (b) any power to impose an obligation relating to nutrient levels in treated effluent of a plant (including by means of a condition included in a permit under environmental permitting regulations); and, in particular, nothing in those sections or this section is to be taken to preclude any such power being exercised so as to require a lower concentration of total nitrogen or lower concentration of total phosphorus in treated effluent of a plant than section 96B requires.

96K Powers to amend sections 96D and 96F

- (1) The Secretary of State may by regulations amend any plant capacity for the time being specified in section 96D(1)(a) or (2)(a).
- (2) Regulations under subsection (1) may not have effect in relation to an area that is a sensitive catchment area when the regulations are made.
- (3) Subject to that, regulations under subsection (1)—
 - (a) may, in particular, amend section 96D so that different plant capacities are specified in relation to the nitrogen nutrient pollution standard and the phosphorus nutrient pollution standard;
 - (b) may, where different plant capacities will apply for different purposes or different areas as a result of regulations under subsection (1), amend section 96D so as to specify those capacities and the purposes or areas for which they apply.
- (4) The Secretary of State may by regulations—
 - (a) amend section 96F(1)(a)(i) so as to substitute a different concentration of total nitrogen;
 - (b) amend section 96F(2)(a)(i) so as to substitute a different concentration of total phosphorus.
- (5) Regulations under subsection (4) may not have effect in relation to an area that is a sensitive catchment area when the regulations are made.
- (6) Where, as a result of the regulations, different concentrations will apply for different purposes or different areas (including different plants within an area), the regulations may amend section 96F(1)(a)(i) or (2)(a)(i) to specify those concentrations and the purposes or areas for (or plants within an area to) which they apply.
- (7) A statutory instrument containing regulations under subsection (1) or (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (8) If a draft of a statutory instrument containing regulations under subsection (1) or (4) would, apart from this subsection, be treated for the purposes of the

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standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

96L Sections 96B to 96K, 96M and 96N: interpretation

- (1) This section applies for the purposes of sections 96B to 96K, 96M and 96N.
- (2) In those sections (and this section)—
- “associated catchment area”—
 - (a) in relation to a plant that is a nitrogen significant plant or is exempt in relation to the nitrogen nutrient pollution standard, means the nitrogen sensitive catchment area into which it discharges;
 - (b) in relation to a plant that is a phosphorus significant plant or is exempt in relation to the phosphorus nutrient pollution standard, means the phosphorus sensitive catchment area into which it discharges;
 - “catchment permitting area” means a sensitive catchment area designated under section 96G(1) for the time being;
 - “environmental permit” means a permit granted under Chapter 2 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016; and a reference to a condition imposed on such a permit is to be construed in accordance with those regulations;
 - “environmental permitting regulations” means—
 - (a) the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) (as they have effect from time to time), or
 - (b) any other provision made after the Levelling-up and Regeneration Act 2023 is passed that is, or could have been, made under section 2 of the Pollution Prevention and Control Act 1999;
 - “exempt plant”, in relation to a nutrient pollution standard, has the meaning given by section 96D;
 - “habitats site” means a European site within the meaning of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (see regulation 8);
 - “the initial period” has the meaning given by section 96E(4);
 - “nitrogen nutrient pollution standard”, in relation to references to a nitrogen significant plant meeting the standard, has the meaning given by section 96F(1);
 - “nitrogen sensitive catchment area” means an area designated under section 96C(1);
 - “nitrogen significant plant” has the meaning given by section 96B(3);
 - “nutrient pollution standard” means the nitrogen nutrient pollution standard or the phosphorus nutrient pollution standard;
 - “nutrient significant plant” means—
 - (a) a nitrogen significant plant, or
 - (b) a phosphorus significant plant;

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“phosphorus nutrient pollution standard”, in relation to references to a phosphorus significant plant meeting the standard, has the meaning given by section 96F(2);

“phosphorus sensitive catchment area” means an area designated under section 96C(2);

“phosphorus significant plant” has the meaning given by section 96B(4);

“plant” means a sewage disposal works;

“related nutrient pollution standard”, in relation to a sensitive catchment area or a plant, means—

- (a) if (or so far as) the area is a nitrogen sensitive catchment area or the plant is a nitrogen significant plant, the nitrogen nutrient pollution standard;
- (b) if (or so far as) the area is a phosphorus sensitive catchment area or the plant is a phosphorus significant plant, the phosphorus nutrient pollution standard;

“sensitive catchment area” means—

- (a) a nitrogen sensitive catchment area, or
- (b) a phosphorus sensitive catchment area;

“standard concentration”, in relation to the nutrient pollution standard that applies to a plant, means the concentration specified in section 96F(1)(a)(i) or (2)(a)(i) on the date that the designation of the associated catchment area as a sensitive catchment area takes effect;

“treated effluent” has the meaning given by section 96F(3);

“upgrade date”, in relation to a plant that discharges into a sensitive catchment area, has the meaning given by section 96E.

- (3) References to a plant discharging into a sensitive catchment area are to the plant discharging treated effluent into the area.
- (4) References to the sewerage system of a sewerage undertaker have the meaning given by section 17BA(7).

96M New and altered plants: modifications

- (1) The Secretary of State may by regulations provide for sections 96B to 96L to apply with prescribed modifications in relation to any plant that, after the Levelling-up and Regeneration Act 2023 is passed—
 - (a) operates for the first time, or
 - (b) is altered.

This is subject to subsection (3).

- (2) Regulations under this section may in particular provide for sections 96C(5) and 96D(4) and (10) to apply as if they specified periods other than 7 years.
- (3) But regulations under this section may not modify section 96F(1) or (2) or section 96G(4) so as to apply a higher concentration of total nitrogen or higher concentration of total phosphorus than would otherwise apply.

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96N Setting and enforcing nutrient pollution standards

- (1) The Secretary of State may by regulations make provision about the setting and enforcing of nutrient pollution standards.
- (2) The Secretary of State may only exercise the power under subsection (1) if the Secretary of State considers that the provisions about the setting and enforcing of nutrient pollution standards will be at least as effective as the provision already in force under sections 96B to 96M, the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 810/2015) or this section as a result of the exercise of this power, including in relation to—
 - (a) overall environmental protection (within the meaning of section 45 of the Environment Act 2021),
 - (b) nutrient pollution levels discharged by plants or across catchment areas,
 - (c) enforcement, or
 - (d) costs.
- (3) The regulations may, in particular—
 - (a) amend, repeal, revoke or otherwise modify—
 - (i) sections 96B to 96M,
 - (ii) the Environmental Damage (Prevention and Remediation) (England) Regulations 2015, or
 - (iii) provision made under this section;
 - (b) provide for a sewerage undertaker's compliance with the duty under section 96B (or an equivalent) to be determined by reference to matters other than the concentration of nitrogen or phosphorous in treated effluent discharged by a plant;
 - (c) include provision applying or corresponding to any provision in sections 96B to 96M (with or without modifications);
 - (d) include provision about the establishment of schemes involving sewerage undertakers and others for the purpose of encouraging or requiring sewerage undertakers to arrange or contribute to action in respect of the effect of nitrogen or phosphorous (from any source) on a habitats site;
 - (e) make different provision for different purposes or different areas.”
- (2) In section 213 of the Water Industry Act 1991 (powers to make regulations), in subsection (1), insert “96K, 96N,”—
 - (a) if this subsection comes into force before section 82(2) of the Environment Act 2021, before “or 105A”;
 - (b) otherwise, before “105A”.

Commencement Information

II S. 168 in force at 26.12.2023, see s. 255(6)

Changes to legislation: There are currently no known outstanding effects for the Levelling-up and Regeneration Act 2023, Part 7. (See end of Document for details)

169 Planning: assessments of effects on certain sites

[Schedule 15](#) amends the Conservation of Habitats and Species Regulations 2017 ([S.I. 2017/1012](#)) to require certain assumptions to be made in certain circumstances about nutrient pollution standards (see [section 168](#)).

Commencement Information

I2 [S. 169](#) in force at 26.12.2023, see [s. 255\(6\)](#)

170 Remediation

(1) The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 ([S.I. 2015/810](#)) are amended as follows.

(2) After regulation 9 insert—

“9A Nutrient significant sewage disposal works: environmental damage

(1) This regulation applies where a sewerage undertaker whose sewerage system includes a nutrient significant plant fails to secure that the plant is able to meet the related nutrient pollution standard by the upgrade date.

(2) Any excess nutrient pollution is to be treated for the purposes of these regulations as damage to the related habitats site that is environmental damage caused by an activity of the sewerage undertaker that—

- (a) requires a permit under the Environmental Permitting (England and Wales) Regulations 2016, and
- (b) falls within Schedule 2.

(3) In paragraph (2)—

“excess nutrient pollution”, in relation to a nutrient significant plant and a related nutrient pollution standard, means the amount by which the total nutrient pollution discharged in treated effluent by the plant during the period—

- (a) beginning with the upgrade date, and
- (b) ending with the day the plant first meets the related nutrient pollution standard,

exceeds the total nutrient pollution that it would have discharged in treated effluent during that period had it met the related nutrient pollution standard on and after the upgrade date;

“total nutrient pollution” means—

- (a) in relation to the nitrogen nutrient pollution standard, total nitrogen, and
- (b) in relation to the phosphorus nutrient pollution standard, total phosphorus.

(4) Where—

- (a) the nutrient significant plant referred to in paragraph (1) is a plant that discharges treated effluent into a catchment permitting area (see [section 96G](#) of the Water Industry Act 1991), and

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- (b) the sewerage undertaker has failed to comply with a condition in the environmental permit for the plant imposed in pursuance of subsection (3)(b) of that section,

the definition of “excess nutrient pollution” in paragraph (3) is subject to the following modifications.
- (5) In a case where the condition relates to the total nutrient pollution discharged by the plant specifically, references in that definition to the “upgrade date” are to be read as the “applicable date”.
- (6) In a case where the condition relates to the total nutrient pollution discharged by all plants that discharge into the associated catchment area, that definition is to be read as if—
 - (a) in the words before paragraph (a), after “by the plant” there were inserted “and all other plants that discharged into the associated catchment area for that plant”,
 - (b) in paragraph (a), for “upgrade date” there were substituted “applicable date”, and
 - (c) in the words after paragraph (b)—
 - (i) for “that it” there were substituted “that both it and those other plants”, and
 - (ii) for “upgrade date” there were substituted “applicable date”.
- (7) For the purposes of paragraph (3) as modified by paragraph (5) or (6), the “applicable date” is to be determined in accordance with section 96G(6)(a) of the Water Industry Act 1991.
- (8) It is for the Environment Agency to determine the excess nutrient pollution discharged by a plant and in doing so the Environment Agency may have regard to—
 - (a) the concentration of total nitrogen or concentration of total phosphorus determined for the purposes of section 96F of the Water Industry Act 1991 (see in particular subsection (5) of that section), and
 - (b) the volume of treated effluent discharged by the plant, as determined by the Environment Agency.
- (9) Schedule 2ZA sets out modifications of these regulations that apply where this regulation applies.
- (10) In this regulation—
 - “related habitats site”, in relation to a nutrient significant plant, means the habitats site by reference to which the associated catchment area is designated under section 96C of the Water Industry Act 1991;
 - “sewerage system”, in relation to a sewerage undertaker, has the meaning given by section 17BA(7) of the Water Industry Act 1991.
- (11) For the purposes of this regulation, the following terms have the meanings given by section 96L of the Water Industry Act 1991—
 - “associated catchment area”;
 - “catchment permitting area”;
 - “environmental permit”;
 - “habitats site”;

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“nitrogen nutrient pollution standard”;
“nutrient significant plant”;
“phosphorus nutrient pollution standard”;
“plant”;
“related nutrient pollution standard”;
“sensitive catchment area”;
“treated effluent”;
“upgrade date”;

and references to a nutrient significant plant meeting the related nutrient pollution standard are to be read in accordance with section 96F(1) or (2) of that Act.”

(3) After Schedule 2 insert—

“SCHEDULE 2ZA

Regulation 9A

MODIFICATIONS WHERE REGULATION 9A APPLIES

- 1 In relation to anything that is treated as environmental damage by regulation 9A, these regulations apply with the following modifications.
- 2 Regulation 17 does not apply.
- 3 Regulation 18 applies as if—
 - (a) the opening words of paragraph (1) provided “Where excess nutrient pollution is treated as environmental damage by regulation 9A(2), the enforcing authority must notify the responsible operator—”;
 - (b) for paragraph (a) there were substituted—
“(a) of the environmental damage;”.
- 4 Regulation 18A applies with the omission of paragraph (2).
- 5 Regulation 19(3) applies as if for paragraphs (a) to (e) (but not the “or” immediately following paragraph (e)) there were substituted—
 - “(a) the responsible operator did not fail to secure that the nutrient significant plant in question is able to meet the related nutrient pollution standard by the upgrade date;
 - (b) the determination by the Environment Agency of the excess nutrient pollution mentioned in regulation 9A(2) was unreasonable;”.
- 6 Regulation 25(2) applies as if—
 - (a) for paragraph (a) there were substituted—
“(a) determining the excess nutrient pollution mentioned in regulation 9A(2);”;
 - (b) paragraph (b) were omitted.”

Commencement Information

I3 S. 170 in force at 26.12.2023, see s. 255(6)

Changes to legislation:

There are currently no known outstanding effects for the Levelling-up and Regeneration Act 2023, Part 7.