

Water Stakeholders' Update – February 2009

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Introduction

This pack provides information in 2 sections. Section 1 aims to inform discussion at the stakeholder meeting. Time will be tight on Friday so please read this beforehand and bring your questions to the meeting.

Section 2 will not be covered in the stakeholder meeting but has been provided for your information. If you would like to see these areas covered in more detail in a future meeting or have any other queries please contact Matt Wieckowski (matt.wieckowski@defra.gsi.gov.uk).

Section 1: Update Sessions for the Stakeholder Meeting

Floods & Water Bill

Update to be provided by member of the Bill team on the day.

Fish Passes / Eel Management Plans

Modernisation Of Salmon And Freshwater Fisheries: New Order To Address The Passage Of Fish

On 16th January 2009, the Government launched the consultation on proposals to address and improve the free passage of fish, allowing access to breeding, nursery and feeding grounds in both England and Wales. These proposals follow the recommendations made in the Salmon and Freshwater Fisheries Review¹, published in 2000, and were identified as potential mechanisms to deliver Water Framework Directive requirements on hydro-morphology (launched in 2007).

We intend to:

- enable the Agency to require the installation of a fish pass or the placement of screens to facilitate the passage of all migratory and freshwater species;
- give powers to the Environment Agency to require that a fish pass is introduced in extant obstructions whether or not works are underway;
- require screens to be introduced for all water abstractions/discharges.

The Environment Agency will target effort to areas of need, working collaboratively with the owners and developers of obstructions. Under the Water Framework Directive, the Agency will continue to develop a prioritisation scheme to enable better targeting of the critical obstructions (a number of which have already been identified), the criteria for this has been set out in the Statement of Intent. This therefore will reduce the potential burden to owners of obstructions, as not all will require a fish pass.

¹ The Salmon and Freshwater Fisheries Review was published in 2000, and the Government response to the recommendations in 2001. Both can be accessed at; <http://www.defra.gov.uk/fish/freshwater/pdf/sffrev.pdf>

The consultation on these proposals closes on 10 April 2009, and we would welcome the views of interested stakeholders on the proposals and on the partial Impact Assessment; which sets out the options and associated costs².

A full summary of all responses received will be published in Spring 2009 and be made available on the Defra website.

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 waters³. To enable the recovery of stock, the European Union adopted Council Regulation No 1100/2007⁴ 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”.

The UK submitted 15 Eel Management Plans⁵ for individual assessment to the European Commission, covering the River Basin Districts (as defined under the Water Framework Directive) in England and Wales, Scotland and Northern Ireland. Following approval from the Commission, the measures identified in these plans will be implemented by 1 July 2009.

Water Protection Zones

There will be a longer session on this on the day, covering the WPZ concept, what they might look like, how the EA will designate them and how measures will be defined within them.

In advance of this, you can find more information on the ongoing consultation at <http://www.defra.gov.uk/corporate/consult/water-protection-zones/consultation.pdf>.

Non-Agricultural Diffuse Pollution

Sustainable Drainage Systems (SUDS)

The Government is looking to increase the uptake of SUDS. SUDS provide a more sustainable approach to draining surface water that mimics natural drainage, manages more water above-ground with the characteristics of storage, slow conveyance, improvement to water quality and some volume reduction.

² All documents can be obtained at www.defra.gov.uk/corporate/consult/fisheries-legislation/.

³ 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.

⁴ 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>

⁵ All 15 Eel Management Plans are available at <http://www.defra.gov.uk/marine/freshwater/fishman.htm#EELS>.

The improving surface water consultation, Spring 08 considered options for which bodies would be responsible for the adoption and maintenance of SUDS. The responses to the consultation and the Pitt Review (June 2008) recommended that the Government should resolve the issue of which organisation should be responsible for the ownership and maintenance of SUDS. The Government response to Pitt (December 2008) announced that upper tier local authorities would take responsibility for adopting and maintaining new build (and re-developed) SUDS on highways and in the public realm. These arrangements sit naturally alongside established roles in planning, community well-being and the promotion of sustainable development. They are also consistent with the proposed role for the lead in local flood risk management and the production of Surface Water Management Plans.

As part of the draft Floods and Water Bill, we propose to include the following five key provisions in the draft Floods and Water Bill to encourage the uptake of SUDS:

- Development of national design, construction and performance standards for SUDS
- Upper tier local authorities responsible for SUDS within the public realm
- New developments to meet national standards if connecting surface water to a public sewer
- Local authorities to discharge across third party land to watercourses
- SUDS differentiated from natural features, controlled waters and sewers

Phosphates in Detergents

Consideration of proposals for a ban of domestic laundry cleaning products (DLCP) containing significant amounts of phosphate. We have had a public consultation on this issue (Feb 2008) and had taken on board responses. We have co-ordinated a working group over the last year which considered the DLCP contribution to the phosphate content of sewage and input to revision of the impact assessment on a ban. The Impact Assessment has been through peer review and is going through its final revision before being presented to the minister. The assessment shows that a ban would be beneficial though not a major impact is a step in the right direction for reduction of phosphate pollution in freshwaters.

Misconnections

This project is looking at a change in legislation to allow water companies to deal with misconnections. This power is currently held by local authorities. This is mainly aimed at domestic misconnections of foul water to surface water sewer which cause significant pollution. It may however also allow water companies to address other types of misconnections allow. The exact content of the legislation is still under discussion. The change in legislation will not by itself dramatically increase the number of misconnections dealt with but will facilitate actions on misconnections making their resolution more efficient. We have completed an Impact Assessment which has gone to peer review this week. A consultation on this issue will be part of the overall consultation on the Floods and Water Bill.

Daughter Directives

Priority Substance Directive

The Priority Substance Directive (2008/105/EC) was published in the Official Journal on 24 December 2008 and Member States have until 13 July 2010 to transpose this Directive.

We anticipate that the Environmental Quality Standards in the PSD will be included in the forthcoming Classification Direction to the EA (which is expected to be communicated to the EA by the spring).

Other elements of the PSD will be transposed 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 (and its daughter directives). This will be undertaken before the transposition deadline.

Working Group E is scheduled to meet on 18/19th March and, although we have received no formal indication from the Commission, the Agenda is likely to include the following topics:

- Reports from the working groups on Mixing Zones, Emissions, and EQS setting - These working groups have either met recently or meetings or are scheduled in the next few weeks.
- Mixing Zones Group has met several times will set out the broad principles for the draft CIS Guidance document.
- Emissions Group is scheduled to meet for the first time in Brussels later this month. The main focus is expected to be how to deal with diffuse sources of priority substances.
- EQS Derivation Group met in Italy last month. Draft Technical Guidance was released to national experts and WG-E members for comment in December. The group are now scheduled to review and revise the document by mid April. Certain areas have been identified that need additional work. The most significant of these is setting sediment standards.
- Chemical Monitoring Activity: The draft QA/QC Directive has been subject to minor revision and is expected to be released in the near future. In addition we expect that some indication of the future work programme for this group will be delivered- possibly to include closer links with the NORMAN network.

Groundwater Directive

The 2006 Groundwater Directive is still in the course of transposition and this comprises two parts:

- Article 6 of the 2006 Directive is being transposed through amended Groundwater Regulations which will replace the 1998 Regulations. It has been necessary to combine the requirements of the 2006 Directive and the WFD with those of the 1980 Directive, which remains in force until December 2012, and this makes the task more complex. The draft regulations are in the legal 'pre-keying' process prior to 'keying' with the JCSI. Thereafter they will be made by affirmative resolution procedure in both the Welsh Assembly and the Westminster Parliament. It is difficult to predict a

timetable until keying is completed but, bearing in mind the transposition date of 16 January 2009, we hope in the early spring.

- Articles 3,4 and 5 are to be transposed via Directions to the Agency which are in the course of preparation. The same transposition date applies so this should be as soon as possible.

Marine Strategy Framework Directive Update

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). An event designed to assess UK stakeholders' views on policy options for transposition took place at the Reading Innovation Centre in January. Stakeholders will also have an opportunity to provide their views on policy options for transposition during the UK's formal consultation period later in 2009.

EU-level discussions to agree criteria and methodological standards to underpin GES have begun with a conference in Brest in December, which proposed the creation of an EU working structure to oversee implementation of the Directive at EU level. The working structure will include an EU Marine Directors group, a Marine Strategic Coordination Group, and several technical working groups, including one focussing on GES. Stakeholders will be given the opportunity to engage in this process. The International Council for the Exploration of the Sea (ICES) and the Joint Research Centre (JRC) have been commissioned to lead the technical work on GES, and there will be a separate task group for each descriptor. As this work progresses, there will be review stages for Member States and stakeholders to comment at meetings of the Marine Strategic Coordination Group and the Working Group on Good Environmental Status (currently expected May and October).

Second Phase of the Environmental Permitting Programme (EPP2)

A joint Defra, DECC, Environment Agency and Welsh Assembly Government consultation on EPP2 policy, draft regulations and impact assessment was launched on 16 February. It invites stakeholders' comments and feedback on our proposals to incorporate Discharge Consenting, Groundwater Authorisations and Radioactive Substances Regulations into the single permitting and compliance system that was created with the EP Regulations under EPP1.

The EP system is risk-based and proportionate, and its proposed extension would deliver:

- Further cuts in unnecessary red tape - bringing cost-savings to industry and allowing regulators to focus their resources on issues that matter
- Continued protection of the environment and human health – maintaining current standards
- Increased clarity and certainty for everyone on how the regulations protect the environment - a clearer, simpler and quicker system allowing a better understanding of the law and its effects.

The consultation is available on Defra's website: www.defra.gov.uk/corporate/consult/env-permitting/index.htm.

To further engage with consultees, we will set up stakeholder events and bilaterals in the next months. The main stakeholder event during the consultation is being held at the end of March / beginning April. Please get in touch if you like to attend: eppadministrator@defra.gsi.gov.uk.

Periodic Review 2009

Ofwat's 5-yearly review of water price limits is now well underway.

The quality regulators EA and DWI have published their final guidance (National Environment Programme and Drinking Water Programme) and companies are now working to ensure that their final business plans include all necessary measures to deliver environmental and drinking water quality outcomes.

Customer research into what water customers think of companies' proposals set out in their draft business plans last August is also drawing to a close.

These final business plans will be submitted to Ofwat in April 2009, where they will be scrutinised by Ofwat in terms of costs and benefits and by the quality regulators to ensure all requirements have been included, before draft determinations are published by Ofwat for comment in July 2009. Final Determinations will be made in November 2009.

Ofwat, as the independent economic regulator for the water industry, sets water price limits to ensure that customers pay no more than is necessary whilst enabling each company to finance and to run its business efficiently. Defra's objective is to ensure that water companies deliver their statutory obligations and wider Government water policies set out in Future Water.

Defra's approach to this price review has been to set out as early and as clearly as possible in two documents:

(i) A Statement of Obligations – a factual check list of legal requirements that *companies* should fulfil; and

(ii) Social and Environmental Guidance - covering how *Ofwat* might contribute to wider social and environmental matters.

These were published in 2008.

Some uncertainty remains over the actions that will be required by companies for the River Basin Management Plans (under the WFD) and Water Resource Management Plans (under the Water Act). The timetables for these are such that they will not be finalised until after price limits are set for 2010-2015. We have worked with the quality regulators and other stakeholders in PR09 to ensure that where there is a high likelihood of an action being necessary and being included in a RBMP or WRMP it has been included in companies' draft business plans.

If any changes to these or other statutory obligations are necessary, companies will be required to take appropriate action and if necessary seek funding cover from Ofwat through change protocol procedures.

This Periodic Review has seen a significant increase in the number of companies who are attempting to tackle pollution problems at source rather than relying on end of pipe treatment, especially to meet drinking water quality objectives. This is very encouraging and shows that there is progress towards the vision set out in Future Water, "for all sectors of society to work collaboratively to remove pollutants at source to minimise need for treatment". We would encourage companies, with the help of the quality regulators, to continue to develop and refine innovative approaches especially where these have multiple environmental benefits.

Section 2: General Updates

Future Water Evaluation

Defra is currently funding a project to evaluate the Future Water strategy. The project will develop an evaluation framework which can be applied to all activities being undertaken to deliver the Future Water strategy (by HMG, its Agents and others) to evaluate how well the strategy is being implemented and whether or not it is delivering the desired outcomes.

As the project develops we will be consulting and involving stakeholders to ensure the project is a full reflection and takes full account of the work going on within the water sector. Risk Solutions, the consultants carrying out the project, may be getting in touch with you or other colleagues within your organisations over the next couple of months.

If you'd like any further information about the project please contact Joanna Bentley (joanna.bentley@defra.gsi.gov.uk, 0207 238 5222).

Nitrates Directive

- Nitrate Pollution Prevention Regulations were published in September 2008 and came into force on 1 January 2009 (2010 for newly-designated NVZs).
- Regulations took account of stakeholder comments received in response to the consultation.
- Our Minister wrote in October to all those likely to be in an NVZ, summarising the main elements of the Regulations and highlighting the extensive programme of advice and support for farmers and land managers that was being launched nationally. The programme includes a technical helpline, comprehensive guidance material, information events and practical workshops. These have been very well attended and positive feedback received.
- Further programme of events being run at regional and local level in response to popular demand. Details are available from the Defra and Natural England websites.
- We are applying to the European Commission for a derogation from one of most costly new rules, the livestock manure N farm limit (170 kg per hectare). We believe we have evidence to support a case for allowing a higher limit without causing adverse environmental impact. If our application is successful, costs to eligible dairy farmers would be significantly reduced.
- The Regulations provide for the owner or occupier of land designated as an NVZ to appeal against the Secretary of State's decision. Appeals will be considered and decided by an independent Appeals Panel on the basis of evidence submitted. The deadline for submitting an application was 31 January 2009, although the Appeals Panel extended the deadline for submitting evidence to 10 March 2009.

Water Resource Management Plans

All water companies in England have consulted on their draft WRMPs; Welsh companies are currently consulting.

All but one of the English companies have produced a statement of response, setting out how representations on the plans have affected draft plans. The final response is expected to be published on 27 February.

Defra will be assessing the statements and make decisions on whether to hold public hearings/inquiries into the plan, and/or direct changes to the plan. This process will continue over the summer.

Abstraction

Defra and WAG expects to consult, from March, on the implementation of the remaining elements of the Water Act 2003. The consultation covers issues such as the transitional arrangements for bringing eg. non-spray irrigation, canals, quarries under licence control, and proposals to maintain a number of current exemptions.

The Environment Agency has finalised the next stage of its Restoring Sustainable Abstraction programme, and anticipates that it will commence the service of notices (under s52 Water resources Act 1991) to revoke or amend abstraction licences in early summer

Demand Management and WFR

The WFD includes a requirement to have a programme of measures to promote efficient and sustainable water use. Consultation on existing measures established that there was a broad agreement with the existing measures identified but also suggested some additional measures. The following provides a summary update:

- Leakage targets – Ofwat completed a review of target setting in 2008 and introduced proposals for revised methodology to take better account of environmental and social costs and benefits
- Section 93A Water efficiency duty – Ofwat have consulted on targets on water companies for water efficiency and introduced them for the period 2010 – 2015
- Water Fittings Regulations review – A review and consultation on WFRs will take place in 2009 to introduce new requirements for water efficiency in 2010.

Additional measures identified:

- Code for Sustainable Homes – has been introduced by CLG in 2007 as a voluntary code which includes mandatory standards for water efficiency within new homes. Government funded housing must meet code level 3
- Building Regulations review – Review of Part G of the building regulations has taken place and new requirement to meet minimum standard to be introduced in October 2009 to come into effect in April 2010.

- Planning measures – Policy Planning Statements have been introduced on Climate Change to allow the setting of higher standards for housing in areas of environmental stress.
- Product labelling – A voluntary scheme for labelling of water efficient products was introduced by the Bathroom Manufacturers Association in 2008. We continue to engage with the Commission on product labelling through the EuP Directive.
- Communication on water scarcity and Drought – UK has participated in the development of the communication which includes a number of initiatives to further demand management.

National Policy Statements

In January 2009, Communities and Local Government published a route map setting out how the Infrastructure Planning Commission regime will be implemented. The route map sets out current plans for producing National Policy Statements: consultation and parliamentary scrutiny of the first tranche of NPSs and their appraisals of sustainability are expected to take place this summer, with designation of the NPSs early in 2010. The first tranche NPSs will cover non-Nuclear Energy and Ports. The water NPSs will follow later: we expect to consult on the draft Waste Water NPS in late 2009 / early 2010 and on the Water Supply NPS in late 2010. The route map is available at:

<http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/>

Also in January, CLG launched a consultation document on the list of statutory consultees for National Policy Statements. The consultation closes on 20 April 2009.

Please click on the link below to download the consultation paper.

<http://www.communities.gov.uk/publications/planningandbuilding/consultationstatutoryconsultees>

Independent Reviews

Cave Review

Published its Interim Report on 18 November 2008, advocating a phased approach to furthering competition that could deliver significant benefits to the economy over the coming decades. The Government accepts this approach and will take it forward, while bearing in mind the need for the sector to retain access to capital at keen prices.

In its response to this interim report, published as part of the Pre-Budget Report in November 2008 (paragraphs 6.68 and 6.69) the Government said:

As a first step, and in response to the Review's recommendations, the Government announces a package of measures to extend and enhance retail competition in the water markets for large non-domestic customers in England. The Government will lower the usage threshold above which businesses and other non-domestic customers are eligible to switch supplier from 50 ML to 5 ML, extend the competition regime to retail wastewater services, remove the current access pricing arrangement for water from legislation (replacing it with simplified criteria to be introduced by Ofwat), and introduce nationally agreed codes to be coordinated by

Ofwat in conjunction with stakeholders. The Government is strongly minded to mandate the legal separation of the retail arm of a company from the rest of its operations, in order to deliver further efficiencies and drive non-domestic competition. It will respond to this, and any further recommendations of the Cave Review, once it receives the final report.

The Government will also keep the merger regime for water companies under review. The Department for Environment, Food and Rural Affairs will launch a public consultation on the implementation of the 5 ML eligibility threshold early in 2009, and will consult on the implementation of the other reforms as part of the Floods and Water Bill. Water is a devolved matter and the Welsh Assembly Government will await further analysis on Wales-specific issues in the final report before providing a response.

The final report from the Cave Review is expected to be published in March 2009.

Walker Review

Walker Review of charging: is looking at the effectiveness and fairness of current and alternative methods of charging for household water and sewerage services from the social, economic and environmental perspective. This includes the appropriate pace of metering, the costs and benefits of metering, affordability, the effectiveness of different types of tariff and how to tackle the problem of bad debt which adds an average of £11 per annum to customer bills. It will make recommendations on any actions that should be taken to ensure that England and Wales has a sustainable and fair system of charging in place.

A call for evidence was issued on 14 November 2008 and five stakeholder events have taken place. Interim recommendations are expected in the spring with the final report expected by the summer.