

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION**

**5846/18**

**5846/18 ADD 1**

**5846/18 ADD 2**

**5846/18 ADD 3**

**5846/18 ADD 4**

**5846/18 ADD 5**

**COM(2017) 753 final**

**COM(2017) 753 final - Annexes 1 to 6**

**SWD(2017) 448 final**

**SWD(2017) 449 final**

**SWD(2017) 451 final**

**SEC(2017) 527 final**

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**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE QUALITY OF WATER INTENDED FOR HUMAN CONSUMPTION (RECAST)**

**ANNEXES TO THE PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE QUALITY OF WATER INTENDED FOR HUMAN CONSUMPTION (RECAST)**

**COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT ACCOMPANYING THE DOCUMENT PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE QUALITY OF WATER INTENDED FOR HUMAN CONSUMPTION (RECAST)**

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**COMMISSION STAFF WORKING DOCUMENT SYNOPSIS REPORT STAKEHOLDER CONSULTATION ACCOMPANYING THE DOCUMENT PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE QUALITY OF WATER INTENDED FOR HUMAN CONSUMPTION (RECAST)**

**REGULATORY SCRUTINY BOARD OPINION PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE QUALITY OF WATER INTENDED FOR HUMAN CONSUMPTION (RECAST)**

Submitted by the Department for Environment, Food and Rural Affairs

19/2

February 2018

## SUBJECT MATTER

1. The proposal is for a recast of Council Directive 98/83/EC (the Drinking Water Directive (DWD)) on the quality of water intended for human consumption. The DWD is designed to protect people from the adverse effects of drinking contaminated water by ensuring that it is wholesome and clean. As the approach was first determined over 20 years ago, the Commission has proposed to recast (i.e. consolidate, with substantive amendments) the DWD to take account of existing and emerging pressures, and aims to ensure that people living in and visiting EU Member States can continue to enjoy high quality drinking water. The Commission also took into account the EU commitment to the UN Sustainable Development Goals and the European Citizens' Initiative, 'Right2Water'.
2. Following an evaluation of the DWD, the Commission identified four areas for improvement and, on this basis, proposes the following changes:
  - Amendments to the chemical and microbiological substances that can be found in water and the quality standards that must be met. These have been recommended by the World Health Organisation (WHO);
  - The use of WHO's holistic risk based approach to monitoring water quality i.e. 'source to tap', which focuses on exemption, prevention and mitigation. Rather than only risk assessing at the point of supply, the recast will introduce risk assessments at the point of abstraction and within the domestic distribution supply e.g. household plumbing and taps;
  - Providing consumers with more information about their water supply and updating reporting requirements so data is stored online (which can be accessed by the Commission) and is more relevant. This is part of the Commission's Digital Marketing Strategy; and
  - Strengthen the checks that need to be performed on materials and substances in contact with drinking water e.g. the materials used to produce a water fitting, by introducing the domestic distribution risk assessment. In parallel, Regulation (EU) No 305/2011 (the 'Construction Products Regulation') will set harmonised standards on construction materials and substances in contact with drinking water. The aim is to facilitate trade within the EU internal market as the checks and standards are currently set by Member States.
3. The proposals would improve access to drinking water for all and promote its use, which is part of the 'Right2Water' initiative. The latter should reduce the number of plastic bottles used by improving people's confidence in tap water, whilst also reducing greenhouse gas emissions and marine litter, and remaining consistent with the European Strategy for Plastics.
4. The proposals are accompanied by:
  - a. ADD 1, proposed amendments to Annexes - covers the tracked changes proposed to each Annex;

- b. ADD 2, executive summary of the Commission's impact assessment – provides a brief overview of the need for the proposed solutions and their impact;
- c. ADD 3, Commission's impact assessment – provides a thorough review of the issues, what should be achieved and the impact on sectors, resources and human health;
- d. ADD 4, synopsis report from the Commission's stakeholder consultation - a summary of the open public consultation in June 2014 and opinions sought to develop the current proposal;
- e. ADD 5, regulatory scrutiny board opinion - a 'positive with reservations' score given with suggestions for further considerations and adjustments.

## **SCRUTINY HISTORY**

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5. The Parliamentary scrutiny history relevant to this proposal is contained in the attached Annex A.

## **MINISTERIAL RESPONSIBILITY**

6. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs, Scottish Ministers, Welsh Ministers and Northern Ireland Executive Ministers.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

7. All devolved administrations will be impacted by this recast and the proposed amendments to the DWD contained within. The devolved administrations have been consulted in the preparation of this Explanatory Memorandum.

## **LEGAL AND PROCEDURAL ISSUES**

8.

- i. **Legal Basis**

The proposal is based on Article 192(1) of the Treaty on the Functioning of the European Union (ex-Article 130s of the Treaty establishing the European Community). This is the same legal basis as the directive being recast.

The Justice and Home Affairs opt-in is not triggered by the proposals.

- ii. **European Parliament Procedure**

Ordinary legislative procedure.

- iii. **Voting Procedure**

Qualified majority voting.

**iv. Impact on United Kingdom Law**

There is existing secondary legislation that transposes the DWD in all four regions of the UK, covering public supplies and private supplies of drinking water and bottled water. Once the recast Directive comes into force, amending legislation may be required throughout the UK to give effect to the changes.

**v. Application to Gibraltar**

The proposal would be applicable to Gibraltar.

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**vi. Fundamental Rights Analysis**

Articles 1 and 2 of the Charter of Fundamental Rights and Freedoms (rights to human life and dignity) might be engaged as the proposal contains provisions on access to water intended for human consumption. Article 47 of the Charter of Fundamental Rights and Freedoms (right to an effective remedy and fair trial) might also be engaged as the proposal contains provisions on access to justice.

The Department is currently considering whether these fundamental rights are respected.

**APPLICATION TO THE EUROPEAN ECONOMIC AREA**

9. The proposal does not apply to members of the European Economic Area.

**SUBSIDIARITY**

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10. Regulating environment and health in the water sector is a shared competence between the EU and Member States. Therefore the EU can only legislate as far as the Treaties allow it, and must observe the principles of necessity, subsidiarity and proportionality.

11. The EU sets minimum water quality standards and minimum requirements for monitoring, reporting, access to water, transparency and remedial action when these standards are not met. These measures are designed to meet the objectives of the DWD, namely to protect human health from the adverse effects of any contamination of drinking water. Member States may determine the type of action they wish to take to meet these minimum standards/requirements. The provisions on improving access to drinking water also allow Member States discretion in deciding what measures to take in order to implement the obligation.

12. The Department is currently considering the implications of the recast proposals on subsidiarity.

### **POLICY IMPLICATIONS (including exit implications where appropriate)**

13. On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the EU. Until we leave the EU, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period, the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

14. Negotiations between the European Parliament, Council and the Commission are unlikely to begin before autumn 2018 (see paragraph 20). Should the text be agreed quickly, it could be put to a vote by Ministers and enter into force before the end of 2018. The deadline for transposition is likely to be two years from that date, which may fall during any implementation period.

15. The Government is still in the process of considering the impact of the proposal on the UK and will work with relevant stakeholders, both inside and outside of Government, to gather their thoughts e.g. Food Standards Agency, Environment Agency, Ministry for Housing Communities and Local Government, Water UK, Ofwat.

16. The Commission's impact assessment estimated set up costs of between €5.9 and €7.3 billion (£5.18 billion and £6.41 billion (0.87910)) across EU Member States with employment increasing from 17,000 to 26,000 full time equivalents throughout the EU. Were the proposals to come into force as it is, there would be an impact on business costs. For instance, water companies would incur extra costs for analysis (due to the proposed amendments to parameters) and extra costs to improve technology or for undertaking remedial action (to meet the new quality standards). However the costs may not be as substantial in the UK compared to other Member States. For instance, the risk assessments within England, Wales and Scotland already risk assess the supply from 'source to tap', therefore few costs, if any, may be incurred to introduce abstraction point risk assessments.

### **CONSULTATION**

17. A public consultation on the proposals is not envisaged at this stage. As mentioned in paragraph 15, the Government will draw the proposal to the attention of relevant stakeholders, seeking views to inform our position.

### **IMPACT ASSESSMENT**

18. The Commission has produced its own Impact Assessment (5846/18 ADD 3) and Executive Summary of the Impact Assessment (5846/18 ADD 2). As explained in

paragraph 15, the Government is still in the process of considering the impact of the proposals on the UK.

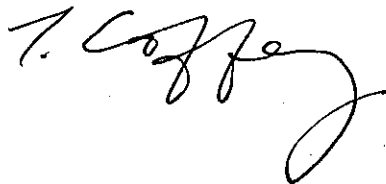
## **FINANCIAL IMPLICATIONS**

19. The proposal has no budgetary implications for the Commission or the European Environment Agency. There are, however, likely to be additional costs for Defra and the devolved administrations' Environment Agencies (or equivalent) and Local Authorities through the additional regulatory requirements, including those on reporting and implementation of additional quality sampling and analysis. The largest financial burden would be on water companies, with smaller overall but potentially burdensome costs on private suppliers.

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## **TIMETABLE**

20. The first working party was on 13 February, which will be followed by another on 1 March. There will then be one or two working parties per month until June. At the June Council there is likely to be a policy debate from Ministers (no vote), which would give further direction as to where the text is heading. It is therefore likely that Council will come to its position after June. The European Parliament is not likely to come to its position until autumn. Negotiations between the Parliament, Council and Commission to agree text would not begin until after this.



**DR THERESE COFFEY MP**

**PARLIAMENTARY UNDER SECRETARY OF STATE FOR THE ENVIRONMENT  
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

**PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:**

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE QUALITY OF WATER INTENDED FOR HUMAN CONSUMPTION (RECAST)**

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**EM 5477/18 COM(2018) 28 FINAL: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A EUROPEAN STRATEGY FOR PLASTICS IN A CIRCULAR ECONOMY**

**5477/18 ADD 1: ANNEXES TO THE COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A EUROPEAN STRATEGY FOR PLASTICS IN A CIRCULAR ECONOMY**

**5477/18 ADD 2: COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE DOCUMENT COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A EUROPEAN STRATEGY FOR PLASTICS IN A CIRCULAR ECONOMY**

**DATE EM SIGNED: 31/01/2018**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>NOT CLEARED</b>	<b>NOT CLEARED</b>

**EM 14972/15, COM(2015) 614 final: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS CLOSING THE LOOP - AN EU ACTION PLAN FOR THE CIRCULAR ECONOMY**

**EM 14972/15 ADD 1: ANNEX TO THE COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS CLOSING THE LOOP - AN EU ACTION PLAN FOR THE CIRCULAR ECONOMY**

**DATE EM SIGNED: 18/12/2015**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>FOLLOWING A DEBATE, WE RECEIVED CONFIRMATION THAT THIS HAD BEEN CLEARED FROM SCRUTINY BY HOC 21/03/2016 POLITICALLY IMPORTANT NOT CLEARED FROM SCRUTINY; RECOMMENDED FOR DEBATE IN EUROPEAN COMMITTEE A (REPORT NO 14 - 05/01/2016)</b>	<b>CLEARED BY HOL LETTER 08/06/2016. SIFTED FOR EXAMINATION TO ENERGY AND ENVIRONMENT (CHAIRMAN'S SIFT REPORT 1606 - 12/01/2016)</b>

**EUROPEAN COURT OF AUDITORS' SPECIAL REPORT NO.12/2017- IMPLEMENTING THE DRINKING WATER DIRECTIVE: WATER QUALITY AND ACCESS TO IT IMPROVED IN BULGARIA, HUNGARY AND ROMANIA, BUT INVESTMENT NEEDS REMAIN SUBSTANTIAL (PURSUANT TO ARTICLE 287(4), SECOND SUBPARAGRAPH, TFEU)**



DATE EM SIGNED: 26/09/2017

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 2; 22/11/2017)</b>	<b>CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1666 - 11/10/2017</b>

**EM 10255/17, COM(2017) 312 final: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ACTIONS TO STREAMLINE ENVIRONMENTAL REPORTING**

**10255/17, SWD(2017) 230 final ADD 1: COMMISSION STAFF WORKING DOCUMENT FITNESS CHECK OF REPORTING AND MONITORING OF EU ENVIRONMENT POLICY ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ACTIONS TO STREAMLINE ENVIRONMENTAL REPORTING**

DATE EM SIGNED: 26/06/2017

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 2; 22/11/2017)</b>	<b>CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1660 - 04/07/2017</b>

**EM 8177/14, COM(2014) 177 FINAL: COMMUNICATION FROM THE COMMISSION ON THE EUROPEAN CITIZENS' INITIATIVE "WATER AND SANITATION ARE A HUMAN RIGHT! WATER IS A PUBLIC GOOD, NOT A COMMODITY!"**

**8177/14 ADD 1: ANNEX TO THE COMMUNICATION FROM THE COMMISSION ON THE EUROPEAN CITIZENS' INITIATIVE "WATER AND SANITATION ARE A HUMAN RIGHT! WATER IS A PUBLIC GOOD, NOT A COMMODITY!"**

DATE EM SIGNED: 10/04/2014

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

COMMONS	LORDS
CLEARED AS POLITICALLY IMPORTANT 30/04/2014	SIFTED TO SUB-COMMITTEE D AT CHAIRMAN'S SIFT 29/04/2014 CLEARED BY LETTER 26/11/2014

EM 7208/94, COM(04)612: PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE QUALITY OF WATER INTENDED FOR HUMAN CONSUMPTION

EMS SUBMITTED 29/06/1995, AND SUPPLEMENTARY EMS DATED 10/05/1996 AND 24/09/1996.

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

COMMONS	LORDS
ESC REPORTED ON FOUR OCCASIONS IN REPORTS 22, 94/95, 5, 22 & 29, 95/96 RECOMMENDING A DEBATE WHICH WAS HELD IN EUROPEAN STANDING COMMITTEE A AND CLEARED ON 27/11/1996	SIFTED TO THEN SUB-COMMITTEE C (SIFT 857) AND WAS THE SUBJECT OF AN INQUIRY REPORT DATED 30/01/1996 WHICH WAS DEBATED ON 04/06/1996