

Margaret Read  
Deputy Director, Water Services  
Department of Environment, Food and Rural Affairs  
3<sup>rd</sup> floor, Seacole Building  
2 Marsham Street  
London  
SW1P 4DF



3rd Floor  
36 Broadway  
London SW1H 0BH  
0207 344 1844  
[www.water.org.uk](http://www.water.org.uk)

12 March 2019

### **Improving our management of water in the environment**

Dear Margaret,

Water UK represents and works with all major water and wastewater service providers in England, Scotland, Wales and Northern Ireland. Our vision is of a water sector that provides customers and communities with world-class services and enhances the UK's quality of life. We welcome the opportunity to respond to this consultation, on behalf in particular of our members in England given that as we understand it, the consultation's proposals relate to England. We would be happy for our response to be published.

Water companies exist to improve public and environmental health – now and for future generations. We have invested nearly £25 billion in environmental work since 1995, protecting or improving 10,000 miles of rivers. Less than a third of beaches achieved 'excellent' ratings 25 years ago, but two thirds meet that standard today. Companies' business plans for 2020-25 promise to further improve the quality and ecology of 8,000 km of rivers and deliver the most ambitious leakage programme for twenty years – all within the context of generally reducing costs to our customers in real terms.

The Environment Bill is a crucial means for enabling water companies to build on those improvements. If implemented well, it should help put in place a predictable, stable framework that encourages investment and innovation, as well as holding all sectors to a higher standard where they touch the water cycle. That is why water companies strongly support the aims of the bill, and we have both as a trade body and individual members been very active in supporting the development of its various ideas.

We welcome the Government's ambition to also look at sector-specific arrangements in parallel with the overarching bill. The policy intention behind many of the proposed changes for water reflect our own views about where improvements might be made, and this response provides more detailed thoughts on how each of those might best work.

While all of the potential changes could, potentially, have merit, given the current pressures on Government (and Defra especially), on legislative time, and on the water sector itself, we recommend Defra establish and be clear on its hierarchy of priorities. We would suggest this might be done by focussing on those measures that will bring greatest environmental benefit, before moving to other

measures that are more ‘tidying’ or which recognise existing practice. So, we would first prioritise getting right the principles and governance arrangements of the Environment Bill; then statutory underpinning for DWMPs; then – if the right checks and balances are put in place – the ability to direct on regional and inter-regional planning.

Responses to specific consultation questions, where relevant, are provided in the Appendix; in relation to four areas of the consultation of most relevance to the water industry our high-level comments are:

- We support the direction of travel set out in the consultation of enhancing regional and inter-regional planning, while noting that further development of this thinking is needed, to which we would be happy to contribute.
- We strongly support making Drainage and Wastewater Management Plans statutory once we have completed the first cycle of their preparation in 2022-23 and refined and improved the plan review and production processes. We would suggest though that the proposed approach of only placing new obligations on water companies, when drainage is very much a shared responsibility, is a significant missed opportunity that puts at risk the potential benefits which customers, society and the environment could otherwise gain. We would be pleased to work with you on both refining the DWMP process itself and how best any future legislative requirements can be shaped to maximise benefits for customer and the environment alike.
- We support the proposal that the Environment Agency should be able to vary or revoke any licence that is causing unsustainable abstraction without paying compensation, as it strengthens the incentives of all players to behave responsibly in how they approach abstraction. In relation to ‘under usage’ of licences, it is crucial to the resilience of public water supplies that enough headroom is maintained in both our water resource and our drought plans as companies hold abstraction licences for both – some elements of which are only used in times of water stress. We suggest that this is done through the water resource management planning and drought planning processes.
- The current arrangements for modifying water company licence conditions are effective and well understood by stakeholders. Individual companies will be commenting on the proposal to change these arrangements in their responses to the consultation.

We would be pleased to discuss our response further if that would be helpful.

Yours sincerely,



Rob Wesley  
Head of Policy  
Tel: 020 7344 1819  
Email: [rwesley@water.org.uk](mailto:rwesley@water.org.uk)

## **Appendix      Responses to specific consultation questions**

In this appendix, we are pleased to provide responses to the consultation questions on Water Resource Management Plans (Q2-Q6), Drainage and Wastewater Management Plans (Q7-Q11), Water Abstraction (Q12-Q18) and Modernising the process of modifying water company licence conditions (Q27-Q31).

### **Water Resources Management Plans**

**Q2. Do you agree that the Secretary of State should be able to direct companies to plan on a regional and inter-regional basis? Please provide reasons.**

**Q3. Do you agree that the Secretary of State should be able to direct water companies to take account of other abstractors' needs? Please provide reasons.**

Companies are already accustomed to thinking about trans-boundary opportunities to improve water resource management, and the interactions between their water resource management plans with other groups both inside and outside their geographic boundary. Recent investment in a number of regional groups, and some of the innovative approaches mentioned in Defra's consultation, demonstrate the continued commitment to 'think big' whenever there are societal, environmental or economic benefits from a cross-cutting approach.

There are some benefits to recognising in statute the role that some of this activity is already playing, and potentially to expand it further. In particular:

1. if regional and inter-regional planning were placed on a more formal footing then there would be more clarity and transparency around the process. If done well, with companies and Government working on ideas for implementation, we could see a more customer-focussed or democratic approach to planning, building on some of the innovation on customer engagement seen as part of the PR19 process.
2. There is an opportunity for Government to really set out how it wants this complex web of actors to come together in devising plans, which is important if trans-company plans are expected to play a part in the regulatory framework and investment decision-making.

As we are at a relatively early stage of the National Framework process, and views have yet to converge on some of the processes that would help enhance strategic planning (including the right 'level' of plan for different circumstances), it makes sense for any statutory power to take the form of a power to direct. However, such a power would be exceptionally broad in sweep. This brings a number of risks:

- i. Depending on the wording of any direction used under this power (and, for example, what is actually meant in practice by terms like 'inter-regional' planning), the case for individual schemes and projects could be swayed in ways that will not always be obvious to policymakers. This could see us stumble into favouring a particular project through bureaucratic momentum rather than objective appraisal, which could carry large economic and environmental implications. The intention behind (and wording of) a direction should therefore be subject to the same kinds of checks and balances as any other significant regulatory intervention. This particularly applies to anything seeking to affect trade-offs between different water users or which touches on companies' other statutory duties, which question three implies.

- ii. There are important differences between regions; between the maturity, focus and centrality of regional groups; and the role and make-up of local water users and stakeholders. This argues against overly-broad national directions. Directions would need to be constructed in a way that took account of these differences – for example, the same generic direction probably could not be issued to every company if it were to have any meaningful detail.
- iii. A statutory ‘direction to plan’ is not – by itself – a necessary or sufficient condition for increasing the number of strategic schemes. It could introduce more burdens into what is already a complicated and long-duration set of processes, while also being relatively ineffectual if unsupported by changes to subsidiary parts of the architecture, such as how plans are recognised by different parts of the regulatory landscape. Of particular importance is clarity among all parties about the status held by different level of plan; however, the Environment Agency’s current initiative to look at barriers to collaboration will also provide evidence for considering other measures that might be needed.
- iv. In relation to taking account of other abstractors’ needs, a direction for water companies may be insufficient unless it is complemented by placing obligations on other abstractors to provide accurate, robust and timely information to water companies for use in water resource planning.

In addition, as the consultation notes, the cross-border nature of some rivers means some water resources are shared between England and Wales. For regional or inter-regional planning to be effective in this situation, a joined-up approach between the UK and Welsh Governments would be needed.

To reduce these risks, **we recommend Defra (i) set out and consult on its overall approach to issuing water resource directions in its Strategic Policy Statement, and (ii) if applying directions to individual companies or regions, consult separately on the content of those before confirmation.**

**Q4. Do you agree that the water resources management planning process should be recognised in legislation as a measure to deliver environmental objectives? Please provide reasons.**

We support simplification of primary legislation, which is slightly dated in its approach. There is clearly more scope for innovation and flexibility across catchments, with companies sometimes finding that more effective or cost-efficient ideas can run into barriers, some of which do seem to stem from how legislative provisions translate into various bits of process.

This is, though, potentially quite a significant change, and without much detail on how it would be brought about (including the thinking around secondary legislation that might be needed).

The definition of ‘environmental objectives’ will need particular care if we are to avoid a system intended for one purpose being increasingly stretched to deal with tangential problems in any given catchment, thus weakening its effectiveness and the incentives on other actors. It will also be important to work with the Environment Agency on how we might get this change to work in practice.

**Our view is that this could be a helpful change, but that more work is needed to understand its ‘real world’ impacts, the interaction with water companies’ other duties, and the net impact on burdens on water companies and regulators.** Should Defra find itself in the position of pursuing this change legislatively, then we would need to flesh out this idea quickly, as we do not believe it is as yet well-developed.

**Q5. Do you agree with our proposals to improve the legislation governing Water Resources Management Plans? Please provide reasons**

**Q6. Do you have any further suggestions about how we could improve the primary legislation that governs water resources management planning? These could be either administrative improvements, such as how confidential information is dealt with, or to achieve better water resources outcomes. Please provide reasons for your suggestions.**

While specific proposals on simplification (for example, on information handling and competition) would individually need further scrutiny, they are sensible changes that we would support.

However, the proposed expansion of powers are quite a blunt instrument to handle in statute. It would be more normal to handle issues of that kind with guidance. That would also avoid cutting-across a more democratic approach to catchment planning hinted at in question two – there is a risk that more innovative approaches to consultation and local involvement could be precluded.

### **Drainage and Wastewater Management Plans**

**Q7. Do you agree that Drainage and Wastewater Management Plans should be made statutory and produced every five years? Please provide reasons.**

We strongly support making Drainage and Wastewater Management Plans (DWMPs) statutory, once we have gone through the process once and had the opportunity to refine and improve the process – i.e. *after* the first cycle of DWMPs have been produced in 2022-23. Similarly, we would support having them produced on a cycle in line with the water industry price review process (which we note is currently every five years but may not be in the future).

The current framework for DWMPs<sup>1</sup> was developed to provide a more robust, and more consistent, basis for the planning of drainage and wastewater services, through a collaborative process led by Water UK, with the active involvement of Defra, the Welsh Government, the Environment Agency, Natural Resources Wales, CCWater, Blueprint for Water, Ofwat, ADEPT and the National Infrastructure Commission.

We have been pleased and encouraged by the strong and continued support shown by stakeholders for this framework, and the widespread recognition that it represents a welcome step change for the sector. Water companies are already committing significant resources (at least an order of magnitude greater than indicated in the consultation) into playing their part in delivering DWMPs.

However, as set out in the consultation, without a formal statutory status in the water sector there is a risk that actions identified in the plans would not receive appropriate consideration and scrutiny during the price review process and as a result would not result in the appropriate level of investment to secure long term resilience.

Secondly, if the current non-statutory basis for DWMPs was maintained indefinitely, there would be a clear risk that other, statutorily required, activities were prioritised by organisations (in particular, Local Authorities) whose input is essential for robust and rounded DWMPs, and as the consultation notes, opportunities would be missed to develop solutions to drainage needs that can also address surface water flooding risks. This point is expanded on in response to Q8.

---

<sup>1</sup> <https://www.water.org.uk/policy-topics/managing-sewage-and-drainage/drainage-and-wastewater-management-plans/>

We also agree with the points made in the consultation that statutory status for DWMPs would give greater confidence that the framework was applied consistently and fully, and give Government the opportunity to define minimum statutory standards for plans.

**Q8. Who should a water company consult with, and obtain information from in developing their Drainage and Wastewater Management Plans and at what stage in the development of their plans?**

While water companies will lead the production of DWMPs, and are already committing significant resources in carrying out this lead role, it is a fundamental feature of drainage and wastewater planning that water companies cannot do this in isolation, because drainage is a shared responsibility – notably with other ‘risk management authorities’ (RMAs) as defined in Flood and Water Management Act 2010. There are, for example, large numbers of drainage assets that are not under the ownership of water companies, the management of which needs to be integrated into DWMPs.

This has been recognised by the National Infrastructure Commission in their recommendation that ‘water companies and local authorities should work together to publish joint plans to manage surface water flood risk by 2022’<sup>2</sup>.

It is therefore essential that as a minimum, water companies consult with, and obtain information from, all other RMAs within their geographic area. However, it risks underestimating the role of other RMAs merely to suggest that they will be consultees and information providers, as it will be essential that all RMAs actively participate in the development and production of plans.

The DWMP framework has been specifically designed with facilitating this co-creation in mind, with plans developed at different geographical levels to suit the needs of local, regional and national stakeholders. Water companies would particularly welcome early engagement with local and regional stakeholders – in particular other risk management authorities – to provide greater opportunities for the co-creation, and potentially co-funding, of solutions that meet multiple objectives.

However, while the consultation document refers to proposing to place a new statutory duty on water companies to require the development and publication of DWMPs (which we recognise is appropriate), the consultation does not propose placing complementary duties on other risk management authorities.

This is a significant missed opportunity which puts at risk the potential benefits which customers, society and the environment could gain from DWMPs.

As a minimum, all other risk management authorities should have a duty to co-operate in the production of DWMPs. This could be given statutory force by, for example, expanding the definition of ‘flood risk management function’ in section 4 of the Flood and Water Management Act 2010, and making other risk management authorities statutory consultees for DWMPs. We also suggest that it would be helpful for Regional Flood and Coastal Committees to be statutory consultees for DWMPs.

In addition, water companies will wish to consult with other local and regional stakeholders, such as consumer and environmental organisations and community interest groups.

We also note that Ofwat has recently requested that the timetable for the first round of DWMPs be accelerated, so that companies can consult on draft DWMPs by the summer of 2022, compared to the previously published timescale of December 2022.

---

<sup>2</sup> <https://www.nic.org.uk/assessment/national-infrastructure-assessment/>

While companies will meet this request, we note that this will inevitably compress the timescales for engagement – and potential co-creation – with stakeholders earlier in the process.

**Q9. What, if any, are the lessons we could use from the water resources management planning process in making Drainage and Wastewater Management Plans statutory?**

A key lesson from the water resource management planning process is that planning frameworks inevitably evolve over time – so it would be beneficial to set statutory requirements for the process in secondary legislation as far as possible, rather than in primary legislation, to make the process more flexible and responsive for future needs.

There are also key differences between drainage and wastewater planning and water resources planning – notably the different geographic scale for planning, with drainage and wastewater planning typically being much more localised, and the wider range of organisations that need to be actively involved in planning, given that drainage is a shared responsibility, not just a water company responsibility.

It will therefore be important that the statutory process for DWMPs is designed in a way that is appropriate for drainage and wastewater planning, rather than being a ‘cut and paste’ of the water resources statutory process, and we would be happy to work with Defra and other stakeholders on how this is best achieved.

**Q10. Is the current non-statutory Drainage and Wastewater Management Plan framework clear and complete, and are there any changes/lessons learnt which we should take on board in making the process statutory?**

The current framework for DWMPs<sup>3</sup> was developed by Atkins over an intensive nine-month process initiated and led by Water UK, with the active involvement of Defra, Welsh Government, the Environment Agency, Natural Resources Wales, CCWater, Ofwat, Blueprint for Water, ADEPT and the National Infrastructure Commission.

While we believe it provides a clear and appropriate basis for the first cycle of (non-statutory) DWMPs, it is inevitable that as companies and partner organisations implement this framework for the first time, opportunities for refinement and improvement will be identified – and some minor refinements have already been identified and are being discussed with stakeholders.

In light of this, we agree with the approach proposed of making the process statutory for the second cycle of DWMPs, and of providing the detailed process in secondary legislation, to make the process flexible and responsive for future needs.

**Q11. Should there be government or regulator oversight in the Drainage and Wastewater Management Plan process and review of plans? What level and type of oversight should this be? Please provide reasons**

We regard governmental and regulatory involvement in the DWMP process as essential to ensuring that DWMPs are – and are recognised as being – a robust and trusted basis for drainage and wastewater planning, and ensuring that a robust plan results in delivery on the ground.

We suggest that this involvement should take several forms, at different stages in the process:

---

<sup>3</sup> <https://www.water.org.uk/policy-topics/managing-sewage-and-drainage/drainage-and-wastewater-management-plans/>

- A strategic steer from Government early in the process for each cycle of plans on the policy objectives to be achieved by DWMPs and the Government's expectations of water companies and other stakeholders to avoid an inadvertent mismatch of expectations; this could for example be provided by the existing mechanism of the strategic policy statement, or by more specific directions;
- Feedback to companies on draft DWMPs from Government, economic and environmental regulators to enable companies to address any concerns in their final DWMPs; for example, the Environment Agency, Ofwat and the Secretary of State could be statutory consultees for DWMPs, in the same way that they are statutory consultees for water resource management plans;
- Ensuring that there is clarity on the linkage between the DWMP process and the price review process and the respective roles of Government, economic and environmental regulators; for example, this could be analogous to the expectations set out in the current strategic policy statement in relation to water resource management planning that Ofwat recognise the need for investment set out in final water resources management plans, continue to challenge companies to meet that need in a way that represents the best value for money over the long term, including through the price review, and work closely with the Environment Agency and use its role as a statutory consultee on water resources management plans to enable it to recognise future investment needs, in line with its statutory duties.

## **Water abstraction**

**Q12. Do you agree that the Environment Agency should be able to vary or revoke any licence that is causing unsustainable abstraction without paying compensation? Please provide reasons.**

**Q13. Do you agree with our proposal to link unsustainable abstraction to various environmental duties as set out in this consultation? If not, how would you determine what constitutes unsustainable abstraction and why?**

We broadly support this change, which strengthens the incentives of all players to behave responsibly in how they approach abstraction. It is otherwise difficult to see how sustainable levels of abstraction can be brought about in a way that is cost achievable; without it, the catchment management approaches (which water companies are often at the heart of) may always struggle to have their fullest impact.

However, while question of 'harm' is complex and can be hard to prove, the onus should be on the Environment Agency to demonstrate that the abstraction of water under a particular licence is having a material impact on the environment, and that varying or revoking that particular licence would address or mitigate this impact.

**Q14. Should the Environment Agency be able to vary under used licences in the case of unsustainable abstraction to remove the underused portion, with suitable safeguards to protect necessary headroom? Please provide reasons, including possible safeguards you consider appropriate.**

**Q15. Should the Environment Agency also be able to vary under used licences where there is unmet need for additional water in the catchment, to remove the underused portion, with suitable safeguards to protect necessary headroom? Please provide reasons, including possible safeguards you consider appropriate.**

**Q16. Should the Environment Agency be able to change any under used licence once necessary headroom is taken into account, irrespective of proportion of under use? If not, what proportion of under use is appropriate?**

**Q17. What do you consider is the appropriate length of time for a licence to be under used before the Environment Agency could use this power? Please provide reasons.**

**Q18. Do you think anything more is needed in primary legislation to deliver the aims of the abstraction plan? Please provide reasons.**

We recognise that there may be circumstances in which some licence holders have licences to abstract volumes of water significantly above both their current usage and their potential future usage.

However, as noted in the consultation, water companies need headroom in their licences so that they can maintain supply during dry years and respond to operational incidents such as sources being temporarily available.

It is crucial to the resilience of public water supplies that this headroom is maintained, and the Water Resource Management Planning process and Drought Planning process provides the appropriate forum for consideration of the degree of headroom that is needed. We note that licences which are relied upon on Drought Plans might not be called on for many years if there is not a drought of the length and severity that would necessitate their usage.

To secure the resilience of public water supplies, we therefore propose that any licence which is relied on in an approved Final Water Resources Management Plan or Drought Plan should not be regarded as being 'underused', regardless of the actual volume of water taken under this licence.

#### **Modernising the process for modifying water company licence conditions**

**Q27. Do you agree with the case for modernising the way in which Ofwat modifies licence conditions? Please provide reasons.**

**Q28. Do you agree with the proposal to base a modernised model on that currently used within the energy sector? Please provide reasons.**

**Q29. Have you any other suggestions for a different model for licence condition modification? Please provide reasons and explain what this could be.**

The arrangements for considering, and where appropriate making, modifications of licence conditions, have been reviewed a number of times in recent years, as noted in the consultation. The current arrangements have been proved many times to be effective at delivering licence modifications where there is a clear and compelling public interest reason for making the modification.

The commitments and obligations in licences, and the presence of the public interest test for licence modifications, have been one of the reasons behind the stability in the sector and in its financing – a stability which has enabled companies to invest some £150 billion since privatisation while keeping bills at acceptable levels.

Individual companies will comment on the proposed changes to the way in which licence conditions are modified in their responses to the consultation.

**Q30. Do you agree with the proposal to modernise Ofwat's information gathering powers? Please provide reasons.**

We fully recognise the importance of Ofwat having appropriate information in order to carry out its statutory functions, and do not object to this proposed change.

However, where information requests are either the same, or substantially overlap, with information requested by other stakeholders – in particular Government or other regulators – these information requests should be co-ordinated to avoid confusion and reduce regulatory burdens.

Noting that the consultation cites the March ‘freeze/thaw’ incident as a reason for expanding Ofwat’s information gathering powers, we observe that the co-ordination of information requests is particularly important in relation to incidents.

Companies recognise their responsibility to provide accurate and timely information to stakeholders during incidents, and devote significant resources to this, for example in meeting the requirements of the Security and Emergency Measures Directives (SEMD).

To ensure that resources are used effectively in what may be a time critical situation, and to reduce the risk of confusion between different information requests from different stakeholders, it would be helpful for there to be co-ordination between Ofwat and Government on any information request – with the aim of ensuring that any additional information required by Ofwat could be provided by companies as part of, or alongside, reports provided under SEMD.

**Q31. Do you agree with the proposal to modernise the way in which documents can be served, to include email? Please provide reasons, including any groups of people or type of documents for which email is not appropriate.**

We agree it is appropriate for water companies and Ofwat to be able to serve documents electronically. It will naturally be important that this is done in a secure manner, and that up to date records are maintained of the persons on whom documents should be served.