



Neutral Citation Number: [2025] EWCA Civ 378

Case No: CA-2024-000579

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**PLANNING COURT**  
**Mrs Justice Lieven**  
**[2023] EWHC 2918 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 02/04/2025

**Before:**

**SIR KEITH LINDBLOM**  
**(SENIOR PRESIDENT OF TRIBUNALS)**  
**LORD JUSTICE FRASER**  
and  
**LORD JUSTICE HOLGATE**

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**Between:**

**SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** **Appellant**

**- and -**

**(1) THE KING (on the application of PICKERING FISHERY ASSOCIATION by MARTIN SMITH)** **Respondents**

**- and -**

**(2) ENVIRONMENT AGENCY**

**- and -**

**OFFICE FOR ENVIRONMENTAL PROTECTION** **Intervener**

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**Richard Kimblin KC and Nina Pindham (instructed by the Government Legal Department) for the Appellant**

**David Wolfe KC and Raj Desai** (instructed by **Fish Legal**) for the **First Respondent**  
**Matthew Fraser** (instructed by **Environment Agency Legal Services**) for the **Second Respondent**  
**Nicholas Ostrowski** (instructed by the **Office for Environmental Protection**) made written submissions for the **Intervener**

Hearing dates: 14 January 2025 and 15 January 2025

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**Approved Judgment**

This judgment was handed down remotely at 2pm on April 2 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## **The Senior President of Tribunals, Lord Justice Fraser and Lord Justice Holgate:**

### ***Introduction***

1. Upper Costa Beck (“UCB”) in the district of Ryedale in North Yorkshire was once renowned for its recreational fishing. But for many years it has been polluted by discharges from several sites along its length, which have caused a decline in its populations of fish.
2. UCB falls within the area covered by the Humber River Basin Management Plan (“the HRBMP”). The Plan was approved by the appellant, the Secretary of State for Environment, Food and Rural Affairs (“the SSEFRA”) on 14 December 2022 under reg.31(1) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (SI 2017 No. 407) (“the WFDR 2017”). The WFDR 2017 transpose Directive 2000/60/EC of the European Parliament and of the Council “establishing a framework for Community action in the field of water policy”, commonly referred to as “the Water Framework Directive” (“the WFD”).
3. The appeal is against the order of Lieven J, dated 19 February 2024, allowing a claim for judicial review, brought by the first respondent, the Pickering Fishery Association (“PFA”), challenging the SSEFRA’s decision to approve the HRBMP. The judge granted permission to appeal on 19 February 2024.
4. Under the WFDR 2017 the SSEFRA is the “appropriate authority” for river basin districts in England, and has various responsibilities for water management. PFA is an unincorporated association established in 1892, which owns fishing rights for much of UCB. It acts in these proceedings through its Secretary, Mr Martin Smith. The second respondent is the Environment Agency (“the EA”), which is the “appropriate agency” under the WFDR 2017. On 9 October 2024 this court granted the Office for Environmental Protection (“the OEP”) permission to intervene by written submissions only.
5. The claim for judicial review was issued on 14 March 2023. The challenge proceeded on four grounds: first, that the SSEFRA erred in law by failing to discharge the duty in reg.12(6) of the WFDR 2017 to carry out a periodic review of the Programme of Measures (“PoM”) in the River Basin Management Plan (“RBMP”) (ground 1); second, that her approval of the river basin management plan was wrong in law because the document submitted for her to approve did not comply with regs. 3 and 12 (ground 3); thirdly, that she breached reg.16(7) by failing to carry out a lawful review of the implementation of the measures set out under reg.16(6)(b) (ground 4); and fourthly, that she failed to carry out lawful consultation (ground 5).
6. Lieven J had before her evidence from Mr Martin Smith, the Club Secretary (“Smith I”), and Mr Andrew Kelton, a solicitor employed by Fish Legal, the latter acting as the Claimant’s solicitors (“Kelton I”). Fish Legal is a members’ association which represents angling clubs and riparian owners throughout the UK. It was previously known as the Anglers’ Conservation Association. She also had before her two statements of Mr Mark Scott of the EA (“Scott I” and “Scott II” respectively), and one statement from Mr Daniel Chandler (“Chandler I”) of the Department for Environment, Food and Rural Affairs (“DEFRA”). Mr Chandler is a Senior Policy Adviser in the water quality team at DEFRA with particular experience on the

regulations and policy relating to the WFD. Mr Scott is a Senior Adviser on river basin planning, working in the EA's national Water, Land and Biodiversity team.

7. After Lieven J handed down her judgment and gave permission to appeal, on 12 April 2024 the EA issued an application seeking to rely on the third statement of Mr Scott which was dated 10 April 2024 ("Scott III"). This had not been before the judge in the High Court, and its contents were new. The application recited that pursuant to para.11(2) of PD52C the application could be determined at the hearing of the appeal; it therefore did not need to be listed in advance.
8. The EA lodged a skeleton argument which referred to Scott III as containing "further explanation in relation to the level of evidence needed to justify measures being implemented at individual water bodies". The other parties consented to the new evidence in the statement being adduced, but the permission of the court is still required, and at the commencement of the appeal the court received this evidence *de bene esse*, that is, on a provisional basis, with final determination to follow.
9. This is an appeal on the points of law which have been raised. Under CPR Part 52.21(1) the appeal is a review of the decision by the judge on those points. There is no explanation by the EA, either in Scott III itself or elsewhere, why it was not possible to adduce this evidence for the hearing in the High Court. Nor was any other reason provided for it being submitted as fresh evidence for this appeal. The statement says at para. 3 that "the purpose of this third witness statement is *to respond to certain specific points in the High Court judgment* with a view to trying to assist the Court of Appeal with considering the appeal" (emphasis added). The court has a discretion under CPR Part 52.21(2) to admit fresh evidence, but there must be some proper basis for the exercise of that discretion. Application of the overriding objective is an important consideration in the exercise of that discretion; *Terluk v Berezovsky* [2011] EWCA Civ 1534 and the numerous cases that have followed it. With one very small exception, namely the explanation that the entry of "N/A" within the RNAG data means "not available", rather than as the judge understood that to mean, namely "not applicable", the contents of Scott III are of no assistance for the resolution of the issues in this appeal. Even that limited point could have been dealt with simply by counsel's submissions, or by suggesting corrections to the judgment distributed in draft for that purpose.
10. We therefore refuse the application and refuse the EA permission to adduce Scott III.

### ***The issue in the appeal***

11. As Lieven J put it in her judgment in the court below ([2023] EWHC 2918 (Admin); [2024] PTSR 315 at [8]), the issue at the heart of the claim was "whether, and to what degree, the HRBMP or any other documents produced by the EA pursuant to the WFDR 2017 must set out information at the level of the individual water body, as opposed to at river basin district level, or even national level". "The information in question is what measures are going to be taken to achieve the environmental objectives referred to in the WFD and the WFDR 2017". Although the decision challenged was the approval of the HRBMP, the "real thrust" of the case was that there was "an obligation on the SSEFRA to set out the measures that are to be taken to meet the objectives in respect of the individual water body (here UCB); to review those measures; and to consult upon them". It was "these specific water body

measures” that PFA said the SSEFRA had not lawfully set out, consulted upon and approved [9].

12. In his skeleton argument on behalf of the SSEFRA for this appeal Mr Richard Kimblin KC says “[the] outcome below is novel and fundamentally changes operation of the scheme of the legislation” (para. 1).
13. As argued before us, the decisive issue on the appeal is whether the judge erred in holding that reg.12 of the WFDR 2017 required the programme of measures to include measures for each individual water body in the river basin district. The SSEFRA contends that reg.12 creates no such obligation, and that a river basin management plan and its programme of measures can lawfully be “generic”.

### ***The WFD***

14. The WFD came into force in December 2000. It was transposed into domestic law initially by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, and subsequently by the WFDR 2017, which came into force in April 2017.
15. Recitals 10, 13, 18, 26, 33 and 36 of the Directive state the following:  
“(10) The Council on 25 June 1996, the Committee of the Regions on 19 September 1996, the Economic and Social Committee on 26 September 1996, and the European Parliament on 23 October 1996 all requested the Commission to come forward with a proposal for a Council Directive establishing a framework for a European water policy.

...

(13) There are diverse conditions and needs in the Community which require different specific solutions. This diversity should be taken into account in the planning and execution of measures to ensure protection and sustainable use of water in the framework of the river basin. Decisions should be taken as close as possible to the locations where water is affected or used. Priority should be given to action within the responsibility of Member States through the drawing up of programmes of measures adjusted to regional and local conditions.

...

(18) Community water policy requires a transparent, effective and coherent legislative framework. The Community should provide common principles and the overall framework for action. This Directive should provide for such a framework and coordinate and integrate, and, in a longer perspective, further develop the overall principles and structures for protection and sustainable use of water in the Community in accordance with the principles of subsidiarity.

...

(26) Member States should aim to achieve the objective of at least good water status by defining and implementing the necessary measures within integrated programmes of measures, taking into account existing Community requirements. Where good water status already exists, it should be maintained. For groundwater, in addition to the requirements of good status, any significant and sustained upward trend in the concentration of any pollutant should be identified and reversed.

...

(33) The objective of achieving good water status should be pursued for each river basin, so that measures in respect of surface water and groundwaters belonging to the same ecological, hydrological and hydrogeological system are coordinated.

...

(36) It is necessary to undertake analyses of the characteristics of a river basin and the impacts of human activity as well as an economic analysis of water use. The development in water status should be monitored by Member States on a systematic and comparable basis throughout the Community. This information is necessary in order to provide a sound basis for Member States to develop programmes of measures aimed at achieving the objectives established under this Directive.”

16. Article 1 of the WFD states:

**“Article 1 – Purpose**

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

...

(c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;

...”

17. In Art.2(10) a “body of surface water” is defined as meaning “a discrete and significant element of surface water such as a lake, a reservoir, a stream, river or canal, part of a stream, river or canal, a transitional water or stretch of coastal water”.

A “river basin” is defined in Art.2(13) as “the area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta”. Article 2(15) defines a “river basin district” as “the area of land and sea, made up of one or more neighbouring river basins together with their associated groundwaters and coastal waters, which is identified under Article 3(1) as the main unit for management of river basins”.

18. Article 3(4) requires Member States to “ensure that the requirements of this Directive for the achievement of the Environmental Objectives [“EOs”] established under Art.4, and in particular all Programmes of Measures are coordinated for the whole of the river basin district”.
19. Article 4 provides:

**“Article 4 – Environmental Objectives**

1. In making operational the programme of measures specified in the river basin management plans:

(a) for surface waters

- (i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;
- (ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, ... ;
- (iii) Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the applications of paragraphs 5, 6 and 7 without prejudice to paragraph 8;

...

4. The deadlines established under paragraph 1 may be extended for the purposes of phased achievement of the objectives for bodies of water, provided that no further deterioration occurs in the status of the affected body of water when all the following conditions are met:

(a) Member States determine that all necessary improvements in the status of bodies of water cannot reasonably be achieved within the timescales set out in that paragraph for at least one of the following reasons:

- (i) the scale of improvements required can only be achieved in phases exceeding the timescale, for reasons of technical feasibility;
- (ii) completing the improvements within the timescale would be disproportionately expensive;
- (iii) natural conditions do not allow timely improvement in the status of the body of water.

(b) Extension of the deadline, and the reasons for it, are specifically set out and explained in the river basin management plan required under Article 13.

(c) Extensions shall be limited to a maximum of two further updates of the river basin management plan except in cases where the natural conditions are such that the objectives cannot be achieved within this period.

(d) A summary of the measures required under Article 11 which are envisaged as necessary to bring the bodies of water progressively to the required status by the extended deadline, the reasons for any significant delay in making these measures operational, and the expected timetable for their implementation are set out in the river basin management plan. A review of the implementation of these measures and a summary of any additional measures shall be included in updates of the river basin management plan.

...

7. Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

(a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;

(b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;

(c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and

(d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.”

20. “Good surface water status” (the status required by Art.4(1)(a)(ii)) means “the status achieved by a surface water body when both its ecological status and its chemical status are at least ‘good’” (Art.2(18)). “Good ecological status” is defined in Art.



2(21) and (22) and Annex V. “Good surface water chemical status” is defined in Arts. 2(24) and 16(7) and Annex IX. Article 4(1)(a)(iii) requires a less demanding ecological status for a “heavily modified water body” (“HMWB”) namely “good ecological potential”. A “heavily modified water body” means “a body of surface water which as a result of physical alterations by human activity is substantially changed in character, as designated by the Member State in accordance with the provisions of Annex II” (Art.2(9)). “Good ecological potential” is defined by the specific provisions in Annex V.

21. Article 5 provides:

**“Characteristics of the river basin district, review of the environmental impact of human activity and economic analysis of water use**

1. Each Member State shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory:
  - an analysis of its characteristics,
  - a review of the impact of human activity on the status of surface waters and on groundwater, and
  - an economic analysis of water use

is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of this Directive.

2. The analyses and reviews mentioned under paragraph 1 shall be reviewed, and if necessary updated at the latest 13 years after the date of entry into force of this Directive and every six years thereafter.”

22. Paragraph 1.5 of Annex II contains these requirements:

**“1.5 Assessment of Impact**

Member States shall carry out an assessment of the susceptibility of the surface water status of bodies to the pressures identified above.

Member States shall use the information collected above, and any other relevant information including existing environmental monitoring data, to carry out an assessment of the likelihood that surface water bodies within the river basin district will fail to meet the environmental quality objectives set for the bodies under Article 4. Member States may utilise modelling techniques to assist in such an assessment.

For those bodies identified as being at risk of failing the environmental quality objectives, further characterisation shall, where relevant, be carried out to optimise the design of both the monitoring programmes required under Article 8, and the programmes of measures required under Article 11.”

23. Article 11 provides:

**“Article 11 – Programme of Measures**

1. Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State. Where appropriate, a Member State may adopt measures applicable to all river basin districts and/or the portions of international river basin districts falling within its territory.
2. Each programme of measures shall include the ‘basic’ measures specified in paragraph 3 and, where necessary, ‘supplementary’ measures.
3. ‘Basic measures’ are the minimum requirements to be complied with and shall consist of:
  - (a) those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;
  - (b) measures deemed appropriate for the purposes of Article 9;
  - (c) measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the objectives specified in Article 4;
  - ...
  - (g) for point source discharges liable to cause pollution, a requirement for prior regulation, such as a prohibition on the entry of pollutants into water, or for prior authorisation, or registration based on general binding rules, laying down emission controls for the pollutants concerned, including controls in accordance with Articles 10 and 16. These controls shall be periodically reviewed and, where necessary, updated;
  - ...
4. ‘Supplementary’ measures are those measures designed and implemented in addition to the basic measures, with the aim of achieving the objectives established pursuant to Article 4. Part B of Annex VI contains a non-exclusive list of such measures.

Member States may also adopt further supplementary measures in order to provide for additional protection or improvement of the waters covered by this Directive, including in implementation of the relevant international agreements referred to in Article 1.

...
5. Where monitoring or other data indicate that the objectives set under Article 4 for the body of water are unlikely to be achieved, the Member State shall ensure that:

- the causes of the possible failure are investigated,

- relevant permits and authorisations are examined and reviewed as appropriate,
- the monitoring programmes are reviewed and adjusted as appropriate, and
- additional measures as may be necessary in order to achieve those objectives are established, including, as appropriate, the establishment of stricter environmental quality standards following the procedures laid down in Annex V.

...

8. The programmes of measures shall be reviewed, and if necessary updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter. Any new or revised measures established under an updated programme shall be made operational within three years of their establishment.

...”

24. Article 13(4) and (7) provides:

“...

4. The river basin management plan shall include the information detailed in Annex VII.

...

7. River basin management plans shall be reviewed and updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter.

...”

25. Annex VII deals with the content of RBMPs and their updates. Part A provides:

“River basin management plans shall cover the following elements:”

...

2. a summary of significant pressures and impact of human activity on the status of surface water and groundwater, including:

...

5. a list of the environmental objectives established under Article 4 for surface waters, groundwaters and protected areas, including in particular identification of instances

where use has been made of Article 4(4), (5), (6) and (7),  
and the associated information required under that Article;

...

7. a summary of the programme or programmes of measures adopted under Article 11, including the ways in which the objectives established under Article 4 are thereby to be achieved;

...

- 7.5. a summary of the controls adopted for point source discharges and other activities with an impact on the status of water in accordance with the provisions of Article 11(3)(g) and 11(3)(i);

- 7.9. a summary of the measures taken under Article 11(5) for bodies of water which are unlikely to achieve the objectives set out under Article 4;

8. a register of any more detailed programmes and management plans for the river basin district dealing with particular sub-basins, sectors, issues or water types, together with a summary of their contents;

...

11. the contact points and procedures for obtaining the background documentation and information referred to in Article 14(1), and in particular details of the control measures adopted in accordance with Article 11(3)(g) and 11(3)(i) and of the actual monitoring data gathered in accordance with Article 8 and Annex V.

...”

26. Part B of Annex VII deals with updates of RBMPs:

“The first update of the river basin management plan and all subsequent updates shall also include:

1. a summary of any changes or updates since the publication of the previous version of the river basin management plan, including a summary of the reviews to be carried out under Article 4(4), (5), (6) and (7);

2. an assessment of the progress made towards the achievement of the environmental objectives, including presentation of the monitoring results for the period of the previous plan in map form, and an explanation for any environmental objectives which have not been reached;

3. a summary of, and an explanation for, any measures foreseen in the earlier version of the river basin management plan which have not been undertaken;

4. a summary of any additional interim measures adopted under Article 11(5) since the publication of the previous version of the river basin management plan.”

27. Article 14 sets out obligations relating to “public information and consultation”, including, in para. 1(c), the requirement that Member States publish, and make available to the public for comment draft copies of the river basin management plan for each river basin district, at least one year before the beginning of the period to which the plan refers.
28. Articles 16 to 17 require the European Parliament and the Council to adopt strategies against pollution of water and to prevent and control pollution of groundwater.

### ***The WFDR 2017***

29. The WFDR 2017 are “EU-derived domestic legislation”, as defined by section 1B(7) of the European Union (Withdrawal Act) 2018 (“the 2018 Act”). They were made under section 2(2) of the European Communities Act 1972. They transpose the provisions of the WFD. Under section 2 of the 2018 Act, they continue to have effect in domestic law. The effect of section 6(3) of the 2018 Act is that their meaning must be ascertained in accordance with any “assimilated EU case law”.
30. Regulation 2(1) of the WFDR 2017 defines the “appropriate agency” and the “appropriate authority” for a “river basin district that is wholly in England”, namely the EA and the SSEFRA.
31. The “programme of measures” is defined in reg.2(1) as being, “in relation to a river basin district, ... the programme of measures established under regulation 12 in accordance with regulation 20” (see below).
32. Under reg.3(1) the SSEFRA and the EA must “exercise their relevant functions so as to secure compliance with the requirements of the WFD ...”. Under reg.3(2) and (3) the SSEFRA and the EA must exercise their functions of deciding whether to grant, vary, revoke, or impose conditions on, an environmental permit under The Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No.1154) (“EPR 2016”) or a licence for abstraction or impoundment under the Water Resources Act 1991 so as to (a) prevent deterioration of surface water or ground water status of a body of water and (b) support the achievement of the EOs set for a body of water (subject to certain exemptions).
33. Part 5 of the WFDR 2017 deals with EOs and PoMs. Regulation 12 provides:

#### **“12. Procedure for setting environmental objectives and programmes of measures**

(1) The appropriate agency must, by such date as the appropriate authority may direct, prepare and submit to the authority proposals for

- (a) environmental objectives for each river basin district, in accordance with regulation 13, and
  - (b) a programme of measures to be applied in order to achieve those objectives, in accordance with regulation 20.
- (2) In preparing proposals under paragraph (1), the appropriate agency must
- (a) take account of the characterisation of, and economic analysis of water use in, the relevant river basin district carried out or updated under regulations 5 and 7, and
  - (b) take such steps as the appropriate authority thinks fit, or the appropriate authority may direct, to
    - (i) provide opportunities for the general public and those persons likely to be interested in or affected by the appropriate agency's proposals to participate in discussion and the exchange of information or views in relation to the preparation of those proposals,
    - (ii) publicise the appropriate agency's draft proposals to those persons, and
    - (iii) consult those persons in respect of those proposals.
- ...
- (6) The appropriate authority must ensure that, for each river basin district, the environmental objectives and programme of measures are periodically reviewed and, where appropriate, updated
- (a) by 22<sup>nd</sup> December 2021, and
  - (b) subsequently, by 22<sup>nd</sup> December of the sixth year following that date and of each sixth year following that."

34. Regulation 13 identifies the "environmental objectives" in regulation 12:

**"13. The environmental objectives**

- (1) The environmental objectives referred to in regulation 12 are, subject to regulations 14 to 19, the following objectives for the relevant type of water body or area.
- (2) For surface water bodies, the objectives are to –
  - (a) prevent deterioration of the status of each body of surface water;
  - (b) protect, enhance and restore each body of surface water (other than an artificial or heavily modified water body) with the aim of achieving good ecological status and (subject to paragraph (3)) good surface water chemical status, if not already achieved, by 22<sup>nd</sup> December 2021;

- (c) protect and enhance each artificial or heavily modified water body with the aim of achieving good ecological potential and (subject to paragraph (3)) good surface water chemical status, if not already achieved, by 22<sup>nd</sup> December 2021;
  - (d) aim progressively to reduce pollution from priority substances and aim to cease or phase out emissions, discharges and losses of priority hazardous substances.”
- 35. Under reg.15 the EA may designate a body of water as being “heavily modified” if it considers that (a) the changes which would be necessary to the hydromorphological characteristics of that body for achieving good ecological status would have significant adverse effects on *inter alia* the wider environment, water regulation, flood protection, land drainage, or other sustainable human development activities or (b) the beneficial objectives served by the modified characteristics of the water body cannot, for reasons of technical feasibility or disproportionate cost, reasonably be achieved by other means which are a significantly better environmental option.
- 36. Regulation 16 allows the deadlines for attaining EOs to be extended:
  - “16. Extended deadlines for environmental objectives**
  - (1) The deadline by which an environmental objective referred to in regulation 13(2)(b) or (c), (5)(c) or (6) must be achieved may be extended for the purposes of the phased achievement of the environmental objectives for a body of water if the conditions in paragraphs (2) and (3) are or will be met.
  - ...
  - (6) Where a deadline is extended under paragraph (1), the relevant river basin management plan must set out
    - (a) the extended deadline and the reasons for it,
    - (b) a summary of the measures to be applied to achieve the environmental objectives set pursuant to regulation 12 which are envisaged as necessary to bring the body of water progressively to the required status by the extended deadline, and
    - (c) the reasons for any significant delay in making these measures operational and the expected timetable for their implementation.
  - (7) Following an extension under paragraph (1), the next update of the relevant river basin management plan must include a review of the implementation of the measures referred to in paragraph (6)(b) and a summary of any additional measures necessary for the purpose set out in that paragraph.”
- 37. Regulation 20 provides:

**“20. Content of programmes of measures**

(1) Each programme of measures proposed and approved under regulation 12 must include basic measures and, where necessary, supplementary measures (see paragraph (4)).

(2) The basic measures must comply with Article 11.3 of the [WFD] and must, in particular, include the following –

...

(g) for point source discharges liable to cause pollution, a requirement for prior regulation or prior authorisation which sets emission controls for the pollutants concerned.

...

(4) Where necessary, each programme of measures must include any other supplementary measures designed and implemented with the aim of achieving the environmental objectives set under regulation 12.”

38. Regulation 25 provides for action where EOs are unlikely to be achieved:

“Where monitoring or other data indicate that the environmental objectives set for a body of water under regulation 12 are unlikely to be achieved, the appropriate agency or, where relevant, the appropriate authority must ensure that—

(a) the causes of the possible failure are investigated,

(b) relevant permits and authorisations are examined and reviewed as appropriate,

(c) the monitoring programmes under regulation 11 are reviewed and adjusted as appropriate, and

(d) such additional measures as may be necessary to achieve those objectives (subject to the application of regulations 15 to 19) are included in the programme of measures applying to that body of water.”

39. Part 6 of the WFDR 2017 deals with RBMPs. Regulation 27 lays down requirements for the content of RBMPs by referring to specific provisions of the WFD, including those set out in [25]-[26] above. Regulation 29 provides for public participation in river basin management plans.

40. Regulation 36 provides:

**“36. Directions**



...

(5) The appropriate authority may give guidance to the appropriate agency or to any other public body with respect to the practical implementation of [these Regulations or any other retained EU law which implemented] the WFD, and that agency or public body must have regard to it.”

41. In September 2021, under reg.36(5), the SSEFRA published statutory guidance entitled “River Basin Planning Guidance” (“the RBPG”). We refer to that document in more detail below.

### ***Background***

42. There are more than one thousand individual water bodies in the Humber River Basin District. UCB is one of them.
43. UCB is a HMWB under reg.15 of the WFDR 2017.
44. As a consequence of the Covid-19 pandemic the 22 December 2021 deadline for the approval of the HRBMP was extended by 12 months to 22 December 2022.<sup>1</sup>
45. On 22 October 2021 the EA published a draft of the HRBMP for public consultation. On 21 October 2022 it submitted the draft plan to the SSEFRA for approval. On 28 November 2022 a ministerial submission was made, which contained the full set of river basin management plans, including the HRBMP.
46. The SSEFRA approved the HRBMP on 14 December 2022.
47. On 8 December 2022 the EA provided PFA with a document entitled “Catchment Planning System”. This document described measures relating specifically to UCB, including the review and enforcement of environmental permits and the investigation of discharges. But it did not form part of the HRBMP or PoM.

### ***UCB***

48. Under Art.4(1)(a)(iii) of the Directive the classification of UCB as a “heavily modified water body” within reg.15 of the WFDR 2017 carries with it the aim that “good ecological potential” – but not necessarily “good ecological status” – will be attained within 15 years of the date of entry into force of the Directive, subject to a maximum of two extensions by virtue of Art.4(4)(c); that is by 2027.
49. It is agreed that at present the ecological potential of UCB is not “good”, but “moderate”. It is also agreed that, at least in part, this has been the result of pollution by sewage spills from the Pickering Waste Water Treatment Works, and discharges from two fish farms, one of them also a watercress farm, and other facilities, including the Flamingo Land Amusement Park. Discharge permits have been issued to the waste water treatment works, to the two fish farms, and to the amusement park. Several abstraction licences have also been granted.

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<sup>1</sup> Paragraph 6 of the Appellant’s skeleton.

50. The “Catchment Data Explorer” in the HRBMP under the heading “Investigations into Classification Status ... Reasons for Not Achieving Good (RNAG)”, gives this explanation of the extended deadline for achieving “good ecological potential” in UCB:

“Disproportionately expensive: Disproportionate burdens;  
Good status prevented by A/HMWB designated use: Action to  
get biological element to good would have significant adverse  
impact on use.”

***The grounds for judicial review in the High Court***

51. PFA did not pursue ground (2) of its challenge because it effectively repeated ground (1). The remaining grounds were as follows:
- (1) The SSEFRA erred in law in approving the HRBMP based upon a PoM which did not comply with Art.11(8) of the WFD and reg.12(6) of the WFDR 2017. The EA submitted and the SSEFRA approved a PoM which failed to identify measures for each water body to achieve the EOs set for that body. The SSEFRA and the EA have proceeded on the basis that a PoM may lawfully set out measures solely at the level of the river basin district, or even nationally.
  - (3) The EA failed to submit and the SSEFRA failed to approve a HRBMP based upon a PoM compliant with the WFD in breach of reg.3(1) and/or reg.12(1)(b) of the WFDR 2017. A review of the PoM for the purposes of updating a RBMP must identify measures in relation to each water body for achieving the EOs for that body.
  - (4) For those water bodies where time for compliance has been extended, the HRBMP does not contain a review for each water body of the implementation of the measures previously identified under reg.16(6)(b) for bringing that body up to the standards required by the extended deadline and a summary of any additional measures necessary, contrary to reg.16(7) of the WFDR 2017 (and Art.4(4) of the WFD combined with reg.3(1) of the WFDR 2017).
  - (5) The process of public consultation on the draft HRBMP failed to comply with reg.29(2) of the WFDR 2017 (and statutory guidance relating thereto) and/or Art.14 of the WFD and/or common law requirements for a lawful consultation, by not making available to the public information on a PoM, specifically in relation to UCB, in accordance with regs.12(6) and 16(7) of the WFDR 2017.
52. Essentially, grounds 1, 3 and 4 are dependent upon the same central issue as to whether a PoM must be carried out at the water body level, or may be carried out at higher levels only. They are variations on a theme. The judge proceeded on that basis and the parties agree that the same approach may be taken on this appeal. This also applies to ground 5. No additional issues were raised in this court under that ground.
53. The position of the EA has altered from time to time. In a letter on behalf of PFA to the EA dated 10 December 2021 it was contended that a review of a PoM under reg.12(6) must consider measures for individual water bodies. On 18 January 2022 the EA responded that specific measures for individual water bodies are not “routinely”

reviewed or updated and consequently they had not been reviewed for UCB as part of the preparation for the new RBMP. In a pre-action protocol letter dated 22 February 2022 PFA said that that represented a misdirection of law.

54. The EA changed its position in a reply dated 15 March 2022. At that stage it agreed that both the EA and the SSEFRA had to assess and review the individual measures at the water body level. The EA said that there had been a review of the PoM for all water bodies as required by reg.12(6) of the WFDR 2017. It was fully aware of the need to undertake such a review and it had not misdirected itself. The EA said that its letter of 18 January 2022 had been incorrect on that point and it had complied with the requirement to review the PoM by considering “regulatory activities” which had taken place in previous years.
55. In a letter dated 3 May 2022 PFA challenged that approach taken by the EA. In its response dated 18 May 2022 the EA altered its position again by stating that the duty to review and update the PoM applied at the level of the river basin district, not individual water bodies.
56. In a pre-action protocol response dated 17 February 2023 the SSEFRA adopted the EA’s responses in their letters dated 15 March 2022 and 18 May 2022 despite the inconsistency between the two. The SSEFRA then maintained that reviews of a RBMP are to be carried out at the level of a river basin district and not each water body.
57. In a letter dated 1 March 2023 responding to a request for clarification the SSEFRA stated that:
  - (i) A RBMP does not contain a document summarising a review of measures or the implementation of measures. Nor does it consider additional measures required.
  - (ii) Instead, all EOs have been reviewed and, where appropriate, updated. But the RBMP itself does not identify which individual objectives have been updated.
  - (iii) The Summary PoM covers the measures required to meet all of the EOs, including those with extended deadlines. The EA does not identify which objectives have extended deadlines “as they are generally the same measures needed for all other objectives”.

### ***The judgment of Lieven J***

58. Before the judge it was common ground that the PoM for the HRBMP (or rather the Summary PoM – see below) does not include any measures specific to UCB. She summarised the sections of the PoM and explained why they were entirely generic in content and not specific to any water body. For example, the document relied upon legal mechanisms, including licensing regimes such as the EPR 2016, but did not identify measures to be taken under those mechanisms. The document identified the classification, characteristics and status of, and the objectives for, UCB but not the measures to be taken in relation to that water body [60] to [69] and [85].
59. As to the application of Art.11(5) (reg.25 of the WFDR 2017), the SSEFRA had submitted that there was a reasonable expectation that the EOs will be met, relying on

material dealing with the management of risk. On this basis the SSEFRA maintained that the obligations in Art.11(5) had not been triggered. However, the judge said that that material is entirely generic and the SSEFRA accepted that there was no specific evidence that the PoM could reasonably be expected to achieve the EOs by the relevant deadline. Paragraph 11 of the Ministerial Submission to the SSEFRA dated 28 November 2022 for the approval of the RBMPs for the period 2021-2027 addressed the level of confidence in achieving EOs at a national level. But the judge concluded that the reasons given by the EA why UCB had not achieved good status<sup>2</sup> made it clear that the EOs for that water body were unlikely to be met and therefore Art.11(5) was engaged [112] to [113].

60. The judge decided that, because the EOs are specific to each water body and the PoM is required to achieve, or to aim to achieve, those objectives, there must be measures specific to each of those bodies. The measures may be generic, and the level of detail may vary from one measure to another, but even where generic measures are relied upon, the PoM must be focused on when and how the EOs for each individual water body are expected to be met. The PoM may not be wholly generic [128] to [134]. In other words, it must be shown how generic measures are applicable at the level of each water body in order to achieve the EOs for that body.
61. Given that the SSEFRA and the EA had misinterpreted the WFD and the WFDR 2017 as allowing a PoM to be wholly generic, and not requiring measures to relate specifically to each water body, the SSEFRA never reached the stage of exercising a discretion lawfully as to the level of specificity in relation to the measures for each water body [128].
62. Article 11(3) of the WFD defines “basic measures” which must be included in the PoM (Art.11(2)). For point source discharges liable to cause pollution, the PoM must include *inter alia* a requirement for prior regulation (e.g. a prohibition on pollutants entering water, prior authorisation, or registration based on general binding rules, including emission controls). The WFD requires that “these controls must be periodically reviewed and, where necessary, updated”. “Controls” must in that context refer to individual water bodies and discharges. Here again, the fundamental purpose of the measures is to meet objectives which are specific to individual water bodies [135].
63. Article 11(5) is a further indication that the PoM is intended to be specific to each water body. Where the EOs for a water body are unlikely to be achieved, the relevant permits and authorisations must be reviewed. Such additional measures as may be necessary to meet those objectives must be established. The measures must be water body specific. The same approach must apply to Art.11(8) [136] to [137].
64. Regulation 16 of the WFDR 2017 permits the extension of deadlines for achieving the EOs for a water body (see also Art.4(4) of the WFD). Where a deadline is extended the relevant RBMP must set out a summary of the measures to meet the EOs envisaged as being necessary to bring “the body of water” to the required status by the extended deadline. It would have to be shown how any generic measure relied upon would be related to a specific water body in order to satisfy that requirement [140].

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<sup>2</sup> See the EA’s Catchment Data Explorer referred to at [117] below.

65. In September 2021 DEFRA issued the RBPG under reg.36(5) of the WFDR 2017 as guidance to the EA on the application of the Regulations and the WFD to the river basin planning period covering 2021-2027. The RBPG, to which the EA is required to have regard, specifically states that there must be a PoM for each water body. That guidance undermines the suggestion by the SSEFRA and the EA that it would be administratively impractical or unworkable to require a PoM for each water body. Furthermore, the evidence did not support that suggestion [142] to [145].
66. The judge went on to uphold the complaint of unlawful consultation. As for UCB, she held that it had been unlawful for the draft HRBMP to propose to downgrade the “fish element” status of the water body from “good” to “moderate”, without an accompanying list of measures on which PFA (and any other interested party) could respond [147] to [156].
67. The judge allowed the claim for judicial review and quashed the HRBMP in so far as it relates to the PoM as it applies to UCB. The EA and the SSEFRA were ordered to take the steps necessary for respectively preparing and approving an updated PoM and section of the HRBMP dealing with UCB. The judge also granted the following declarations:

“It is declared that the Water Framework Directive 2000 (“WFD”) and the Water Environment (Water Framework Directive) England and Wales Regulations 2017 (“the Regulations”) require:

- (a) that the periodic review of programmes of measures established under Article 11 WFD and regulation 12 of the Regulations must be undertaken at the individual water body level (as opposed to merely at river basin district level, or even national level); and
- (b) that the programmes of measures must set out the water body specific measures to be taken to achieve the environmental objectives for each water body.”

### ***The ground of appeal***

68. The single ground of appeal simply claims that the judge misinterpreted the WFD as transposed by the WFDR 2017. However, the skeleton argument accompanying the notice of appeal advanced a number of points which may briefly be summarised as follows:
- (i) A PoM and a RBMP may lawfully rely upon generic measures which are not specifically related to a water body. The WFD and the WFDR 2017 intend that a PoM and a RBMP be strategic, high-level documents setting a direction of travel for how the EOs will be achieved in a river basin district *as a whole*. The WFD provides a framework for the co-ordination and integration of the principles and measures for the protection and sustainable use of water within a river basin district (reg.3(4) of the WFDR 2017). The judge failed to grapple with the high-level, strategic nature of framework legislation.

- (ii) The term “programme of measures” is not apt to refer to separate measures for each water body, particularly when read in the context of this framework legislative scheme. The judge erred in holding that reg.12 of the WFDR 2017 requires a PoM to include measures for each individual water body in a river basin district. Regulation 12 creates no such obligation.
- (iii) On a purely textual reading of the WFD and the WFDR 2017, a PoM is not required to specify measures for individual water bodies. The term “river basin district”, that is the area for which a PoM and RBMP must be approved, does not expressly or by implication include a “body of water”.
- (iv) The judge was wrong to conclude that, on a purposive reading of the WFD and the WFDR 2017, the measures in a PoM have to be water body specific in order to achieve the EOs of each water body. Read as a whole, the purpose of the legislation is “strategic, high-level”. It is broadly framed so as to allow for adaptation to changing, complex circumstances. Accordingly, Arts.4 and 11 of the WFD and regs.12 and 13 of the WFDR 2017 require the PoM to be directed at planning for the river basin district as a whole and not individual water bodies.
- (v) The SSEFRA’s interpretation is supported by reg.32 of the WFDR 2017, which the judge did not address. Regulation 32 confers a power on the EA to prepare a “supplementary plan” to add to a RBMP, which can relate to, for example, a particular description of body of water, or a particular catchment or geographical area.

#### ***A summary of the parties’ submissions***

- 69. Mr. Richard Kimblin KC and Ms. Nina Pindham developed the SSEFRA’s contention that PoMs and RBMPs are high-level, strategic documents and consequently the legislation does not require measures to be directed at individual water bodies. They referred to the European Commission’s “European Community Water Policy” dated 21 February 1996 (“the EU Commission’s Water Policy”), as *travaux préparatoires* for the WFD, and emphasised certain recitals of the Directive, as part of the context for a proper understanding of Art.11 itself. The SSEFRA also relied upon Guidance Document 11 on “Planning Processes” produced by an “informal working group” under the aegis of the European Commission as part of the “Common Implementation Strategy for the Water Framework Directive (2000/60/EC)” (“CIS Guidance Document 11”) and the RBPG 2021 (see [41] above) as supporting his interpretation of the legislation.
- 70. The SSEFRA and the EA emphasised the opening words of Art.4(1) of the WFD which lays down requirements for the setting of EOs:

“In making operational the programme of measures specified in the river basin management plans . . .”

Mr. Matthew Fraser on behalf of the EA put the argument very clearly in his skeleton argument (paras. 6 and 63). The legislation does not require the PoM or any review of

it, to be water body specific. Instead, the PoM operates at a level of generality, and only becomes water body specific at the point of implementation of the PoM on the ground through individual actions taken pursuant to generic measures in the programme. Those generic measures may include the provisions of national legislation. Both PoMs and RBMPs focus on mechanisms for achieving EOs, not “on the ground actions” for doing so.

71. Similarly, the SSEFRA and the EA refer to Art.11(1) of the WFD which provides that PoMs may refer to “measures following from legislation adopted at national level and covering the whole of the territory of a Member State”. Article 11(3)(g), dealing with the “basic measures” required for “point source discharges liable to cause pollution”, refers to *inter alia* “prior authorisation” or “prior regulation” (see also reg.20(1)(g) of the WFDR 2017). In England and Wales such controls may be exercised through the EPR 2016. It is the application of such legislation which may result in a measure specific to a water body. The EA must exercise their functions under the EPR 2016 so as to secure compliance with the WFD (see reg.3(1), the definition of “relevant functions” in reg.2(1) and para.31 of sched.2 of the WFDR 2017). The SSEFRA and the EA must determine whether to grant, vary, revoke or impose conditions on an environmental permit so as to support the achievement of the EOs set for a body of water (reg.3(2) to (3) of the WFDR 2017).
72. Reg.3(4) of the WFDR 2017 requires the SSEFRA and the EA to exercise their “relevant functions” (including those under the EPR 2016) in relation to each river basin district so as to best secure that the requirements of the WFD for the achievement of the EOs and in particular PoMs, are co-ordinated for the whole of that district.
73. The SSEFRA submits that there are additional controls in the Water Industry Act 1991 (“the WIA 1991”) in relation to point discharges and water abstraction and their effects on individual water bodies. The statutory scheme was analysed by Lord Nicholls in *Marcic v Thames Water Utilities Limited* [2004] 2 AC 42 at [10] to [19]. It sets out the powers and duties of water undertakers and sewage undertakers, subject to supervision and control by the Director General of Water Services (OFWAT). Through a system of price reviews the Director General ensures that undertakers receive reasonable returns for their capital investment in *inter alia* environmental improvements. The WIA 1991 also contains enforcement mechanisms. The SSEFRA submits that the legislative schemes in the WIA 1991 and the EPR 2016 are appropriately concerned with the implementation of actions to improve specific water bodies, whereas the WFD and WFDR 2017 are not.
74. The SSEFRA and the EA submit that the legislation distinguishes between “river basin district” and “body of water”. Where a provision is intended to apply to water bodies it says so expressly. Art.11 of the WFD and reg.20 of the WFDR 2017 dealing with PoMs do not refer to water bodies. Regulation 2 defines a PoM in relation to a “river basin district”, not “water bodies”.
75. In *R (Edison First Power Limited) v Secretary of State for the Environment, Transport and the Regions* [2003] UKHL 20; [2003] 4 All E.R. 209 Lord Millett said this at [116] about the presumption that Parliament intends to act reasonably when enacting legislation:

“The Courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless.”

76. However, the SSEFRA accepts that the presumption can only apply where a choice is available between different interpretations of the language used by Parliament (see Lord Reid in *Inland Revenue Commissioners v Hinchy* [1960] AC 748, 768).
77. Here it is submitted that the interpretation for which PFA contends would be administratively unworkable. There are nearly 5,000 water bodies in England, 58,000 water discharge permits and 20,000 licences. There are just over 1,000 water bodies in the Humber River Basin District alone. Requiring a PoM to specify measures at the level of individual bodies would be resource intensive and would divert EA resources from “other essential duties”. Moreover, no meaningful consultation could be carried out with the public under reg.29 of WFDR 2017 in relation to such a large number of water bodies.
78. The EA adopted the submissions for the SSEFRA. Mr. Fraser helpfully clarified the contents of the PoM in the HRBMP and how it relates to the PoMs and RBMPs in other river basin districts.
79. Mr. David Wolfe KC and Mr. Raj Desai appeared on behalf of PFA. They repeated the submissions which had succeeded before Lieven J. The WFD does not merely set a direction of travel for the achievement of EOs in a river basin district as a whole. Instead it lays down a detailed and prescriptive series of procedural stages, including the PoMs, to achieve the EOs set for each water body in that district.
80. There is nothing inconsistent between the co-ordinated and integrated approach of the WFD and a requirement that measures in a PoM should be set for each water body in order to achieve the EOs for that body.
81. PFA submits that the judge was correct to decide that it would be counter-intuitive if a PoM could be formulated in a wholly generic manner, without focusing on whether, when and how EOs for individual water bodies would be met.
82. This also applies to the review of existing RBMPs. It is intrinsic to the WFD that a review will carry out *inter alia* “gap analysis”, including assessments of the current pressures and impacts on a water body which have resulted in a water body not achieving its EOs, the adequacy of existing measures for that body and any additional measures needed so that the EOs are likely to be achieved by the next deadline.
83. The absence of water body specific measures from the PoM is not justified by the distinction drawn by the SSEFRA and the EA between the establishment of a PoM under Art.11 of the WFD and the implementation of, or “making operational”, that Programme (see Art.4(1)).
84. This is particularly clear where a review of a PoM has to be undertaken under Art.11 of the WFD and reg.12 of the WFDR 2017. Art.11(7) of the WFD required the first PoMs to be established at the latest within 9 years after the Directive came into force



and made operational at the latest within 12 years, that is by 22 December 2009 and 22 December 2012 respectively. Art.11(8) required those PoMs to be reviewed and updated by no later than 22 December 2015 and every six years thereafter. Any new or revised measures established under an updated programme should be “made operational” within three years of being approved.

85. PFA submits that the term “measures” must have the same meaning or ambit in the provisions governing both the first PoM and any updates of that programme. It makes no sense of the legislative scheme to treat “measures” as being limited to generic provisions at a river basin district or national level, *a fortiori* where those provisions are simply a generic mechanism, such as a permitting regime. The WFD does not envisage that Art.11(8) will simply address the updating of regulatory legislation or national policy, the content of which will generally be uniform throughout a national jurisdiction.
86. Turning to the principle in *Edison First Power*, PFA submits that the presumption relates to interpretations of legislation which produce absurd or unreasonable consequences. It does not enable a court to pick and choose between interpretations according to whether the outcomes would be more or less resource intensive for the public bodies involved. Neither the SSEFRA nor the EA have produced evidence to substantiate their reliance on this principle.
87. The written submissions of the OEP were accompanied by the written statement of Mr. Neil Emmott, its Head of Monitoring Environmental Law and Advice (“Emmott I”).
88. The OEP was established by the Environment Act 2021. The principal objective of the OEP is to contribute to environmental protection and the improvement of the natural environment (s.23). It is responsible for holding government and public authorities to account for their compliance with environmental law. The OEP must monitor the implementation of such law (s.29(1)) and may report on any matter concerned therewith (s.29(2)). Its reports are laid before Parliament and published (s.29(5)). A minister must respond to any such report (s.29(6)). The OEP also has functions for the enforcement of environmental law (sections 31 to 43).
89. In May 2024 the OEP laid before Parliament its report: “A review of implementation of the Water Framework Directive Regulations and River Basin Management Planning in England”. The government published its response on 11 September 2024. The OEP’s submissions to this court draw upon their report.
90. The OEP submits that the judgment of Lieven J is correct. The Intervener expresses concern for the implementation of the WFD and for the health of water bodies if the appeal should be allowed.
91. The OEP submits that the requirements of the WFD are not simply strategic and high-level. As its title makes plain it establishes “a framework for Community *action* in the field of water policy”.
92. The WFD contains both general and specific requirements. On the one hand the WFD imposes general obligations on the European Parliament and Commission to enact “daughter directives” to establish controls for “priority substances”, “priority

hazardous substances” and groundwater pollution, which had not been developed by 2000 (see Arts.16 to 17).

93. On the other hand, the WFD repealed and replaced a number of Directives imposing specific requirements (see Art.22). The CJEU has interpreted at least one Directive replaced by the WFD as requiring “programmes” (in relation to specific emission limit values and quality standards) for particular water bodies (*Commission v Greece* (Joined Cases C-235/95 and C-233/95) and *Commission v Spain* (Case C-214/96)). The WFD also re-emphasised that specific requirements contained in other Directives continue to apply (Arts. 7 and 10).
94. Furthermore, the provisions of the WFD which lie at the heart of this appeal, namely Arts. 4, 5, 8, 11 and 13, impose detailed, precise requirements on Member States, which do not depend upon any further input from the European Union. For example, the objectives of achieving good chemical status and good ecological status are specific and measurable (Arts. 2(21), (22) and (24), 4 and 10(3), and Annexes V and IX). There are time limits for the achievement of EOs (initially 2015 but capable of extension to 2022 and then 2027 – see Art.4(4)(c)). There are specific derogations from the requirements to achieve good ecological or good chemical status (see Art.4). Reading these provisions as a whole, the WFD imposes on Member States an “obligation of result” for the establishment of EOs and PoMs to achieve the required status for each water body within defined timescales. Alternatively, the WFD imposes an “obligation to undertake best efforts” to achieve that status. But even if that lesser requirement applies, the status to be aimed for is still precise and measurable, as are also the EOs for individual water bodies.
95. The OEP submits that the EOs in Art.4 are to be set for individual water bodies and can only be achieved through PoMs establishing measures at the level of each water body, not the level of a river basin, river basin district, or nationally. The provisions in Arts. 4(4), 11(3)(g) and 11(5) plainly indicate that a PoM must set out measures for each water body, the implementation and effect of which can then be monitored and re-assessed at the review stage.
96. Given the hard-edged nature of the EOs required for individual water bodies and the obligation to meet those objectives, a PoM does not comply with the WFD if its measures are set at river basin level or above, to await subsequent implementation at water body level. If at the time when the EA prepares a PoM and the SSEFRA approves it, they are not satisfied that the measures set out can reasonably be expected to achieve the EOs (see para.10.7 of the RBPG) they fail to discharge their respective functions in accordance with the WFD (contrary to reg.3(1) and (2) of the WFDR 2017).
97. In para. 81 of Scott II, he explains that based on the RBPG, the EA uses the following terms in a RBMP to describe levels of confidence in the future achievement of EOs:
  - “ • ‘good by 2027’ where there is confidence that the target status will be met by 2027, based on a reasonable expectation that all the necessary measures will be in place

- ‘good by 2027 (low confidence)’ where there is still uncertainty about whether all the necessary measures will be in place to achieve the target status by 2027”

98. According to the OEP’s report to Parliament in May 2024 (pp.193-197), the EA’s data shows:

- (i) By 2019 only 16%<sup>3</sup> of the surface water bodies in England had achieved “good ecological status” or, for HMWBs, “good ecological potential”.
- (ii) After allowing for derogations which apply to 23% of all water bodies, the latest RBMPs aim to achieve good ecological status or potential in 77% of cases (3,591 water bodies). However, for 2,604 water bodies (73% of those not the subject of derogations) there is only a low confidence that the EOs will be met by 2027.
- (iii) In other words, there are only 987 water bodies where there is good confidence that the EOs will be met by 2027, including 758 that had already achieved that outcome by 2019. Accordingly, the measures in the PoM for achieving good ecological status or potential by 2027 with a good as opposed to a low level of confidence relate to only 229 additional water bodies compared to 2019.
- (iv) A large amount of the uncertainty stems from a lack of sufficient investment. The EA’s analysis shows that the level of planned investment up to 2027 is only about 12% of that required to achieve the EOs (although it is recognised that that is subject to the outcome of OFWAT’s 2024 price review).

The OEP also refers to para.49 of the EA’s skeleton argument: for England as a whole the deadline for achieving the required status was extended beyond 2015 for 62% of all surface water bodies and beyond 2021 for 58% in the 2022 review.

99. The OEP links the failure to achieve good status sooner for such a large number of water bodies to *inter alia* reliance upon generic or national measures, rather than water body measures, in the PoM (see e.g. Emmott I at para.19). The OEP also submits that the high proportion of measures where there is only a “low confidence” of achieving the EOs by 2027 indicates that Art.11(5) of the WFD (reg.25 of the WFD 2017) must be engaged in a number of those cases (see e.g. paras.36 and 42 of the OEP’s submissions).

### **Discussion**

100. We set out our analysis under the following headings:

- (1) What do the PoMs approved by the SSEFRA set out to do?
- (2) Is a PoM intended to be only a high-level, strategic document?
- (3) Other regimes for identifying water body specific measures.
- (4) The interpretation of the term “Programme of Measures”.

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<sup>3</sup> In 2015 the comparable figure was 15% (see p.179 of the HRBMP).

*(1) What do the PoMs approved by the SSEFRA set out to do?*

101. It is necessary to begin with the clear distinction drawn by the WFD between a PoM and a RBMP. The WFD requires Member States to prepare and approve them as separate processes and documents. Art.11 deals with PoMs and Art.13 with RBMPs. A PoM is to contain measures in accordance with Art.11 and Annex VI. A RBMP is to contain the information listed in Annex VII (Art.13(4)). Paragraph 7 of Annex VII requires a RBMP to contain a summary of the PoM or PoMs adopted under Art.11. The Directive required that a RBMP (and updates) and also summary reports of the analyses under Art.5 and monitoring programmes under Art.8, be sent to the Commission under the reporting requirements in Art.15. But there was no requirement for a PoM to be sent to the Commission. Article 11(7) and (8) requires all the measures in a PoM to be “made operational” within three years of the approval of that Programme. There is no requirement to make a RBMP operational, or a time limit for the implementation of that Plan. That is because the measures to be carried out are those spelt out in the PoM and not the *summary* of that document contained in the RBMP.
102. This is made clear in section 5.6 of the CIS Guidance Document 11, which states:
- “The plans are not the principal mechanism for implementing measures to achieve the environmental obligations imposed by the Directive. Those measures are to be set out in the programme of measures required by Article 11 that is to be adopted for each river basin district. Programmes of measures will then be summarised in the relevant RBMP. The role of RBMPs is rather broader than this. For example, they are to be the primary vehicle for consulting the public and stakeholders on plans for managing the water environment within the river basin district.
- The plan will include a summary of the results of the analyses; the characteristics of the river basin; a review of the impact of human activity on the status of waters in the basin; estimation of the effect of existing measures and the remaining “gap” to meeting those objectives; and, what more is required.”
103. The WFDR 2017 is even clearer than the WFD in maintaining the distinction between the PoM and the Summary of the PoM in the RBMP. Part 5 of the WFDR 2017 deals with “Environmental objectives and programmes of measures”.
104. Under reg.12 the EA must prepare and submit by a date directed by the SSEFRA proposals for the EOs for the district in accordance with reg.13 and a PoM in accordance with reg.20. The SSEFRA’s decision on whether or not to approve EOs and PoMs submitted to him is made under reg.12(3). Part 5 also includes reg.25 (which transposes Art.11(5) of the WFD). Where the EOs for a water body are unlikely to be achieved, the EA must ensure that such additional measures as the regulations may require to achieve those objectives are included in the PoM applying to that body of water.

105. RBMPs are dealt with separately in Part 6 of the WFDR 2017. For example, reg.28 requires the EA to review and update each plan and to submit an updated plan to the SSEFRA for approval by such date as he may direct.
106. Chapter 14 of the RBPG deals with PoMs. Paragraph 14.1 states that the Guidance distinguishes between a “measure” and a “mechanism”:

“• ‘measure’ is used to mean any action which will be taken on the ground to help achieve the objectives

• ‘mechanism’ is used to mean the policy, legal and financial tools which are used to bring about those actions. Mechanisms include, for example: legislation, economic instruments (which can include taxes, tradable permits and payments for ecosystem services); codes of good practice; negotiated agreements; promotion of water efficiency; educational projects; research, development and demonstration projects.”

It will be noted that a “mechanism” includes legislation by which a measure or action on the ground will be taken. The RBPG does *not* treat legislation as a measure. Paragraph 14.2 states that the EA is responsible for combining the measures to form a PoM; it must therefore consider both the measures which will be necessary and the mechanisms by which they will be delivered.

107. Paragraph 14.19 of the RBPG distinguishes between a PoM and a “summary” of that programme for inclusion in the RBMP:

“14.19 For reporting purposes, the complete picture of all of the measures necessary to achieve the objectives in a river basin district and all of the mechanisms necessary to deliver them will be set out in a large portfolio of technical, legal and administrative documents (which cover different geographical scales, contain different levels of detail, are owned by different bodies and operate over different timescales). While all of this information may be essential for the implementation of measures, it does not need to be submitted to the Secretary of State.”

Paragraph 14.23 states *inter alia*:

“14.23 The summary of the programme of measures should explain:

- which types of measures will be used to address these significant water management issues
- the mechanisms which will be used to deliver these measures.”

108. England is divided into 10 river basin districts<sup>4</sup> for each of which a RBMP has been approved. Each of those RBMPs contains this text (see p.27 of the HRBMP):

*“Programmes of measures include the on-the-ground actions (for example, improving a sewage treatment works) and the mechanisms (tools and approaches) to ensure the actions are delivered (for example, environmental permit conditions regulating the discharge of sewage effluent and the associated water industry price review process to fund the improvements). They include exercising statutory powers set out in legislation to deliver actions on the ground.*

*The summary programmes of measures in the plans focus on the main mechanisms, programmes, and strategic initiatives to protect and improve the water environment in each river basin district. These mechanisms include ‘basic’ measures (for example, action required by legislation) and ‘supplementary’ measures which can be regulatory or voluntary initiatives such as codes of practice.” (emphasis added)*

109. Thus, the text of the RBMPs clearly gives the impression to the reader that there exists for each river basin district a PoM which is more detailed than the Summary PoM in each Plan. That would be necessary to comply with the legislation and the guidance referred to above. So it came as a surprise to discover that no PoMs have in fact been produced. Nothing has been produced containing any more information than is to be found in the so-called “Summary” of the PoM in each RBMP. The court was told by counsel for the SSEFRA and the EA that the Summary of the PoM stands as the PoM in each district. It is not clear whether the SSEFRA himself has been made aware of this.

110. Chandler I sets out the position of DEFRA clearly in paras.22 to 24 and 32:

“22. In the case of the England RBMPs, the water body level evidence – characterisation, classification, pressures and objectives, is all included in the RBMPs at water body scale (for example, this is what is in the Catchment Data Explorer, available to the public) as well as being the information we had to previously report to the EU via WISE. The EA use this same data for managing the water environment at the area level. That is, ‘WFD implementation’. In contrast, the guidance is very clear regarding the level of reporting requirements for programmes of measures in the RBMP which must be in summary form and focussed on national measures and how they will address the overall pressures identified on the water environment.

23. Given this understanding of the purpose of the summary of programmes of measures in the RBMPs, it is clear that the summary itself in practice is a summary of national measures categorised for reporting purposes under Key Types of

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<sup>4</sup> Two of which extend into either Wales or Scotland.

Measures (KTM) An extract from section 10.1 of the Guidance is exhibited at [DC/1/31-37]. These are broad categories (e.g. measures to reduce nutrient pollution from agriculture). The Guidance states at para. 10.1.2 [DC/1/33]:

“KTM are expected to deliver the bulk of the improvements through reduction in pressures required to achieve WFD Environmental Objectives. A KTM may be one national measure but it would typically comprise more than one national measure.”

24. So, the summary is indeed of a number of programmes of measures. A summary of every individual measure applied to every individual water body would have to be a huge collection of data in its own right and would not be workable to serve the reporting function. Consider the measure of environmental permitting and compliance alone. In 2022/23 the Environment Agency issued over 4,000 new or revised permits. They manage a total of 58,000 discharge permits and 20,000 licences to abstract or impound water.

32. In considering the RBMPs in the context described above, the Secretary of State fulfils the duty to approve the RBMPs with consideration of relevant issues at RBD level. There is no expectation that the RBMPs should convey detailed inventories of measures for every water body in an RBD.”

Chandler I refers at para.13 to para. 5.6 of “CIS Guidance Document no. 11 (see [102] above).

111. This evidence from DEFRA focused on what a RBMP should contain, as a document serving only reporting and consultation functions, notwithstanding that PFA’s challenge was to the legal adequacy of the PoM and not to the Summary of that programme in the RBMP. Nevertheless Mr. Chandler has made it clear that the programme in the RBMP is essentially only a “summary of national measures” set out for reporting purposes in “broad categories”, such as “measures to reduce nutrient pollution from agriculture”.
112. Given that the Summary PoM is the only PoM that has been produced and that on any view, a PoM compliant with the WFD and the WFDR 2017 cannot simply be an assembly of “national measures”, it is apparent from the evidence that no consideration was given by the EA and the SSEFRA as to what a compliant PoM should contain, even as an exercise of judgment. Accordingly, Lieven J was entirely right to say in her judgment at [128] that the EA and the SSEFRA never reached the stage of exercising any discretion they have, either as to what water body specific measures were necessary or the level of detail into which the PoM should go.
113. On the basis of this fundamental self-misdirection by the EA and the SSEFRA the appeal should fail. The lawfulness of a RBMP, including its Summary PoM, presupposes the existence of a lawful PoM upon which it has been based. The approach adopted to the preparation and approval of RBMPs is therefore unlawful.

Nevertheless, it is necessary for us to consider and decide the other issues of law which arise in this case. Before doing so we will address the explanation given by the SSEFRA and the EA of the contents of the Summary of the PoM (otherwise the PoM) for the HRBMP. This bears out the error of law identified in [112] above and provides context for considering the remaining issues.

114. The first 143 pages of the HRBMP contain the same text as in every other RBMP. It provides a high-level, generic summary of how the current conditions of waters are classified, the various types of EOs and challenges for the water environment. The “summary programmes of measures” runs from p.27 to p.143. The text is the same throughout the country. It is not even specific to a river basin, or a river basin district. The plan summarises generic measures for protected areas, such as Special Protection Areas, different sectors of the economy, climate change, and timescales for taking action under different statutory and policy regimes. The summary programme moves on to address “mechanisms” at pp.79 to 143. Again, it only describes mechanisms and some of the issues involved at a national level. As Mr. Chandler stated, that is the focus of the document.
115. The HRBMP then provides links to the maps provided for the plan, showing the classification of each water body in terms of ecological and chemical status, the objectives and the location of the monitoring points used. The maps do not indicate measures.
116. Pages 179 to 189 of the HRBMP gives a progress report since the 2015 updates in national, generic terms, save that some information in two summary tables is presented for river basin districts.
117. The RBMPs also provide a link to the EA’s Catchment Data Explorer (“CDE”) which the public may access. This summarises data for individual water bodies, such as UCB, but only as regards characterisation, classification, pressures and objectives (Chandler I at para. 22). The CDE does not present any proposed measures at the level of individual water bodies.
118. The RBMP also contains a spreadsheet on 5 pages entitled “Summary Programmes of Measures”. This was described in the bundle index as being for the Humber River Basin District. In fact many, if not most, of the measures apply to *all* river basin districts in the country. The document would appear to be common to all RBMPs. Some measures apply to specified river basin districts, including Humber. In those instances, the spreadsheet normally says that the measures apply to “various” water bodies within those districts, without identifying which ones they may be, if indeed they have been identified for this purpose. In relation to England as a whole, only a tiny proportion of the measures listed, 12 in total, are said to have outcomes linked to 2027. The remainder do not. In the case of the Humber River Basin District, the spreadsheet identifies only five non-regulatory measures which are linked to specified water bodies, of which four are said to involve financial incentives linked to 2027 outcomes. It will be recalled that there are about 1,000 water bodies in that district alone. No meaningful details are given of any of the measures, nor is there any explanation as to their expected effects on EOs. No explanation has been given as to how those few measures which are linked to a water body came to be included in the Summary PoM.



119. This spreadsheet paints both measures and mechanisms with the broadest of brushes. So, for example, the first “Measure/Mechanism”, which is said to apply to all river basin districts throughout the country and to be linked to 2027 outcomes, is described in these terms:

“Water Industry Asset Management Plan Price Review 19  
Water Industry National Environment Programme schemes –  
Habitat Improvements.”

The next column headed “Measure Information” says:

“Habitat restoration or creation and species recovery. E.g. river and lake restoration, removing barriers to fish movement, tackle Invasive Non Native Species, achieve objectives for water-dependent Sites of Special Scientific Interest and European sites, actions to conserve and enhance priority habitats and species”

The column headed “Mechanism” merely states “regulatory”. The SSEFRA and the EA typically rely upon this level of information as providing not only a summary of the programme of measures, but also the programme itself for the purposes of Art.11. The information cannot meaningfully be related to individual water bodies, in terms of measures for each body to achieve the relevant EOs. Indeed, the spreadsheet does not identify any water body specific EOs, with only a couple of exceptions.

120. The Plan also contains a further spreadsheet of 10 pages showing “potential additional programmes of measures”. The same information is included in all RBMPs. It is not specific to any water body or even to a river basin district.
121. The EA has also included some pages describing steps being taken by the Yorkshire Derwent Catchment Partnership. The information provided is sparse. In several instances no delivery mechanism has been identified. More importantly, the document does not attempt to relate those steps to the achievement of EOs specified for a water body.
122. Mr. Chandler was therefore correct to say that the Summary PoMs, indeed the only PoMs which have been produced, are essentially focused on national measures, or what may otherwise be described as generic measures.

*(1) Is a PoM intended to be only a high-level, strategic document?*

123. The SSEFRA and the EA submitted that the RBMP is intended to be a high-level, strategic document and therefore is not required to contain measures specifically for each water body. But even if that submission is correct, and even if it applies to the Summary PoM, it does not address the PoM required by Art.11 of the WFD and reg.20 of the WFDR 2017. In the High Court PFA succeeded in challenging the failure to produce the requisite PoM and as a consequence the HRBMP.
124. In 1996 the EU Commission’s Water Policy explained the need for a directive to deal with water resources. Section 4 identified a number of challenges to be overcome, including “point source pollution” (from discharge points and leakages from sites)

and “diffuse source pollution” (inputs from scattered sources such as agricultural production and consumption of products by industry and the public) (sections 4.1.1 to 4.1.2). Article 174 of The Treaty on European Union lays down a number of principles including the aim of achieving a high level of protection, the precautionary principle, the “polluter pays” principle and the need to integrate relevant policies at a local as well as a national level. Both the costs and the benefits of action or inaction should be considered, implying proportionality between measures proposed and impact on the environment (section 5). Rivers and lakes do not respect administrative boundaries. The logical unit for the administration and co-ordination of management is the river basin (i.e. the area of land from which all surface run-off flows through streams, rivers and lakes into the sea at a single mouth or delta) or several river basins (section 7.8).

125. In the discussion section (section 8) the Commission stated:

“Perhaps the clearest issue which emerges is that there is a need for greater integration in the practical implementation of water legislation. Integration is required between;

- water quantity issues and water quality issues,
- surface water management and groundwater management,
- water use and environmental protection,
- control of pollution through emission controls and through quality objectives, and, not least,
- water policy and other policies.”

126. The next paragraph contains the following recommendation:

“The Commission believes that this can be improved through the adoption of a Framework Directive on Water Resources which would require integrated water management plans (see section 7.7). The plans would contain an assessment of the overall situation in the water body including its environmental quality, its resource potential and the environmental pressures impacting upon it. It would also establish the specific objectives of water policy in relation to that body of water and a programme of measures designed to achieve those objectives within a specified timetable.”

127. Thus, the integrated approach envisaged for the Directive involved *for each water body* an assessment of its characteristics and issues, specific water policy objectives and a programme of measures designed to achieve those water body specific objectives. The Commission’s policy provided that although for administrative purposes integrated water management would be set at the level of river basin districts, that integration would also include EOs and measures identified at water body level. It recognised that the nature of the objectives and measures would vary within a river basin.

128. Recitals (6) and (10) to (12)) of the WFD record that taking into account the EU Commission’s Water Policy and the principles in Art.174 a Framework Directive was to be prepared. Recital (13) states that the diversity of conditions and needs requiring “different specific solutions” should be taken into account “in the planning and execution of measures to ensure protection and sustainable use of water in the framework of the river basin. Decisions should be taken as close as possible to the locations where water is affected or used. Priority should be given to action ... through the drawing up of programmes of measures adjusted to regional and local conditions.” The success of the WFD depends *inter alia* on “coherent action at ... local level” (recital (14)). A number of recitals refer to the need for co-ordination and integration in relation to *inter alia* measures (e.g. (18), (23), (26), (33) and (35)). Recital (33) provides:

“(33) The objective of achieving good water status should be pursued for each river basin, so that measures in respect of surface water and groundwaters belonging to the same ecological, hydrological and hydrogeological system are coordinated.”

Thus, the recital speaks of the co-ordination of measures within the same “system” for different surface waters and groundwaters, implying that the measures needing to be co-ordinated may vary as between water bodies.

129. Article 1 sets out the purpose of the WFD, including to establish a framework for the protection of *inter alia* inland surface waters and groundwater. It refers to the aim of enhancing the protection and improvement of “the aquatic environment”. This provision is neutral on the issue of whether PoMs are to be defined at a national, river basin or water body level.
130. Article 3 addresses “the co-ordination of administrative arrangements within river basin districts”. A “river basin district” is an area of land and sea made up of one or more neighbouring river basins together with their associated groundwaters and coastal waters which is identified under Art.3(1) as “the main unit for management of river basins” (Art.2(15)). Article 3(1) requires Member States to identify individual river basins (as defined in Art.2(13)) and to assign them to river basin districts. Member States are to ensure appropriate administrative arrangements for the application of the rules of the WFD “within each river basin district” (Art.3(2)). Art.3(4) requires:

“4. Member States shall ensure that the requirements of this Directive for the achievement of the environmental objectives established under Article 4, and in particular all programmes of measures are coordinated for the whole of the river basin district ...”

Thus, Art.3 does not require PoMs or measures to be expressed at the level of the river basin district, or indeed a river basin. Instead, it requires measures *within* a river basin district, to be co-ordinated, which is consistent with the identification of measures at the level of individual water bodies.

131. There is nothing in the WFD or in the policy documents preceding or following the Directive shown to the court to indicate that co-ordination and integration relates simply to measures defined at a national, or river basin district, or river basin level. Plainly, the Directive acknowledges that there is a need for co-ordination of more detailed or local measures.
132. The OEP is essentially correct in its analysis of the WFD. Substantial parts of the Directive impose specific, detailed requirements which are not of a high-level or strategic nature. The WFD imposes a number of detailed requirements in addition to requiring the objectives in Art.4 to be met (see e.g. Arts.7 and 10).
133. Under Art.4 EOs are to be set for surface waters, groundwater and protected areas. Such objectives are specific to individual water bodies (*European Commission v Federal Republic of Germany* Case C-525/12 at [53]). They include achieving “good ecological status” and “good chemical status”, or in the case of artificial or heavily modified water bodies (defined in Art.2(8) and (9)) “good ecological potential”. By Art.2(17) to (25) the requirements for those different types of status are highly specific and detailed (see e.g. Annex V and Annex IX). Progress towards achieving those requirements is measurable.
134. Article 5 together with Annex II imposes specific, detailed requirements for defining the characteristics of a river basin district down to the level of each water body.
135. Article 8 requires Member States to have in operation programmes for monitoring the water status within each river basin district, in accordance with the detailed requirements of Annex V. Those requirements involve monitoring down to the level of individual water bodies (see e.g. paras. 1.3, 1.4.2 and 1.4.3. and Table 1.2 of Annex V). The monitoring under Art.8 facilitates compliance with Art.5.
136. Under Art.11 each Member State must establish a PoM for each river basin district which takes into account the results of the analyses under Art.5, in order to achieve the EOs established under Art.11. Each PoM must include the “basic measures” in Art.11(3), described as “minimum requirements”. A PoM must also include, where necessary, the “supplementary measures” referred to in Art.11(4). It is readily apparent that the basic measures include detailed requirements and specific controls (see e.g. Art.11(3)(a), (c), (d), (e), (f) and (g)). Where judged necessary, supplementary measures, including specific project requirements, must be included in the PoM (see Part B of Annex VI).
137. In *Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland* (Case C-461/13) EU:C:2015:43 (“the Weser case”) the Grand Chamber of the CJEU considered Art. 4(1) in the context of the WFD read as a whole. In that case the regulatory body had accepted that a project would adversely affect the current status of certain parts of the River Weser. On the specific questions of law posed for the court, it decided at [51] that Art.4(1)(a)(i) to (iii) must be interpreted as meaning that Member States are required, unless a derogation is granted, to refuse authorisation for an individual project where it may cause a deterioration in the status of a surface water body, or where it jeopardises the attainment of good surface water status, or good ecological potential and good surface water chemical status, by the date laid down by the WFD. In other words, a regulatory authority must be satisfied that a

project would not harm the attainment of any of the EOs of Art.4(1)(a) for a water body before granting approval for that scheme.

138. In reaching that conclusion the court held that:

(i) By Art.4(1)(a) it is “in making operational the programmes of measures specified in the ... management plans” that Member States adopt the measures necessary in order to achieve the objectives of preventing deterioration of the status of bodies of surface water and protecting and enhancing their status. The use of the words “in making operational” means that Art.4(1) entails obligations which must be complied with by the competent authorities when approving individual projects [33].

(ii) The common principles and overall framework for action which the WFD lays down are to be developed subsequently by Member States by individual measures in accordance with the timescales in the directive [34].

(iii) The environmental objectives that the Member States are required to achieve are specified in Article 4(1). That provision imposes two separate but intrinsically linked objectives. First, under Article 4(1)(a)(i) Member States are to implement the necessary measures to prevent deterioration of the status of all bodies of surface water (the obligation to prevent deterioration). Second, under Article 4(1)(a)(ii) and (iii), Member States are to protect, enhance and restore all bodies of surface water with the aim of achieving good status by the end of 2015 (the obligation to enhance) [38]-[39].

(iv) Both the obligation to enhance and the obligation to prevent deterioration of the status of bodies of water are designed *to attain* the objectives pursued by the WFD, i.e. the preservation or restoration of good status, good ecological potential and good chemical status of surface waters [41].

139. Following on from this analysis the court decided at [42]-[43] and [50]:

“42. In order to ensure that the Member States attain the environmental objectives referred to above, Directive 2000/60 lays down a series of provisions, in particular *Articles 3, 5, 8, 11 and 13 and Annex V*, establishing ..... a complex process involving a number of *extensively regulated stages*, for the purpose of enabling the Member States to implement the necessary measures, on the basis of *the specific features and the characteristics of the bodies of water* identified in their territories.

43. These matters confirm the interpretation that Article 4(1)(a) of Directive 2000/60 does not simply set out, in programmatic terms, mere management-planning objectives, but has *binding*

*effects, once the ecological status of the body of water concerned has been determined, at each stage of the procedure prescribed by that directive.*

50. .... The obligation to prevent deterioration of the status of bodies of surface water remains *binding at each stage of implementation* of Directive 2000/60 and is applicable to every surface water body type and status for which a management plan has or should have been adopted. ....” (emphasis added)

140. Thus, Arts. 3, 4, 5, 8, 11 and 13 involve interconnected stages directed at identifying and implementing the measures necessary to attain the EOs for each water body. The preparation and approval of a PoM under Art.11 serves that purpose and therefore is not a freestanding exercise.
141. Accordingly, it is incorrect to treat the requirements of Art.11 for establishing a PoM as simply high-level or strategic. Those requirements are typically specific and measurable. The measures are required to achieve the EOs set under Art.4 for each water body.
142. Art.13(1) requires the production of a RBMP for each river basin district. Such plans may be supplemented by more detailed programmes and management plans (Art.13(5)). But a RBMP must include the information required by Annex VII. That Annex contains a long list of requirements. For surface waters they include the mapping and location of water bodies and water body types. Protected areas must be identified. The monitoring networks and results must be shown on a map. The EOs for individual water bodies under Art.4 must be set out. Details of any “supplementary measures” must be provided along with information on measures for specific water bodies (e.g. Art.11(5)). Several provisions require a summary of material produced elsewhere in greater detail to comply with other requirements of the WFD. Those summaries relate to detailed information about different areas of water of a river basin district.
143. Article 14 requires that the public be consulted on a draft RBMP. In addition, a member of the public can request access to the background documents and information used for the development of that draft (Art.14(1)). That would include a PoM summarised in the RBMP, where that Programme has in fact been prepared and approved.
144. Given the matters which Annex VII requires to be included, a RBMP cannot be described as a purely strategic or high-level plan. It may include strategic and high-level material, but it is not so limited. More to the point, the subject matter of the legal provisions which are central to the issues in this appeal is not high-level or strategic. For example, there are the requirements for a RBMP to list the EOs established for each water body under Art.4 and to summarise the PoM for achieving each EO, “including the ways in which the objectives established under Art.4 are to be achieved” (see para.7. of Annex VII).
145. The above analysis of the WFD also applies to the reviews and updating required by the Directive for the PoMs under Art.11 and the RBMPs required under Art.13. It also

applies to the transposition of the WFD by the WFDR 2017 (see e.g. regs.5, 6, 8, 11, 12, 13 and 20.)

*(2) Other regimes for identifying water body specific measures*

146. Mr. Kimblin submitted that to interpret the WFD as requiring only a high-level identification of measures in a PoM is consistent with other regimes which address the implementation of such measures through actions on the ground. He added that those regimes are suitable for that purpose because they take into account cost-benefit analysis and the availability of funding for capital improvements such as new infrastructure. Mr. Kimblin referred to the WIA 1991 described in *Marcic* (see [73] above) and the EPR 2016, which is said to be aimed at ensuring that regulatory burdens on businesses are proportionate. He submitted that those schemes are intended to provide detailed solutions or actions on the ground to tackle non-compliance with EOs. Such solutions may depend on detailed monitoring, investigations and technical appraisal, to which the regimes in the WIA 1991 and the EPR 2016 are suited.
147. We do not see any merit in this line of argument, for four reasons. First, other domestic legislation which a national legislature chooses to enact, such as the WIA 1991 and the EPR 2016, provides no guide to the meaning or scope of EU legislation, in this case the meaning of the term “PoM” in the WFD. The fact that the UK has legislation in addition to the WFDR 2017 which regulates water quality in individual water bodies does not indicate that a PoM in the WFD is not required to address individual water bodies and need only be a high-level document.
148. Second, the regimes in the WIA 1991 and the EPR 2016 do not cover all the actions needed to achieve the EOs under Art.4 and to comply with the WFD and the WFDR 2017. The regime under the WIA 1991 by which OFWAT sets prices related to a reasonable return on proposed capital investment schemes, applies only to water and sewage undertakers. The EPR 2016 impose a requirement to obtain an environmental permit only in relation to specified installations and activities. Moreover, the PoMs under the WFDR 2017 include policy-based and voluntary as well as legal mechanisms.
149. Third, the WFD also has regard to economic and financial issues. Article 5 requires an economic analysis of water use in each river basin district to be carried out in accordance with Annex III. Article 9 requires Member States to address the recovery of the costs of water services, including environmental and resource costs, taking into account that analysis. They must have in place water-pricing policies and ensure an adequate contribution from different water uses to the recovery of the costs of water services, based on the economic analysis under Annex III and the “polluter pays” principle (Art.9(1) of the WFD and regs.7 and 21 of the WFDR 2017). Article 9(2) requires Member States to report in each RBMP on the steps planned towards implementing Art.9(1) which will contribute to achieving the EOs set under Art.4 and on the contribution made by different water uses to the recovery of the costs of water services (see to the same effect reg.27(1)(b) and (2)(a) of the WFDR 2017). “Water services” and “water use” are given very broad definitions which include abstraction, storage, treatment and distribution of groundwater and surface water and the collection and treatment of waste water followed by its subsequent discharge into surface water (Art.2(37) and (38) and para.1(2) of sched.1 to the WFDR 2017).

Economic considerations affecting the achievement of EOs are embedded in both the WFD and WFDR 2017, including the setting of PoMs under Art.11. The RBPG states that the economic work and identification of measures carried out in the preparation of PoMs and RBMPs will be a helpful starting point for work on the environment programme and price review carried out by OFWAT. There is to be close liaison between the two authorities on such matters (see paras. 15.20 – 15.23).

150. Fourth, a Member State's regulatory regimes for controlling the effects of particular uses and operations on individual water bodies are not indicators that PoMs are not required to contain water body specific measures. Article 11(1) allows PoMs to rely upon "measures following from legislation adopted at national level and covering the whole of the territory of a Member State". "Where appropriate, a Member State may adopt measures applicable to all river basin districts ...". The WFD refers to measures "following from", in the sense of resulting from, national legislation. In such cases, the measure cannot simply be a reference to a set of regulations. It has to be a measure following or resulting from those regulations or, in other words, an application of those rules. Plainly the application of legislation will vary according to the circumstances of each water body. The description of some measures may be similar, or even identical, for a number of water bodies, but in each case that will follow from a consideration of that legislation as it applies in relation to each water body. Similarly, a measure may be adopted for all river basin districts if the PoM considers the application of that measure to the achievement of the EOs for each water body. The WFD sets a legal framework within which Programmes must be established bringing together (that is integrating and co-ordinating) measures based on legal, policy and voluntary mechanisms for achieving the EOs for each water body.

*(3) The interpretation of the term "Programme of Measures"*

151. In this context a "programme" refers to "a plan or scheme of any intended proceedings, or a planned series of activities or events" (Oxford English Dictionary). A "measure" refers to a plan or course of action intended to attain some object or a suitable action. Article 11 refers to "measures" in the plural. To take or adopt measures, after the French "prendre des mesures", means to take actions or steps in order to achieve some purpose (ibid).
152. The words "measure" and "programme" are wholly or partly borrowed from the French (ibid). The French version of Art.11(1) of the WFD speaks of "un programme de mesures . . . afin de réaliser les objectifs fixés à l'article 4". "Mesures" refers to actions or steps. Not surprisingly, programme in the French refers to a plan or scheme. "Afin de réaliser" equates with the English words in Art.11(1) "in order to achieve" the EOs set under Art.4.
153. The EA and the SSEFRA placed a good deal of emphasis on the words "with the aim of" followed by "achieving" or "progressively reducing" in Art.4(1)(a)(ii) to (iv) (and reg.13(2)(b) to (d) of the WFDR 2017), in order to suggest that the EOs which must be set under those provisions are merely aspirational (see e.g. para.8 of the EA's reply to the OEP's submissions). The equivalent French text uses the words "afin de parvenir" and "en vue d'obtenir" to make it clear that Art.4(1)(a)(ii) to (iv) requires the setting of objectives for attaining, achieving, or succeeding in reaching, the relevant water body status. That language is not merely aspirational. The English word "aim" can have a range of meanings, but read in context, it must refer here to



the objective of achieving the relevant status (ibid). It is not to be understood as referring to something merely aspirational. Regulation 13 of the WFDR 2017 accords with Art.4 of the WFD properly construed.

154. This reading of the WFD, in particular Art.4(1), is reinforced by the decision of the Grand Chamber of the CJEU in the *Weser* case. The legislative purpose of defining EOs for each water body and measures to be implemented in order to obtain those objectives permeates the WFD, in particular Arts. 3, 4, 5, 8, 11 and 13 (see [140] to [142] above).
155. The concept of implementation is not divorced from the setting of the EOs and PoMs in order to achieve those objectives. That is plain from the decision to insert the phrase “in making operational the programme of measures” into Art.4 itself, and not in some other provision following on from the approval of the PoMs. Taking action on the ground is closely related to the setting of objectives under Art.4, as is made plain by such phrases as “shall implement the necessary measures to prevent deterioration” and “shall protect, enhance and restore”. So as in the *Weser* case, a regulatory body may be obliged by Art.4 to refuse approval for a project, or to impose conditions on an approval, so as to secure compliance with the relevant objectives.
156. A PoM under Art.11 is to be established in order to achieve the EOs set under Art.4. Therefore, the natural reading of Art.11 is that a Member State must establish a programme of measures or actions to achieve those objectives at the level at which they have been set, namely individual water bodies. If it had been intended that Art.11 could be satisfied by the identification of high-level measures, without demonstrating that they would meet EOs for individual water bodies, the legislation would have said so expressly. It does not. The measures in an Art.11 programme must either be specific to a water body or, if generic, related to the achievement of the EOs for each water body. That much is clear from the overall scheme of the WFD, and also the WFDR 2017. In addition, there are a number of specific provisions which support this interpretation.
157. First, there are a group of derogations from Art.4 which indicate that the overall approach to the PoMs is water body specific.
158. Article 4(4) allows the deadlines in Art.4(1) to be extended for the “phased achievement” of EOs for water bodies, provided that no deterioration occurs in the status of the *affected body of water* and four conditions are met. They include cases where not all necessary improvements in status can reasonably be achieved within those deadlines on grounds of technical feasibility, or completion within the timescale would be disproportionately expensive, or natural conditions do not permit the status of *the body of water* to be improved in time. Where this derogation is relied upon, the RBMP must set out the extension of the deadline, the reasons for it, a summary of the measures required under Art.11 to bring the bodies of water to the required status by the extended deadline and the expected timetable for their implementation. Updates of the RBMP should review that implementation and summarise any additional measures required. The language of Art.4(4) indicates that improvements and timetables for implementation will already have been identified for individual water bodies.
159. By Art.4(5) Member States may aim to achieve less stringent EOs than those required by Art.4(1) “for specific bodies of water” when they are so affected by human activity

(see Art.5(1)) or their natural condition is such, that the achievement of those objectives would be “infeasible or disproportionately expensive”. No further deterioration “in the status of the affected body of water” must occur and the reasons for adopting the lesser EOs must be referred to in the RBMP and reviewed every six years.

160. Article 4(6) provides that the WFD is not breached where temporary deterioration in the status of bodies of water occurs in circumstances which are exceptional or could not reasonably have been foreseen. The further conditions that must also be satisfied include a requirement to take all practicable measures to restore “the body of water” to its prior status as soon as reasonably practicable. Those body-specific measures must be summarised in the next update of the RBMP.
161. Article 4(7) provides that the WFD is not breached where a failure to achieve the EOs for “a body of surface water” is the result of new modifications to the physical characteristics of that body, or a deterioration in a body’s status from “high” to “good” has resulted from new sustainable human activities. An explanation of the reasons for those modifications or alterations must be included in the RBMP and the EOs for that water body reviewed every six years.
162. Article 11(3)(g) provides that for point source discharges liable to cause pollution there must be a requirement for prior regulation, such as prior authorisation, laying down emission controls for the pollutants concerned. Article 11(3)(h) provides that for diffuse sources liable to cause pollution, there must be measures to prevent or control the impact of pollutants. Controls may take the form of a requirement for prior regulation. Both Art.11(3)(g) and (h) provide: “Those controls shall be periodically reviewed and, where necessary, updated”. The same requirement also appears in Art.11(3)(e), (f) and (i) which impose controls on the abstraction of fresh surface water and groundwater, or the artificial recharge or augmentation of groundwater bodies, or the control of hydro-morphological conditions for water bodies subject to “any other significant adverse impacts” on water status (see Art.5 and Annex II).
163. The updating of such controls must include the potential need to tighten the requirements applicable to a water body so that its EOs may be achieved by the relevant deadline. The updating of such controls is not referring simply to the making of amendments to national or generic legislation. The clear implication is that the PoM will have set measures specific to each water body in the first place, including the application to each such body of any national legislation relied upon.
164. Second, Art.11(5) reinforces this water body specific approach. Where monitoring or other data indicates that the EOs set under Art.4 for “the body of water” are unlikely to be achieved then the Member State must ensure that the causes of that possible failure are investigated, relevant authorisations and monitoring programmes are reviewed and any necessary *additional* measures to achieve those EOs are established. Paragraph 7.9 of Annex VII requires a summary of those specific measures to be included in the RBMP.
165. In addition, para.1.5 of Annex II includes the following provision:

“For those bodies identified as being at risk of failing the environmental quality objectives, further characterisation shall,

where relevant, be carried out to optimise the design of both the monitoring programmes required under Article 8, and the programmes of measures required under Article 11.”

This is dealing with the same subject as Art.11(5). Paragraph 1.5 requires that for those water bodies where there is a risk that EOs will not be achieved, the “design” of the PoMs established under Art.11 must be “optimised” (see the use of the word “both”). The text clearly implies that this requirement would also have applied to the first PoMs under the WFD.

166. Article 11(5) makes it plain that the test of whether EOs are likely or unlikely to be achieved by the relevant deadline is to be applied to each individual water body in the drawing up of a PoM, whether in relation to measures in that programme, or “additional measures” required by that provision. The question posed by Art.11(5) whether “additional measures” are required for a body of water can only sensibly be answered in the context of the existing measures which have already been identified for that water body. These “additional measures” must be included in the updates of the PoM and of the Summary in the RBMP.
167. Third, the same approach applies to Art.11(8) which laid down a requirement for each PoM to be reviewed, and if necessary updated, by December 2015 and every six years thereafter. An updated PoM is to contain any “new or revised measures” which may be required in order to meet the EOs for a water body. Article 11(8) is not satisfied by a Member State simply asking itself whether a piece of national legislation, the content of which is typically uniform throughout the country, should be amended or enacted, nor is it simply concerned with the amendment or introduction of a national policy.
168. Instead, the question raised by Art.11(8) is whether existing “measures” or “actions” forming part of a programme, or planned scheme, for each water body need to be amended. Article 11(8) is concerned with how each measure for a water body in a PoM, including those based upon national legislation or policy, has worked in practice for the purpose of achieving the relevant EOs for the body. Subject to any derogation permissible under the WFD, such measures should have been made operational within three years from the approval of the PoM (Art.11(7)). There would then have followed a period of at least three years for the monitoring of the effects of that measure on water status or quality in that water body, and the identification of any further measures for that body if the relevant EOs were still not being met.
169. The SSEFRA submitted to Lieven J that Art.11(5) had not been triggered in relation to the HRBMP. Nor would it appear from the Summary of Measures we have seen in a format applicable nationally (see e.g. [118]-[122] above), that either the SSEFRA or the EA has accepted that Art.11(5) was engaged for the purposes of any other Summary PoM or RBMP. We accept the judge’s conclusion that Art.11(5) ought to have been applied to UCB (see [59] above). We also accept the OEP’s reasoning as to why Art.11(5) must be applicable to some water bodies elsewhere (see [97] – [99] above). Certainly, given the high-level approach which the EA and the SSEFRA adopted to the Summary PoM and the RBMP, we are satisfied that they have not considered the application of Art.11(5) (reg.25 of the WFD 2017) in relation to individual water bodies and their respective EOs and measures. Similarly, from the material presented to the court, we are also concerned as to whether the derogation

under Art.4(4) of the WFD (reg.16 of the WFDR 2017) has been applied specifically in relation to individual water bodies, their EOs and measures.

170. The SSEFRA and the EA submit that Art.13(5) of the WFD indicates that a PoM need not include water body specific measures because it gives a power or discretion to supplement a RBMP by the production of more detailed programmes and management plans for a sub-basin, sector, or water type to deal with particular issues of water management. Regulation 32 of the WFDR is essentially to the same effect, although the language is slightly different. The SSEFRA and the EA submit that there is only a power, not an obligation, to produce plans dealing with individual water bodies. But in our judgment those provisions do not support that argument. They both provide for plans to supplement a *RBMP* which need only contain a *Summary* of the relevant PoMs. They do not authorise the approval of supplementary plans to add to the more detailed PoMs. On any view, neither Art.13(5) nor reg.32 authorise the production of a supplementary plan to provide details of measures which, under Art.11 (regs.12 and 13 of the WFDR 2017), were required to be included in the PoMs.
171. The above analysis of the WFD applies equally to the WFDR 2017. There is no material difference between the two for the purposes of resolving the central issues in this appeal. The structure and content of the relevant provisions is essentially the same, namely: regs. 3(4) river basin districts, 5 (characterisation of river basin districts), 6 (classification of water bodies), 7 (economic analysis of water use), 11 (monitoring programmes), 12 and 13 (EOs and reviews), 15 (artificial or heavily modified water bodies), 16 to 19 (derogations from regs.12 or 13), 12 and 20 (PoMs and reviews), 21 (charges for water services), 25 (“action” where EOs are unlikely to be achieved), 27 (content of RBMPs), 28 (review of RBMPs) 29 (public consultation on draft RBMPs), 30 and 31 (approval of RBMPs) and 32 (supplementary plans).
172. The SSEFRA and the EA sought to rely heavily upon the definition of “programme of measures”, in reg.2(1) of the WFDR 2017:

“ ‘programme of measures’, in relation to a *river basin district* means the programme of measures established under regulation 12 in accordance with regulation 20.”

They suggested that it was significant that this definition did not refer to measures for a water body. This involves a misreading of the legislation.

173. Regulation 12(1) provides for the EA to prepare and submit EOs and PoMs to the SSEFRA. It is then for the SSEFRA to approve the EOs and/or PoMs, with or without modifications, or to reject either or both of them (reg.12(3)). Regulation 12(1) requires the preparation of EOs for each river basin district *in accordance with reg.13* and PoMs for the achievement of those objectives. Regulation 13(1) provides that the EOs referred to in reg.12 are those set out in the following provisions of reg.13 (subject to regs. 14 to 19). Regulation 13 requires EOs to be set for each body of water. The argument of the SSEFRA and the EA ignores the need to read reg.12 together with reg.13. Read correctly, the objectives in reg.12(1), and therefore the PoMs to achieve those objectives, must include EOs for each water body (see also the definition of “environmental objectives” in reg.2(1)). The WFDR 2017 therefore accord with the WFD. If anything, the Regulations are even clearer than the Directive.

174. The main guidance on river basin planning is consistent with our interpretation of the legislation, in particular with regard to the obligation to include water body specific measures in PoMs.
175. CIS Guidance Document 11 is aimed at the authorities responsible for implementing the WFD at the level of river basin districts (p.1). Section 5 sets out the main components of the planning process under the WFD. The first component involves describing the characteristics of each river basin district, including for each water body its status, class, pressures and impacts on that body and risks to achieving EOs (pp.26-29). The second component involves setting up EOs for water bodies as *the foundation for decisions on PoMs* (pp.33-34). The definition of an EO involves determining what the status of a particular water body should be and when that should be achieved (p.35). The third component is the establishment of monitoring programmes of water bodies to determine *inter alia* which are at risk of failing to meet the EOs and which are not (p.37). The fourth component, “gap analysis”, compares the results of the assessment of current status with the EOs of the water bodies (p.37). This is said to be a central matter in the implementation of the WFD, reflected in para. 1.5 of Annex II (quoted at [22] above). The fifth component is the setting up of PoMs (p.38). The sixth component is the development of the RBMPs (section 5.6 quoted at [102] above).
176. The SSEFRA’s RBPG sets out matters which the EA should take into account when carrying out its responsibilities to prepare a RBMP as a plan for the relevant river basin district (3.1 and 3.5). In deciding whether to approve a RBMP or an update to a plan, the RBPG states that the SSEFRA will take into account *inter alia* whether the EA has had regard to the principles and advice in that guidance (16.4).
177. RBMPs should go down to catchment level within each river basin district (3.1 and 8.1).
178. A draft update of a RBMP for consultation with the public should propose EOs for each water body, PoMs to achieve those objectives and the estimated scale of the actions and improvements that might be delivered (8.8 and see also 10.3).
179. The RBPG states at 9.1 to 9.2:
- “9.1 The WFD regulations require the Environment Agency to set environmental objectives and establish programmes of *measures for each body of water* in England.
- 9.2 *These measures and objectives* must be reviewed and updated every 6 years as part of the river basin planning process. *For water bodies to reach their objectives*, they must meet a large number of standards for things such as pollutant concentrations, health of fish populations, and groundwater quantity. Different objectives and standards will apply to different water bodies. Surface water, groundwater and water bodies used for abstracting drinking water have different sets of criteria. The precise values for standards have been set with advice from the UK Technical Advisory Group (UKTAG).”  
(emphasis added)

180. The guidance is perfectly clear. PoMs must be set under Art.11 for each body of water in order to meet the EOs for each such body.
181. Mr. Kimblin recognised during his oral submissions for the SSEFRA that this part of the RBPG is directly contrary to the interpretation of the legislation for which his client and the EA contend. But he submitted that the RBPG was wrong. He accepted that there had not been any public announcement about this or any alteration of the text. It is not suggested that the SSEFRA has received any briefing that his guidance misstates the law on this important point. This is surprising given that paras. 9.1 and 9.2 are guidance under reg.36(5) of the WFDR 2017, which is to be taken into account by the EA in carrying out its river basin planning functions and by the SSEFRA in deciding whether to approve a RBMP. Moreover, Lieven J had previously relied upon these paragraphs in her judgment [142].
182. The picture was further confused by the stance then taken by the EA. It submitted that paras. 9.1 and 9.2 are not incorrect because they may be read consistently with the interpretation of the legislation which the EA and the SSEFRA advance.
183. In our judgment, the natural and plain meaning of paras. 9.1 and 9.2 is that the PoM must set out measures for each individual water body to meet the EOs for that body. Those paragraphs are correct. They are in line with the WFD, the WFDR 2017, the EU Commission's Water Policy (February 1996) and the CIS Guidance Document 11.
184. We also conclude that the submissions of the SSEFRA and the EA relying upon a purposive interpretation of the legislation do not alter the outcome of this appeal. Their case was simply that the purpose of the WFD, the RBMP and PoM is high-level and strategic. We have already explained why that is not so.
185. We also do not accept the suggestion that the judge's interpretation of the legislation should be rejected because it would result in administrative unworkability.
186. First, there is no ambiguity in the legislation which would allow the principle to be invoked (see [75]-[76] above and *Hinchy*).
187. Second, the SSEFRA and the EA do not go so far as to suggest that the judge's interpretation of the legislation would be impossible to implement, absurd, illogical, futile, or pointless.
188. Third, the submission by the SSEFRA and the EA overlooks another part of their case. They say that all identification of measures at the level of individual water bodies is to be carried out in the implementation of a PoM and need not be carried out in the preparation of that programme. Thus, the issue is not whether that work needs to be carried out at all, but when it should be carried out. The EA's resources have to be devoted to those obligations under the WFD at some point. This applies to the requirements for monitoring of water bodies, the implementation of measures and their effects, and the review and update of PoMs. The WFD was enacted in 2000. During the 25 years which have followed there has been ample time to ensure that the necessary resources are in place and at the right stage in order to comply with the WFD and UK legislation. In its Response in September 2024 to the OEP's Report, the Government stated that a review by the EA of nearly 5,000 water bodies would take about 18 months to two years to complete. That suggests that the work could have

been done before the latest PoMs were drawn up and approved. There is no evidence to the contrary.

189. Fourth, paras. 9.1 and 9.2 of the RBPG suggest that the interpretation of the legislation which we accept would not have consequences which are administratively unworkable. They also undermine the suggestion that consultation with the public would be impractical.
190. Fifth, no evidence has been produced to substantiate the claim that to require PoMs to deal with each individual water body would be resource intensive and would divert EA resources from other “essential duties”. For example, those duties have not been identified. The points made in [188] and [189] above emphasise the significance of that lack of evidence.
191. There is one final point. Consistent with the proper interpretation and application of the WFD and the WFDR 2017 we have set out, there is inevitably a judgment to be made by the EA and the SSEFRA on the level of detail to include in a PoM on each water body specific measure. Some measures will be the subject of regulatory or policy decisions which have already been taken. Others will be subject to the completion of a decision-making process, for example, the grant of permits or the imposition of requirements under the EPR 2016. The PoMs under the WFDR 2017 do not supersede the operation of regulatory regimes. As the RBPG explains, the WFDR operates in harmony with other regimes. Provided that a PoM complies with the WFD and WFDR, judgments made by the EA and the SSEFRA on level of detail may only be challenged on *Wednesbury* principles.

## Conclusions

192. We reach the following conclusions:

- (1) To comply with the WFD and the WFDR 2017 a PoM drawn up under regs.12 and 13 must identify a programme or scheme of actions for each water body in order to achieve the EOs for that body within the relevant deadline.
- (2) Where the EA and the SSEFRA rely upon generic provisions in a PoM, such as national legislation or policy, as a basis for identifying the measures for a water body, they must set out in the PoM measure(s) or action(s) for each water body to achieve its EOs which follow from an application of those provisions to that body.
- (3) So long as a PoM shows the measure(s) or action(s) programmed for each water body in order to attain its EOs within the relevant deadline, the level of detail to include in the PoM is a matter of judgment for the EA and the SSEFRA, subject to a legal challenge solely on *Wednesbury* principles.

193. For the above reasons the appeal is dismissed.