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Summary of responses to the consultation on water resources management plan regulations

January 2007



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



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Introduction

In January 2006, the Government and Welsh Assembly Government issued a consultation paper¹ inviting views on proposals for secondary legislation to support elements of the water resources management planning process introduced by the Water Act 2003². The consultation also served the purpose of informing the water industry and key stakeholders about the main steps in the water resources management planning process. All references in the consultation paper to "Government" meant central Government and the Welsh Assembly Government and all references to the "Secretary of State" meant the Secretary of State and the National Assembly for Wales.

The consultation paper was distributed to around 500 organisations with a possible interest in water resources management planning. It was also made available on the Defra website. A total of 50 replies were received. A partial Regulatory Impact Assessment accompanied the consultation paper and 23 consultees provided comments on this.

Most responses were received from water companies and councils. The organisations that responded can be broken down to 15 water companies, 18 councils, 2 regional planning authorities, 4 non-departmental government bodies, 7 trade associations, 2 consumer groups and 2 research/academic bodies.

Each section of this response cross-refers to the consultation question, provides a summary of responses, and a central Government and Welsh Assembly Government response that explains what action will be taken in light of the responses. Any references to "Government" in this report therefore mean central Government and the Welsh Assembly Government.

The summary of responses is intended to represent the main points of consultees' responses to the consultation questions. It has not been possible to address here all aspects of each, some of which were wide-ranging and closely argued. However, these will be supplied on request to personal callers³ or in response to telephone or email requests (020 7238 6575,

¹ Consultation on water resources management plan regulations, Defra and the Welsh Assembly Government, January 2006

² Section 62, which introduces section 37A, 37B, 37C and 37D into the Water Industry Act 1991

³ Information Resource Centre, Defra, Nobel House, 17 Smith Square London SW1P 3JR

defra.library@defra.gsi.gov.uk; or in Wales 02920 82 3168, env-p&q@wales.gsi.gov.uk

Since the end of the consultation a new Department, Communities and Local Government (CLG), has been created which has replaced the ODPM. Hence, where consultation contributions referred to ODPM, the Government's response refers to CLG.

Q1 Do you agree that the Environment Agency should maintain its current role, in keeping with its water resources duties, to provide guidance on the content of water company water resources plans?

Summary of consultees' comments

All consultees who expressed a view to this question agreed that the Environment Agency should maintain its current role in providing guidance on the content of water company water resources management plans. While supporting the continuation of the Agency's role, many of the consultees called for the amount of information requested for water resource zone tables to be reviewed. A number of consultees also proposed that the draft plans should provide a more strategic view of the provision of water resources to be consulted on to help inform the contents of the final plan.

Other comments were Ofwat, Consumer Council for Water (CCWater), ODPM and English Nature (Natural England from 1 October 2006) to be consulted on the requirements of the contents of water company water resources plans. Ofwat's involvement was considered necessary in view of the contribution of water resources management plans to the process for setting water charges, CCWater to help identify key issues prior to public consultation, ODPM to ensure that future house building plans are considered and English Nature so that potential risks to statutorily protected sites are taken into account.

One consultee suggested that it was inappropriate for the Agency to determine water company requirements in connection with the Strategic Environmental Assessment (SEA) Directive⁴.

Government response

The Government welcomes the endorsement of the Environment Agency's role in providing guidance to water companies on preparing their water resources management plans.

The Agency has a range of duties that mean it is well placed to provide guidance that achieves the correct balance:

⁴ EC Directive (2001/42/EC) 'on the assessment of the effects of certain plans and programmes on the environment', commonly referred to as the Strategic Environment Assessment Directive.

- to contribute towards the achievement of sustainable development, under the Environment Act 1995. This duty ensures that the Agency must have consideration of economic and social issues in providing guidance.
- to secure the proper use of water in England and Wales⁵ and to have particular regard to the water companies' own supply duties⁶.

The Agency has successfully produced guidance for the preparation of the current set of water resources management plans, in consultation with water companies. It has recently consulted water companies on its latest guidance, and it will develop the guidance taking account of comments it has received on both its consultation.

CLG will contribute to those aspects of guidance relating to methods for assessment of future housing numbers and population, while Natural England will provide input on aspects of guidance relating to wildlife and conservation.

Agency guidance will need to be updated in line with relevant developments and we expect that the Agency to continue to consult water companies, Water UK and Ofwat in the development of this guidance.

Q2 Do you agree with the proposals for issues to be included in the directions under s37A (3)(d) and s37A (7)? If not why not? What else should be considered and why?

Summary of consultees' comments

The majority of consultees supported the proposal for the Secretary of State to issue Directions on what information should be included in the water resources management plans in addition to that required under Section 37A(3). However, several consultees commented that it was unnecessary to include detailed information in the draft plan, as the data used would be outdated by the time the final plan was produced. It was proposed that the draft plan concentrate on strategic issues to be evaluated for possible inclusion in the final plan which would form part of the business plan to be submitted to Ofwat in 2009.

A proposal was made for the current Prescribed Conditions Regulation to be modified to enable the Secretary of State to direct water companies in water stressed areas to include an assessment of the cost effectiveness of compulsory metering. This assessment would replace the need for water companies to apply for water scarcity status. Where compulsory water metering was included in the final water resources management plan, a water company would be empowered to meter compulsory in those areas specified in the plan.

Other additional information requirements suggested by consultees concerned growth in housing/employment contained in Regional Spatial Strategies,

⁵ Section 6(2)(b) of the Environment Act 1995 (as amended)

⁶ Section 15(1) of the Water Resources Act 1991 (as amended)

action to be taken to improve water efficiency measures in line the Government's sustainable development priorities, and data about the relative costs of the available options.

Some consultees did not think it necessary to direct water companies on information to include in their draft plan as this was specified already in the Environment Agency guidelines.

Government response

The Government intends to specify in a direction (The Water Resources Management Plan Direction 2006) made under s37A (3)(d) of the Water Industry Act 1991, certain additional matters which will need to be included in the first set of statutory plans. The Government is considering making directions for various additional matters including:

- an assessment of the impact of proposed options on greenhouse gas emissions;
- that the plan sets out the assumptions made as to the frequency of restrictions that the company will impose during drought;
- that the current understanding of the implications of climate change are fully factored in to both supply and demand forecasts.

Central government is also considering a direction to require companies whose areas are not wholly or mainly in Wales, and which are within areas of water stress, to include within their draft plans a metering programme as an option for addressing the supply-demand balance. We will be consulting separately on this matter, and changes to the Prescribed Conditions Regulations, in 2007.

The Environment Agency guidelines will provide additional information on methodology etc to help the water companies meet the legislative requirements, including the proposed directions. The guidelines will not therefore be a replacement for the proposed directions.

Q3 Do you agree with the proposal outlined in step 8 that requires draft plans to be made available on water companies' websites, with hard copies available for viewing at appropriate locations? If not, how would you propose that draft plans are made available?

Summary of consultees' comments

While the proposal for water companies to publish their water resources management plan on their websites and make hard copies available was generally supported, a number of consultees wanted access to the plan to be more extensive. To facilitate public participation in the planning process it was suggested that the draft plans be placed in local authority offices, libraries and National Park offices, and a clear guide to the plan provided to help public understanding.

Other responses included sending hard copies of the plan to all relevant District Councils and County Councils; plans to be provided in a format suitable for use by the visually impaired or people with other relevant disabilities; issuing a press release to publicise details of the draft plans through the local press, radio and television.

Some concerns were raised about the cost of providing copies of the plans in large water company areas. To control costs it was proposed that consultees should either access the plans on water companies' websites or be sent copies electronically by e-mail. Hard copies to be available at water company head office.

A number of consultees expressed the need to ensure national security issues were taken into account in advance of publication. However there was a view that the removal of maps and diagrams from plans might make meaningful engagement with the public less likely.

Government response

It is essential that water companies communicate their water resources management plans to a wide audience, to inform the public about how they intend to fulfil their duty to maintain the security of the public water supply over the next 25 years.

It will be up to the discretion of water companies as to how they make the wider public aware of the draft plans on their websites, and send copies of the plans to statutory consultees. To facilitate public access, companies may wish, as appropriate, to place hard copies of the plan in locations such as local council offices, libraries or National Parks offices in addition to the company's principal office; this might be particularly appropriate for companies operating over large areas. In the case of statutory consultees, companies could send the plans to them electronically. We have asked the Environment Agency to include guidance upon this within their Water Resources Management Plans Guidelines.

All plans will be scrutinised to ensure that no information is published which could jeopardise National Security. Although this may limit consultation responses on some aspects of the water resource management to be consulted on, National Security issues remain paramount.

Q4 Bearing in mind that draft plans will be available to the public during the consultation period, are there any other parties that you feel should also be specified in the regulations? If so, please include an outline of why you think that they should be specified in the regulations.

Summary of consultees' comments

In addition to the consultees included in the water company management plans regulations, other bodies suggested to be specified in the regulations were the Conservation Boards for the Cotswolds, Chilterns and other Areas of

Outstanding Natural Beauty, the National Farmers Union, National River Agencies, the County Wildlife Trusts, local Fisheries Organisations, Waterwise, Local Delivery Vehicles, Greater London Authority and Regional Planning bodies.

Several consultees commented that the list was sufficient.

Government response

The Government considers the proposed list of organisations to be sent a copy of the draft water resources management plan to be included in regulations contains all principal stakeholders. These stakeholders can cascade the plan to other organisations they consider have an interest in water resource management.

Water companies can also send plans to additional stakeholders of their choice, according to local circumstances including local wildlife trusts and fisheries organisations if appropriate.

Q5 Is a 26 week period sufficient to allow for consultees and other interested persons to respond in relation to draft water resources plans and to enable companies to prepare and publish a statement on how the representations have been taken into account? If not what do you consider to be a suitable period and why?

Summary of consultees' comments

Of 34 consultees who responded to this question, 33 agreed that twenty six weeks was a suitable period. The consultee who disagreed considered a 26 week period to be impractical since the proposed date of April 2007 for submitting the draft plans to the Secretary of State meant the results of relevant water company investigations expected to be completed after April 2007 would not be available for inclusion in the plans. To enable this information to be utilised it was recommended that the 26 week period be shortened to possibly 16 weeks.

Some consultees who supported the 26 week period proposed that the submission date to Secretary of State of draft plans be deferred to align it with the timetable for preparation of water companies draft business plans for the 2009 periodic review.

A consultee proposed that regulations stipulate a minimum 12 week public consultation period and another advocated that 12 weeks be the required maximum consultation period. It was also suggested that companies should publish a timetable several months in advance, so that interested parties know the consultation is due and will be ready to respond, and for a holding response to be publish when a complex issues still require resolution.

Government response

A Water Resources Management Plan Direction will be issued specifying that companies have 26 weeks from publication of the draft water resources management plan in which to publish a statement showing how it has taken representations into account. Each company will need to set the period by which representations must be received by the Secretary of State/National Assembly for Wales to fit in with that deadline, and at the same time allow itself sufficient time to consider the representations it receives.

The Government will, though consider additional requirements related to the timing of the different stages of the plan process.

The revised timetable is designed to mesh with the price review mechanism.

Q6 Do you agree that as part of maintaining the Environment Agency's current role in assessing water company water resources plans it should be sent representations about company draft plans? If you do not agree, can you suggest alternatives as to how the Agency can maintain its current role?

Summary of consultees' comments

The majority of consultees agreed that representations should be sent to the Environment Agency in its role of advisor to the Secretary of State on the water resources management plans. However, various comments were made by consultees on how this should be achieved. These were for responses of material substances only to be passed to the Agency, the Agency to rely on water company statement published on the website, water companies to be consulted by the Agency before submitting a report to the Secretary of State and water companies to have an opportunity to make representation to the Secretary of State on the report. A concern was also raised about whether the EA would have sufficient resources to fulfil this responsibility.

Government response

The Government agrees with the majority of responses that it is important for the Agency to maintain their current role as environmental advisers to the Government.

The Agency will consider these representations in its advice to Ministers as to whether a hearing or inquiry should be held on a particular plan, and in advising the Secretary of State/ National Assembly for Wales on any directions to water companies requiring changes to their draft plans.

Q7 Does the proposal under step 11 provide enough guidance to water companies about how to take representations into consideration? If not, what further detail could be added?

Summary of consultees' comments

Of 31 responses to this question 24 considered the guidance was adequate and 7 did not. Further guidance was said to be required on whether water companies needed to respond to each representation, and status of the Environment Agency's representation. Clarification was sought on the consequences of the Agency's representation having to be given particular consideration. Did this mean water companies would be required to comply with the Agency's representation or only take it into account and if not acted upon to provide an explanation. If the Agency's representation was intended to outweigh other representation this should be stated in the regulations.

Other consultees wanted equal importance to be attached to Ofwat's representation, the possible impact on the planning timetable to be taken into account should representations have a significant bearing on the plans, and for a brief summary of the representations received to be published on the website to demonstrate the complexity of the planning process.

There was a concern about a possible conflict between the Secretary of State and Ofwat should the Secretary of State direct a water company to include a particular action in its plan which is not agreed funding in the subsequent Ofwat price review.

Government response

The Government has decided that water companies should take due account of any representation. The *Water Resources Management Regulations* will require a company to publish a statement on:

- the consideration that it has given to those representations;
- any changes that it has made to the draft water resources management plan as a result of consideration of those representations and its reasons for doing so; and
- where no change has been made to the draft drought plan as a result of consideration of any representation, the reason for this.

If the water undertaker believes that a particular representation is spurious (for example that the representation is not relevant to the water resources management planning process) then it can indicate that in its statement on how it has accounted for representations. In cases where there are representations in conflict with each other then it will be a matter for the water company to evaluate how best to take this into consideration in its water resources management plan and provide an explanation in its statement.

In cases where a direction may be issued by the Secretary of State to revise a plan and a water company does not agree with the decision, the water company may be able to challenge a direction by way of judicial review.⁷

The financing of any activities arising from a direction will be a matter for companies and Ofwat, using existing mechanisms.

Environment Agency Guidelines will cover issues of representation.

Q8 Do you agree with the proposals for the Secretary of State to hold local inquiries into water resources plans using unmodified inquiry procedures under section 250(2) to (5) of the Local Government Act 1972? If you do not agree, how would you propose to modify the procedures?

Summary of consultees' comments

Only one consultee disagreed with the use of local inquiries. Those who did agree with the proposal consider that local hearings should only be held as a last resort. They recommended that public hearings and conciliation talks be considered first before embarking on a public inquiry which can be both time consuming and expensive. To mitigate against the cost of inquiries being borne by consumers, it was proposed that water companies should not be liable when the grounds for representations are rejected. The period of three months for public inquiries to be triggered was also considered by one consultee to be too short, and it was suggested it should be extended to six months.

The legal status of public inquiry decisions on water resources plans in relation to inquiries under the provisions of the Town and Country Planning Act (TCPA) 1990 needs to be clarified. If an inquiry rejected representations against a proposal in a water resources management plan to build a new reservoir would this ruling override the need for a further inquiry under the TCPA.

Government response

The Government will make provisions in the *Water Resources Management Plans Regulations* for inquiries or other hearings to be held in connection with the draft water resources management plans.

The Government expects that in most instances issues between water companies and third parties will be resolved without recourse to hearings and inquiries. This flexible approach to the type of procedure to be followed, beginning with informal discussion to resolve issues, will ensure that costs are minimised. But the Government wants to make provision for hearings or inquiries where appropriate.

⁷ Further details of the Judicial Review process are available from the Department of Constitutional Affairs website at http://www.dca.gov.uk/civil/procrules_fin/contents/protocols/prot_jrv.htm

The Secretary of State/ National Assembly for Wales will not wish to hold hearings or inquiries unnecessarily, in recognition of the time and cost involved, and does not expect them to be the norm. A soundly based plan, addressing all the key issues in an appropriate manner should not need to be the subject of either. Plans that do not appear to properly balance the needs of consumers with the need to adequately protect the environment may well be the subject of a hearing or inquiry.

It is anticipated that hearings would be held for cases which require detailed discussions but do not require a formal inquiry; and inquiries would be held where cases are particularly complex or controversial, or have caused particular local interest. The Secretary of State/National Assembly for Wales will decide on a case-by-case basis which is the most appropriate procedure to follow.

Any such hearing would be used only to inform any potential direction made by the Secretary of State/National Assembly of Water to make changes to the water resources management plan; the hearing will not itself result in any decision on the content of a plan. Nor would such a hearing override the need for an inquiry or hearing related to any planning development that is identified in the plan.

The Government intends to apply the inquiry procedures under section 250 (2) to (5) of the Local Government Act 1972 as if the procedures referred to a water undertaker rather than a local authority, but otherwise without modification.

Q9 Do you agree with the proposals for publication of the final plans in the same way as the publication of draft plans, and if not why not?

Summary of consultees' comments

The majority of consultees agreed to the proposal, and a number referred to their responses to Question 3 on the publication of draft plans to being applicable to the final plans. Specific comments on the publication of the final plans were on limiting the amount of data included in the final plans, the possibility that some of the investigative work might be considered to be commercial and in confidence by the consultants, the final plan being available on the Environment Agency's website in addition to the water companies' website, and publication of an accessible summary of the plan.

It was also proposed that water companies consider market research to demonstrate the effectiveness of any publicity methods used.

Government response

The Government agrees that it is most appropriate to publish final plans in the same way as draft plans. It will be the responsibility for water companies to ensure that the plan is presented in the most comprehensive way, and in

some cases it may be appropriate to summarise the key elements in order to inform a wider audience.

As with draft plans, the Consumer Council for Water will be able to communicate the content of plans to the consumers its represents but the Government does not see that it needs to legislate for this.

Q10 Do you have any comments about the partial Regulatory Impact Assessment (Annex 4) which examines the costs and benefits of putting into place regulatory water resources plan provisions?

Summary of consultees' comments

Over half of all consultees who responded to the consultation exercise provided comments on the Regulatory Impact Assessment (RIA).

A number of detailed comments were provided, many of which related to the costs of providing copies for consultees, having to revise plans because of the use of different yearly data sets, public inquiries, and hiring specialist consultants if a Strategic Environmental Assessment is required.

A number of the consultees' comments have been summarised as follows:

- Disappointing that no attempt in RIA to quantify any benefits that may offset these significant costs.
- The RIA underestimates the number of hard copies that needs to be sent, for larger companies there could be over 80 bodies to which the plan would have to be sent. This will have a significant administrative burden and it is suggested that to reduce administration burden and cost an electronic copy is sent via e-mail.
- If an SEA is required, it is estimated it would cost a large water company an additional £100,000.
- Proposed regulations provide a useful framework but the scale of the burden on companies is difficult to know until the process is underway.
- Section 1.3 paragraph 6 to be changed to read, "This incorporates the work that they need to carry out on water supply and demand including delivering environmental solutions at sites damaged by Water Company abstraction."
- Local advertising will be a significant additional cost. Not clear why the costs of publication of the final plan would range from £2-5k compared to the cost of publishing the draft plan of £2 –10k?
- The time table as currently proposed may require detailed analysis of 2006/07 and 2007/08 as base years in preparation of draft and final plans and the Business Plan submission to Ofwat. This could be avoided by limiting the draft consultation to strategic issues and co-ordinating the final WRP with the FBP submission.
- The current guidance implies that there will be a much greater amount of reworking of the plan than previously because of the long period between production of the draft and final plans. The final plans will need to be derived from detailed calculations of 2007/08 out-turn data, none of which will be available for detailed calculations required to produce the draft plan

in summer 2007. It is estimated that the revisions will cost in the range of £50,000 to £100,000.

- It is not clear from the partial RIA what the cost impact will be on Water Supply Licensees who will have a statutory obligation to provide information to the water undertakers and require specialist support and advice. It is believed these costs are likely to be far higher than £1,000 to £5,000 range specified in the consultation document for consultees. More detailed analysis of costs and benefits will be required going forward.
- A number of water companies and Water UK objected to the comment in the RIA that water companies would be unlikely to comply with requirements on a voluntary basis. They consider this to be incorrect, as water companies had voluntarily prepared detailed WRP for the EA since 1997.

Government response

The Government will address many of these points in finalising the Regulatory Impact Assessment for publication with the *Water Resources Management Plans Regulations*.