



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART IV

#### SEWERAGE SERVICES

##### CHAPTER I

##### GENERAL FUNCTIONS OF SEWERAGE UNDERTAKERS [F1ETC]

##### *Principal duties and standards of performance*

#### **94 General duty to provide sewerage system.**

- (1) It shall be the duty of every sewerage undertaker—
  - (a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers [F1 and any lateral drains which belong to or vest in the undertaker] as to ensure that that area is and continues to be effectually drained; and
  - (b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.
- (2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard—
  - (a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and
  - (b) to the need to provide for the disposal of trade effluent which is so discharged.
- (3) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 18 above—
  - (a) by the Secretary of State; or

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- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (4) The obligations imposed on a sewerage undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 95 below and shall not be in any way qualified by any such provision.
- (5) In this section “trade effluent” has the same meaning as in Chapter III of this Part.

#### Textual Amendments

**F1** Words in s. 94(1)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

#### Modifications etc. (not altering text)

**C1** S. 94 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 10(2)** (with [reg. 1\(1\)\(c\)](#))

## 95 Standards of performance in connection with provision of sewerage services.

- (1) For the purpose-
  - (a) of facilitating the determination of the extent to which breaches of the obligations imposed by virtue of the following provisions of this Part are to amount to breaches of the duty imposed by section 94 above; or
  - (b) of supplementing that duty by establishing overall standards of performance in relation to the provision of sewerage services by any sewerage undertaker, the Secretary of State may, in accordance with section 96 below, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Act as breaches of that duty.
- (2) The Secretary of State may, in accordance with section 96 below, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in his opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) above may provide that, if a sewerage undertaker fails to meet a prescribed standard, it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2) above, regulations under that subsection may—
  - (a) include in a standard of performance a requirement for a sewerage undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
  - (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Director;
  - (c) make provision for the procedure to be followed in connection with any such reference and for the Director’s determination on such a reference to be enforceable in such manner as may be prescribed;

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- (d) prescribe circumstances in which a sewerage undertaker is to be exempted from requirements of the regulations.

<sup>F2</sup>[(5) Where the Director determines any dispute in accordance with regulations under this section he shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.]

#### Textual Amendments

**F2** S. 95(5) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para.24](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.1

#### [<sup>F3</sup>95ZA Standards of performance in connection with provision of sewerage services: sewerage licensees

- (1) For the purpose of establishing overall standards of performance in connection with the provision of sewerage services by sewerage licensees in accordance with their retail authorisations, the Secretary of State may, in accordance with section 96ZA, by regulations—
- (a) impose requirements in connection with the provision of sewerage services;
  - (b) provide for a requirement so imposed to be enforceable under section 18 by—
    - (i) the Secretary of State, or
    - (ii) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (2) The Secretary of State may, in accordance with section 96ZA, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in the Secretary of State's opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) may provide that if a sewerage licensee fails to meet a prescribed standard the licensee must pay such amount as may be prescribed to any person who—
- (a) is affected by the failure, and
  - (b) is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may—
- (a) include in a standard of performance a requirement for a sewerage licensee, in prescribed circumstances, to inform a person of that person's rights by virtue of any such regulations;
  - (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
  - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
  - (d) prescribe circumstances in which a sewerage licensee is to be exempted from requirements of the regulations.
- (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.]

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### Textual Amendments

**F3** S. 95ZA inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 30(1), 94(3)**; S.I. 2016/1007, art. 2(e)

## [95A <sup>F4</sup>Information with respect to levels of performance.

- (1) The Director shall from time to time collect information with respect to—
- (a) the compensation paid by sewerage undertakers under regulations under section 95(2) above; <sup>F5</sup> ...
  - <sup>F6</sup>(aa) [ the compensation paid by sewerage licensees under regulations under section 95ZA(2); and]
  - (b) the levels of overall performance achieved by sewerage undertakers [<sup>F7</sup>or sewerage licensees] in connection with the provision of sewerage services.
- (2) At such times as the Director may direct, each sewerage undertaker shall give the following information to the Director—
- (a) as respects each standard prescribed by regulations under section 95(2) above, the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
  - (b) as respects each standard established by regulations under section 95(1)(b) above, such information with respect to the level of performance achieved by the undertaker as may be so specified.

[ At such times as the Authority may direct, each sewerage licensee is to give the <sup>F8</sup>(2A) following information to the Authority—

- (a) as respects each standard established by regulations under section 95ZA(1), such information with respect to the level of performance achieved by the licensee as may be specified in the direction;
- (b) as respects each standard prescribed by regulations under section 95ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.]

[ The requirements in subsections (2) and (2A) are enforceable by the Authority under <sup>F9</sup>(3) section 18.]

- (4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or given to him under this section as it may appear to him expedient to give to customers or potential customers of sewerage undertakers [<sup>F10</sup>or sewerage licensees].
- (5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as practicable—
- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.]

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#### Textual Amendments

- F4** S. 95A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.31](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F5** Word in s. 95A(1) repealed (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(3\)\(a\), 94\(3\)](#); S.I. 2016/1007, art. 2(e)
- F6** S. 95A(1)(aa) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(3\)\(b\), 94\(3\)](#); S.I. 2016/1007, art. 2(e)
- F7** Words in s. 95A(1)(b) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(3\)\(c\), 94\(3\)](#); S.I. 2016/1007, art. 2(e)
- F8** S. 95A(2A) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(4\), 94\(3\)](#); S.I. 2016/1007, art. 2(e)
- F9** S. 95A(3) substituted (1.1.2015 for specified purposes, 1.11.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\), ss. 30\(5\), 94\(3\)](#); S.I. 2014/3320, art. 2(2)(b); S.I. 2016/1007, art. 2(e)
- F10** Words in s. 95A(4) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(6\), 94\(3\)](#); S.I. 2016/1007, art. 2(e)

#### [<sup>F11</sup>95B Publication of statistical information about complaints

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of sewerage undertakers [<sup>F12</sup>or sewerage licensees] and the handling of such complaints.
- (2) In subsection (1) above, “complaints” includes complaints made directly to sewerage undertakers [<sup>F13</sup>or sewerage licensees] (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.]

#### Textual Amendments

- F11** S. 95B inserted (1.10.2005) by [Water Act 2003 \(c. 37\), ss. 45\(2\), 105\(3\)](#); S.I. 2005/2714, art. 2(e) (with Sch. para. 8)
- F12** Words in s. 95B(1) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 85\(a\)](#); S.I. 2017/462, art. 3(k)(x)
- F13** Words in s. 95B(2) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 85\(b\)](#); S.I. 2017/462, art. 3(k)(x)

#### 96 Procedure for regulations under section 95.

- [<sup>F14</sup>(A1) The Secretary of State may make regulations under section 95 above—
- (a) on an application by the Authority, in accordance with subsections (1) to (3) below; or
- (b) otherwise than on such an application, in accordance with subsections (4) to (8) below.]
- (1) [<sup>F15</sup>Where the Authority has made to the Secretary of State a written application complying with subsection (2) below, the Secretary of State may make regulations under section 95 above if—
- <sup>F16</sup>[(b) the Secretary of State is satisfied that a copy of the application has been served by the Director—

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- (i) on every sewerage undertaker specified in the application; <sup>F17</sup> . . .
- (ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;
- (iii) [<sup>F18</sup>on the Council; and
- (iv) on such other persons or bodies as the Secretary of State may consider appropriate;]]
- (c) such period as the Secretary of State considers appropriate has been allowed for the making—
  - (i) by the Director; and
  - (ii) by any affected sewerage undertaker [<sup>F19</sup>or person or body on whom a copy of the application has been served under paragraph [<sup>F20</sup>(b)] above],
 of representations or objections with respect to the Director’s proposals and any modifications proposed by the Secretary of State; and
- (d) the Secretary of State has considered [<sup>F21</sup>the summary mentioned in subsection (2)(bb) below,] the Director’s reasons for his proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.

<sup>F22</sup>[(1A) Before making an application to the Secretary of State under this section the Director shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.]

- (2) An application made by the Director to the Secretary of State complies with this subsection if it—
  - (a) sets out [<sup>F23</sup>the Authority’s proposals for the making of] regulations under section 95 above;
  - (b) specifies the sewerage undertaker or undertakers in relation to which it is proposed [<sup>F24</sup>the regulations] should apply
  - [<sup>F25</sup>(bb) is accompanied by a written summary of the results of the research carried out in accordance with subsection (1A) above;]; and
  - (c) summarises the Director’s reasons for his proposals.
- (3) The Secretary of State shall not make any regulations [<sup>F26</sup>on an application by the Authority under this section] except where—
  - (a) the only provisions of the regulations are [<sup>F27</sup>those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority’s application or to those proposals] with such modifications as the Secretary of State considers appropriate; and
  - (b) each of the modifications (if any) of the Director’s proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
    - (i) to the Director; <sup>F28</sup> . . .
    - (ii) to any sewerage undertaker appearing to the Secretary of State to be likely to be affected by the modifications[<sup>F29</sup> and
    - (iii) to any person or body on whom a copy of the Authority’s application was served under subsection (1)(b) above.]

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- [<sup>F30</sup>(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 95 above only if he considers—
- (a) that the regulations will contribute towards the attainment of policies relating to public health or the environment; or
  - (b) (if he does not consider that they will so contribute) that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made.
- (5) Before making regulations under section 95 above by virtue of subsection (4) above, the Secretary of State shall—
- (a) give notice of his proposals;
  - (b) consider the results of the research carried out in accordance with subsection (7) below; and
  - (c) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn.
- (6) A notice under subsection (5)(a) above must—
- (a) summarise the Secretary of State's reasons for his proposals;
  - (b) specify the sewerage undertaker or undertakers in relation to which it is proposed the regulations should apply; and
  - (c) specify the period within which objections or representations with respect to the proposals may be made.
- (7) Before giving notice under subsection (5)(a) above the Secretary of State shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected.
- (8) A notice under subsection (5)(a) above shall be given by serving a copy on—
- (a) the Authority;
  - (b) the Council;
  - (c) every sewerage undertaker to which the regulations will apply;
  - (d) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and
  - (e) such other persons or bodies as the Secretary of State may consider appropriate.]

#### Textual Amendments

- F14** S. 96(A1) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(2)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1, 2](#))
- F15** Words in s. 96(1) substituted (1.4.2005) for "words preceding paragraph (a), and paragraph (a)" by virtue of [Water Act 2003 \(c. 37\)](#), **ss. 42(3)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1, 2](#))
- F16** S. 96(1)(b) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 25(2)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F17** Word in s. 96(1)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(3)(b)**, 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in [art. 4](#), [Schs. 1, 2](#))
- F18** S. 96(1)(b)(iii)(iv) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(3)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1, 2](#))



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- F19** Words in s. 96(1)(c)(ii) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para. 25\(3\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F20** Words in s. 96(1)(c)(ii) substituted (1.4.2005) by [Water Act 2003 \(c. 37\), ss. 42\(3\)\(c\), 105\(3\); S.I. 2005/968, art. 2\(h\)](#) (with savings in [art. 4, Schs. 1, 2](#))
- F21** Words in s. 96(1)(d) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 30\(2\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F22** S. 96(1A) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 30\(3\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F23** Words in s. 96(2)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\), ss. 42\(4\)\(a\), 105\(3\); S.I. 2005/968, art. 2\(h\)](#) (with savings in [art. 4, Schs. 1, 2](#))
- F24** Words in s. 96(2)(b) substituted (1.4.2005) by [Water Act 2003 \(c. 37\), ss. 42\(4\)\(b\), 105\(3\); S.I. 2005/968, art. 2\(h\)](#) (with savings in [art. 4, Schs. 1, 2](#))
- F25** S. 96(2)(bb) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 30\(4\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F26** Words in s. 96(3) substituted (1.4.2005) by [Water Act 2003 \(c. 37\), ss. 42\(5\)\(a\), 105\(3\); S.I. 2005/968, art. 2\(h\)](#) (with savings in [art. 4, Schs. 1, 2](#))
- F27** Words in s. 96(3)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\), ss. 42\(5\)\(b\), 105\(3\); S.I. 2005/968, art. 2\(h\)](#) (with savings in [art. 4, Schs. 1, 2](#))
- F28** Word in s. 96(3)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\), ss. 42\(5\)\(c\), 101\(2\), 105\(3\), Sch. 9 Pt. 2; S.I. 2005/968, art. 2\(h\)\(n\)\(i\)](#) (with savings in [art. 4, Schs. 1, 2](#))
- F29** S. 96(3)(b)(iii) and preceding word inserted (1.4.2005) by [Water Act 2003 \(c. 37\), ss. 42\(5\)\(c\), 105\(3\); S.I. 2005/968, art. 2\(h\)](#) (with savings in [art. 4, Schs. 1, 2](#))
- F30** S. 96(4)-(8) added (1.4.2005) by [Water Act 2003 \(c. 37\), ss. 42\(6\), 105\(3\); S.I. 2005/968, art. 2\(h\)](#) (with savings in [art. 4, Schs. 1, 2](#))

### **[<sup>F31</sup>96ZA Procedure for regulations under section 95ZA**

- (1) Section 96 applies for the purposes of making regulations under section 95ZA as it applies for the purposes of making regulations under section 95.
- (2) In the application of section 96 by virtue of subsection (1), a reference to a sewerage undertaker is to be treated as a reference to a sewerage licensee.]

#### **Textual Amendments**

- F31** S. 96ZA inserted (15.7.2015) by [Water Act 2014 \(c. 21\), ss. 30\(7\), 94\(3\); S.I. 2015/1469, art. 2\(d\)](#)

#### **Modifications etc. (not altering text)**

- C2** S. 96ZA(2) modified (temp.) (1.7.2015) by [The Water Act 2014 \(Commencement No. 4 and Transitional Provisions\) Order 2015 \(S.I. 2015/1469\), art. 5\(2\)\(5\)](#)

### **[96A <sup>F32</sup>Information to be given to customers about overall performance.**

- (1) Each sewerage undertaker shall, in such form and manner and with such frequency as the Director may direct, take steps to inform its customers [<sup>F33</sup>, and, if the direction so specifies, sewerage licensees using the undertaker's sewerage system for the purpose of providing sewerage services to the premises of customers,] of—
  - (a) the standards of overall performance established under section 95(1)(b) above which are applicable to that undertaker; and



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(b) that undertaker's level of performance as respects each of those standards.

[ Each sewerage licensee must, in such form and manner and with such frequency as

<sup>F34</sup>(1A) the Authority may direct, take steps to inform the licensee's customers of—

- (a) the standards of overall performance established under section 95ZA(1) which are applicable to that licensee;
- (b) that licensee's level of performance as regards those standards.

(1B) The Authority may direct that the requirement in subsection (1A) is not to apply to such sewerage licensees as may be specified in the direction.]

(2) In giving [<sup>F35</sup>a direction under subsection (1) or (1A)], the Director shall not specify a frequency of less than once in every period of twelve months.

[ The sewerage licensees referred to in subsection (1) shall, if the Authority so directs,

<sup>F36</sup>(2A) pass on the information about the matters mentioned in that subsection to their customers.

(2B) In subsection (1), the reference to the sewerage undertaker's sewerage system is to be construed in accordance with section 17BA(7).]

(3) The duty of a sewerage undertaker [<sup>F37</sup>or sewerage licensee] to comply with this section shall be enforceable by the Director under section 18 above.]

#### Textual Amendments

- F32** S. 96A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.32](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F33** Words in s. 96A(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 86\(2\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(p) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F34** S. 96A(1A)(1B) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 86\(3\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(p) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F35** Words in s. 96A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 86\(4\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(p) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F36** S. 96A(2A)(2B) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 86\(5\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(p) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F37** Words in s. 96A(3) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 86\(6\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(p) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

#### [<sup>F38</sup>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.

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*Changes to legislation: Water Industry Act 1991, Cross Heading: Principal duties and standards of performance is up to date with all changes known to be in force on or before 27 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (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
  - (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.

#### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), ss. **168(1)**, **255(6)** (with s. 247)

### 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

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- (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.
- (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.

#### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with s. 247)

### 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)).

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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.
- (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.

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**Textual Amendments**

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), [ss. 168\(1\), 255\(6\)](#) (with s. 247)

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## 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.
- (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.

### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

## 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

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- (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
      - (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;



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- (f) make different provision for different purposes or different areas (including different plants within an area).

**Textual Amendments**

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

**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.
- (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—



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- (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”;
    - (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.

#### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with s. 247)

#### Modifications etc. (not altering text)

**C3** S. 96G(6)(a) applied (26.12.2023) by [S.I. 2017/1012](#), **reg. 85D** (as inserted by [Levelling Up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), **Sch. 15 para. 11** (with s. 247))

**C4** S. 96G(6)(a) applied (26.12.2023) by [S.I. 2015/810](#), reg. 9A(7) (as inserted by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 170(2), 255(6)** (with s. 247))

### 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.

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- (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.

#### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), ss. 168(1), 255(6) (with s. 247)

## 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.
- (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;

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- (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.

#### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

### 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 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.

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#### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with s. 247)

### 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 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.

#### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with s. 247)

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## **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;
  - “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—

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*Changes to legislation: Water Industry Act 1991, Cross Heading: Principal duties and standards of performance is up to date with all changes known to be in force on or before 27 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (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).

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#### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

### 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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#### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

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*Changes to legislation: Water Industry Act 1991, Cross Heading: Principal duties and standards of performance is up to date with all changes known to be in force on or before 27 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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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.]

### Textual Amendments

**F38** Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))



**Changes to legislation:**

Water Industry Act 1991, Cross Heading: Principal duties and standards of performance is up to date with all changes known to be in force on or before 27 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 3 Ch. 2B inserted by [2014 c. 21 s. 12](#)
- s. 17(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(4)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17A(c) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(d) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(2)(ba) and word inserted by [2014 c. 21 Sch. 5 para. 4\(2\)\(b\)](#)
- s. 17R(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(7)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17AA(1)(ba)(bb) inserted by [2014 c. 21 Sch. 5 para. 5\(2\)](#)
- s. 17BA(5A) inserted by [2014 c. 21 Sch. 5 para. 7\(3\)](#)
- s. 17HA(9)(b)(ia) inserted by [2014 c. 21 Sch. 5 para. 16\(2\)](#)
- s. 23(2AA) inserted by [2014 c. 21 Sch. 7 para. 35\(4\)](#)
- s. 23(8)(9) inserted by [2014 c. 21 Sch. 7 para. 35\(10\)](#)
- s. 39E-39H inserted by [2021 c. 30 s. 78\(7\)](#)
- s. 87(7C)-(7F) inserted by [2012 c. 7 s. 35\(6\)](#)
- s. 94A-94E inserted by [2021 c. 30 s. 79](#)
- s. 95ZA(6) inserted by [2014 c. 21 Sch. 5 para. 39\(4\)](#)
- s. 96ZA(2)-(5) substituted for s. 96ZA(2) by [2014 c. 21 Sch. 5 para. 40](#)
- s. 106B(3A) inserted by [2014 c. 21 Sch. 7 para. 94](#)
- s. 117G(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(2\)](#)
- s. 117G(4)-(4D) substituted for s. 117(4) by [2014 c. 21 Sch. 5 para. 41\(3\)](#)
- s. 117G(6)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(4\)](#)
- s. 117K(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(2\)](#)
- s. 117K(5)(5A) substituted for s. 117(5) by [2014 c. 21 Sch. 5 para. 42\(3\)](#)
- s. 117L(9) inserted by [2014 c. 21 Sch. 5 para. 43\(3\)](#)
- s. 117N(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(2\)](#)
- s. 117N(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(3\)](#)
- s. 117N(11)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(4\)](#)
- s. 117O(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(2\)](#)
- s. 117O(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(3\)](#)
- s. 117S(7)-(9) inserted by [2014 c. 21 Sch. 5 para. 49](#)
- s. 119(2)(ab) inserted by [2003 c. 37 s. 89\(1\)\(a\)](#)
- s. 119(3) inserted by [2003 c. 37 s. 89\(1\)\(b\)](#)
- s. 121(1)(ba) inserted by [2003 c. 37 s. 89\(2\)\(a\)](#)
- s. 141DC inserted by [2021 c. 30 s. 83](#)
- s. 177K(7)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(4\)](#)
- s. 207D and cross-heading inserted by [2014 c. 21 s. 39](#)
- s. 207D(5) word repealed by [2014 c. 21 Sch. 5 para. 52\(a\)](#)
- s. 207D(5) words inserted by [2014 c. 21 Sch. 5 para. 52\(b\)](#)

- s. 213(1ZA) inserted by [2014 c. 21 Sch. 7 para. 119\(3\)](#)
- s. 213(1ZA) repealed by [2014 c. 21 Sch. 5 para. 53](#)