
Water Stakeholders' Update –October 2009

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Draft Flood & Water Management Bill

- The draft Flood and Water Management Bill (which extends to England and Wales) was published on 21 April, with the consultation period closing on the 24 July 2009. When the consultation closed, Defra received over 600 responses.
- We are currently analysing the responses to the public consultation and awaiting a pre-legislative scrutiny report from the Environment, Food and Rural Affairs (EFRA) Select Committee. EFRA Select Committee are anticipated to meet on the 16 September and publish their report a week later. Defra will consider this report along with the consultation and aim to respond to both of these processes in the Autumn. Accepted recommendations will be reflected either in the Bill when it is introduced into Parliament or later legislation as appropriate.
- The draft Bill would strengthen and extend existing flood and water legislation, implementing appropriate recommendations from the Pitt Review and the Government's Water Strategy 2008 *Future Water*. The overall effect would be a healthier environment, better services and greater protection for people, their communities and businesses.
- A Bill covering many of the measures set out in the draft Bill, is included in the Government's draft legislative programme as set out in *Building Britain's Future - Government's Draft Legislative Programme*. This document includes information on the Flood and Water Management Bill, the headline aims being:
 - implementing key recommendations made in Sir Michael Pitt's Review of summer 2007 floods;
 - reducing the likelihood and impact of flooding;
 - improving our ability to manage the risk of flooding, by clarifying responsibilities;
 - improving water quality;
 - giving water companies better powers to conserve water during drought;
 - encouraging the use of sustainable drainage where practical; and
 - improving the overall efficiency and management of the water industry.
- The Government intends to make changes in other related areas when Parliamentary time allows.

Fish Passes / Eel Management Plans

Eel Management Plans

Advice from the International Council for the Exploration of the Sea (ICES) indicated that the stock of the European eel (*Anguilla anguilla*) is outside safe biological limits across European waters¹; stating that measures need to be introduced to reduce the exploitation of all life stages of the eel and restore their habitats.

To enable the recovery of stock, the European Union adopted Council Regulation No 1100/2007² which requires Member States to develop national management plans for each River Basin District; with the objective of “permit[ting] with high probability the escapement to the sea of at least 40% of the silver eel biomass relative to the best estimate of escapement that would have existed if no anthropogenic influences had impacted the stock”.

Following submission to the European Commission, all 15 Eel Management Plans³ passed the first stage of a two-stage approval process. We are now at the final stages of the approval process and following confirmation from the Commission of this, the measures identified in these plans will be implemented.

Background

The Eel Management Plans have been drawn up by the relevant UK authorities with each of the devolved administrations; Environment Agency, The Scottish Government, Department of Culture, Arts & Leisure, and assessed by the appropriate scientific agencies.

¹ Report of the 2006 session of the Joint EIFAC/ICES Working Group on Eels Rome, 23-27 January 2006. ICES CM 2006/ACFM:16.367pp.

² Council Regulation No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European Eel is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:248:0017:0023:EN:PDF>

³ The Eel Management Plans are based on the River Basin Districts (as defined under the Water Framework Directive) covering England and Wales, Scotland and Northern Ireland. All 15 UK plans are available at <http://www.defra.gov.uk/marine/freshwater/fishman.htm#EELS>.

Second Phase of the Environmental Permitting Programme (EPP2)

The government's summary of responses to the consultation on EPP2 regulation and policy will be published shortly. The EPP2 consultation on government guidance (including water discharge activities) closed on 29 July.

EPP2 would bring surface and groundwater discharges into the common framework, without changing the underlying legal requirements generally set in Directives. The new regulations aim to deliver efficiency benefits for business and the regulator, without compromising water quality standards.

For example, the regulations would introduce a registration system for small sewage discharges which should satisfy the need to manage pollution risks, without requiring permit holders to apply for bespoke permits. Standard permits could be introduced for higher risk activities - such as larger scale package treatment works sewage discharges – where there are sufficient numbers of them to warrant carrying out the risk assessment and developing the rules up front.

Please note that Government and the Environment Agency will soon consult on their guidance for registered exemptions for small sewage discharges.

More information is available on www.defra.gsi.gov.uk/environment/epp and www.environment-agency.gov.uk/epr.

Marine Strategy Framework Directive

The goal of the Marine Strategy Framework Directive is to achieve Good Environmental Status (GES) in Europe's seas by 2020. Under the Directive, the UK is required to:

- Carry out an initial assessment of its seas - 2012
- Define GES for its waters, and establish targets and indicators - 2012
- Establish a monitoring programme - 2014
- Design programme of measures – 2015
- Implement programme of measures – 2016

The first step in the process is to transpose the Directive (by July 2010). We are likely to propose transposing through a single set of UK-wide regulations that establish a high level framework setting out the roles and responsibilities of the Secretary of State and the Devolved Administrations in implementing the Directive. The Secretary of State is likely to be responsible for developing the overall marine strategy, including setting targets and determining GES, for the UK, based where relevant on information supplied by the devolved administrations. Devolved Administrations (DAs) would then develop and implement the programmes of measures for the waters they act as competent authority for, in coordination with other DAs and the Secretary of State. Stakeholders will have an

opportunity to provide their views on policy options for transposition during the UK's formal consultation, which is due to begin in Autumn 2009.

Arrangements to coordinate implementation of the Directive at EU-level include a Marine Directors group, a Marine Strategic Coordination Group, and several technical working groups, including one focussing on GES (next meetings expected October/November).. EU level stakeholders have been invited to sit on several of these groups and UK stakeholders should contact their relevant EU-level umbrella organisations to ensure their views are fed in. One immediate priority is the development of EU-wide criteria and methodological standards to underpin GES – these will apply across the EU and will help to ensure a consistent level of implementation. The technical work to develop these criteria and standards is being carried out for the Commission by the International Council for the Exploration of the Sea (ICES) and the Joint Research Centre (JRC). The UK is also actively involved in the regional implementation of the Directive through the Oslo and Paris Commission (OSPAR). OSPAR is currently looking at how best to organise itself to support the implementation of the Directive across the North East Atlantic.

More details can be found in a stakeholder newsletter (see: <http://www.defra.gov.uk/marine/pdf/environment/msfd-news200907.pdf>). Defra will shortly be setting up a regular stakeholder group to discuss issues related to the Directive, including transposition

Water Protection Zones

- Defra is continuing to work with the Environment Agency, Natural England and other stakeholders on a range of delivery and regulatory measures.
- The NE and EA will continue delivering the England Catchment Sensitive Farming Delivery Initiative into 2010-11. A £5m Capital Grant Scheme is being developed for 2010/11 to fund small capital works to reduce diffuse pollution.
- Responses to the 2008 Water Protection Zone consultation have now been published and drafting of the Statutory Instrument and Statutory Guidance is underway. The project will continue to be informed by developments on the legislation and statutory guidance
- EA are working with Defra and other stakeholders on the initial 'Proof of concept' WPZs. The expected date for finalising the legislation and statutory guidance is December 2009, so it is not expected that any formal consultation on a WPZ will go ahead before April 2010.
- Other work to inform the WPZ process includes an assessment of how Water Protection Zones have been used in other countries and a look at the lessons learnt from the one existing WPZ in place in England and Wales (River Dee).
- EA will engage with local stakeholders to discuss the most effective options for delivery in seven different candidate sites, and this will feed into recommendations and guidance prior to any wider rollout during the first cycle of River Basin Plans.
- Candidate sites will be subject to evidence gathering on the source and nature of problems in the sub-catchment, and this will lead to work examining the possible

measures that could be applied. No final decisions have been taken on the need for a WPZ in these areas, and this will only proceed when evidence suggests that the use of any existing or possible measures are unlikely to meet the WFD objectives.

England Catchment Sensitive Farming Delivery Initiative (ECSFDI)

- The ECSFDI is currently in its penultimate year. It is expected to run in 2010-11 with a similar budget to this year. (£7.9 million, plus a £5million Capital Grants Scheme).
- The current Programme is on course to deliver its advice budget, the current Capital Grant Scheme was oversubscribed, and 4 national and 10 regional Strategic partnerships have either been signed, or are in the last stages of completion. £200k has been used for a national advice service for the new Nitrate Vulnerable Zones regulations.
- The expectation is that the ECSFDI will progressively move its activities into the Rural Development Programme for England (RDPE), which is larger, better resourced, and will allow longer term planning to take place.
- The linkage with RDPE will also benefit the ECSFDI by allowing it to operate outside of its current 50 priority catchments and develop a true national presence, and the RDPE will benefit from the expertise in resource protection built up by NE and EA in delivering the ECSFDI.
- Early linkages are expected to see the use of Axis 1 funding for Capital Grants by some RDA's, and an increase in advisory and training services being delivered through Axis 1, and possibly 4.
- The ECSFDI has also helped in developing the new Soil Protection toolkit, and is also well represented on the development of the new RB209 Fertiliser Manual. ECSFDI also contributes to ongoing pesticides policy work.
- Catchment Sensitive Farming has also been recognised as a powerful tool in dealing with greenhouse gases and their contribution towards climate change, and we expect to be doing more work in this sector in the future.

Nitrates

The Nitrate Pollution Prevention Regulations were published in September 2008 and came into force on 1 January 2009 (2010 for newly-designated NVZs). These help reduce nitrate pollution by requiring farmers in Nitrate Vulnerable Zones (NVZs) to comply with mandatory Action programme measures focused on the use and management of manures and fertilisers. An extensive advisory/support programme has been rolled out across the country in support of this, including a Helpline, guidance documentation, information events and practical workshops, details of which are available via the Defra and the Environment Agency website.

In March the UK was successful in its request for a derogation from the livestock manure N farm limit, one of the more demanding requirements set by the Directive. We are now in the process of drafting a new set of Regulations to implement the Commission Decision which grants a derogation from the Nitrates Directive in England. A new leaflet providing guidance on the derogation will also be published in advance of the Regulations coming into force.

The Regulations allowed appeals against NVZ designation to be submitted by January 31st for consideration by the independent appeals panel, with further evidence being accepted up until March 10th. Appeals made by farmers against the Secretary of State's decision to classify land as an NVZ are currently being considered by the independent appeals panel (Upwards of 750 received). Due to the high volume of appeals, the independent appeals panel now aim to make all decisions by the end of the year.

Sustainable Drainage Systems (SUDS)

The policy is being revised following the consultation in April. We had over 700 responses to this consultation topic and have required major resource to analyse and address this number of responses. We have made suggestions for changes to policy which are being considered within Defra Policy and Legal departments.

The SUDs impact assessment has been refined following additional information from several sources including CLG. The final draft has now gone to the Defra chief economist for sign off. The net benefit range is positive and substantial.

Phosphates in Detergents

Proposal to Ban Phosphates in Domestic Laundry Cleaning Products

This proposal is going ahead but will not be implemented under the Floods and Water Management Bill but under legislation to comply with section 2(2) of the European Communities Act. We are exploring options for making legislation on this issue with the chemical regulations directorate of the HSE.

The Impact assessment for this proposal is with the Defra Chief Economist for sign off. The net benefit is positive but small and so the monetised benefit ratio is marginal. We consider the non-monetised benefits to be significant. If the proposal goes ahead we hope to consult in October and have the legislation laid in April 2010.

Misconnections

Proposals on Misconnections

The proposal for misconnections is a relatively minor small issue – there were 62 responses to the consultation on this proposal. Of particular interest were detailed responses from the Water Company Environment Agency Forum on Misconnections. We have suggested amendments to the draft bill following analysis of these responses. A submission analysing the responses has been sent to the minister.

The Impact assessment shows a small but positive and significant net benefit for this proposal. This impact assessment has been signed off.

Daughter Directives

Priority Substance Daughter Directive 2008/105/EC

- The PSD was published on 24th December 2008 and we have until July 2010 for transposition.
- The quality standards will be included in the forthcoming Classification Direction to the EA which is expected to be issued in the autumn.
- As advised by lawyers, we also need to apply the same EQS to surface waters that are not classified as bodies of water, for the purposes of classification. Another element is amendments to the Dangerous Substance Daughter Directives.
- The last two issues could be done by replacing/amending the series of Surface Waters (Dangerous Substances) (Classification) Regulations made between 1990 and 1998 to transpose the Dangerous Substance Directive 76/464/EEC.

Groundwater Daughter Directive 2006/118/EC

- The consultation on the approach to transposition of Article 6 regarding prevention and limiting of pollutants finished on 20 August. Stakeholders have been consulted further whilst preparing regulations. Due to a variety of reasons it has not been possible to meet the transposition deadline of January 2009 and we are late with the government response to the consultation. The consultation response is expected to be published in the autumn. After Parliament has debated the draft regulations on 21st October, new regulations are expected to be in place which will enable the Agency to commence four yearly review of groundwater authorisations in the light of the requirements of the 2006 Groundwater Directive. Guidance to the 1998 Groundwater Regulations has been revised in light of the draft Groundwater Regulations 2009 and is expected to undergo a consultation in the autumn.

□ The forthcoming WFD classification instrument will deal with the requirements of Articles 3 (groundwater standards and threshold values - the latter determined by UKTAG using the methodology already consulted on); Article 4 (the approach to classification of groundwater bodies) and Article 5 (trend reversal). Transposition of Articles 3, 4 & 5 is planned to be by Directions to the EA.

Prioritisation

This exercise remains an area of concern, and has been the subject of considerable criticism with Industry groups, led by Eurometaux, concerned over the high rankings assigned to zinc (in particular) and the failure of the monitoring based exercise to reflect the findings of EU Risk Assessment Reports. The Commission has called a meeting of WG-E on 8/9 October to consider this matter in greater detail. It is expected that this will enable extensive additional monitoring data provided by France and Italy to be included in a revised ranking exercise.

QA/QC Directive

The QA/QC Directive was published on 31 July 2009 and the UK have 2 years to transpose the Directive. We are at an early stage in considering how best to transpose. **Sub-Groups** UK Experts are active players in several sub groups including EG-EQS, Emissions and Mixing Zones. **EG-EQS** – This group (co-chaired by UK) advised that the draft Technical Guidance Document on Environmental Quality Standards will be finalised later this year and is expected to be consistent with REACH obligations. **Emissions**- This group has identified a number of priority substances where diffuse pollution sources are problematic across Europe. The group is preparing datasheets on TBT, Cadmium, Mercury, and PAHs. A draft sheet on TBT was presented at the last meeting. **Mixing Zones**- This group (co-chaired by UK) presented the proposed tiered approach and the associated structure for the guidance document. This was accepted by WG-E. The work of these groups is expected to conclude either later this year or early in 2010.

Periodic Review 2009

Ofwat issued draft determinations of water price limits on 23 July. Ofwat is proposing that average bills should fall by £14 from £344 in 2009/10 to £330 in 2014/15 - a fall of 4 per cent before inflation. Ofwat is currently discussing its proposals with the water companies and other stakeholders and will issue final determinations in late November. Further information on PR09 is available from the Ofwat web site at: <http://www.ofwat.gov.uk/pricereview/>. The Government expects Ofwat to ensure that companies are able to supply water and sewerage services, take a long terms view of sustainability and make sure that any bill increases are no higher than they need to be. The Environment, Food, and Rural Affairs Committee also published its report into its inquiry into PR09 on 22 July. The Committee's report is available at: <http://www.publications.parliament.uk/pa/cm/cmenvfru.htm>. The Government will respond to the Committee's recommendations in due course.

Water Resource Management Plans

- It is a statutory duty on the 21 water companies based mainly or wholly in England to produce Water Resource Management Plans.
- The Plans cover the period 2010 to 2035 and describe how each company aims to secure a sustainable demand-supply balance over this period.
- Water companies should follow a 'twin track' approach to managing supplies, where demand management alone may not secure future water supplies and some new or enhanced supply eg a reservoir may be necessary.
- Demand management includes consideration of leakage management as well as water efficiency measures, metering etc.
- The draft Plans were consulted on in 2008, following which each water company prepared a statement of response to the representations received on its Plan.
- The Secretary of State announced his decisions on the next steps for the Plans in August 2009. In reaching those decisions, he considered the draft Plans, responses received on the public consultations and the statements of response as well as technical advice from the Environment Agency.
- The Secretary of State has announced a decision in respect of 13 of the 21 Plans and asked the remaining eight water companies to provide some additional information in support of their proposal before he reaches a decision.
- Ten of the 13 Plans will now be able to be finalised for publication.
- Of the remaining three, the Secretary of State has concluded that there are issues that should be given further consideration in public. He has therefore called for public inquiries into Thames Water's and South East Water's Plans and a public hearing on Portsmouth Water's Plan.
- It is expected that these hearing and inquiries will take place in spring/summer 2010.

Abstraction

Consultations:

- Defra recently consulted on proposals to time limit existing water abstraction licences in England and Wales. The consultation closed in August 2009.
- We are currently in the process of analysing consultation responses and gathering further evidence to assess the next steps in policy development.
- Defra also consulted on abstraction provisions of the Water Act 2003, which closed in July 2009.
- Our target date for implementing these provisions was October 2009. However, the consultation response from the Environment Agency suggested that, for a number of reasons, the date should be April 2010. Government is still considering the outcome of the consultation as a whole and will respond in due course – this may include a decision to bring the regulations into effect in April instead – but no decision has yet been made.
- These provisions will:
 - bring under licence control previously exempt abstractions eg irrigation and dewatering mines, quarries and engineering works;
 - remove exemptions from licensing on abstractions in certain areas; and
 - exempt from licensing certain categories of abstraction or impounding works, such as those in water meadows, that represent a low risk to the environment.
- These provisions will require 3,000 new abstraction licenses and continue to exempt 19,000 abstractions from licensing.

National Policy Statements

In July 2009, Communities and Local Government published a revised route map setting out how the Infrastructure Planning Commission (IPC) regime will be implemented. This is available at:

www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/.

This explained that the first National Policy Statements are expected to be published for consultation in the autumn. The water NPSs are being produced on a longer timeframe. We expect to consult on the Waste Water NPSs in spring 2010, with the aim of designating it in 2011. We intend to consult on the Water Supply NPS in late 2010 - once the final Water Resource Management Plans are published, which are needed to inform the NPS - with the aim of designating that NPS by early 2012.

The intention is for the IPC to be able to accept applications meeting the thresholds set out in the Planning Act for the Waste Water sector in April 2011, and for the Water Supply sector in April 2012.

Cave Review

The final report of the independent Cave Review of Competition and Innovation in water markets was published on 22 April. The review reported to Defra, HM Treasury and Welsh Ministers and we are grateful to the work that Professor Cave and his review team have undertaken. The review proposed a package of recommendations including a reduction of the eligibility threshold for business customers to switch supplier from 50 to 5 megalitres, opening sewerage services to competition, the introduction of regulated access to replace negotiated access and the cost principle, reform of the inset and merger regimes, increased trading in abstraction licences and discharge consents and retail separation where this would not add considerably to customers bills. Defra issued its consultation paper on Cave's recommendations on 17 September, focusing on those recommendations that would require changes to primary legislation. The deadline for responses to the consultation is 18 December 2009. Further information on the Cave Review, including the final report and Defra's consultation paper, is available at: <http://defraweb/environment/water/industry/cavereview/index.htm>.

Walker Review

The independent Walker Review of charging for household water and sewerage services is looking at the effectiveness and fairness of current and alternative methods of charging from the social, economic and environmental perspective. It is a joint review between Defra and Welsh Assembly Government and includes issues such as charging for water, metering, tariffs, affordability, bad debt in the industry and water efficiency. A call for evidence was issued in November 2008 and a number of stakeholder workshops were held in late 2008 and early 2009. The interim report was published on 29 June. The final report is expected in November. Further information on the Walker Review and the interim report is available at: <http://defraweb/environment/water/industry/water-charging-review/>.