



House of Commons
Environment, Food and Rural
Affairs Committee

The Water Framework Directive: Government Reply

Sixth Special Report

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The Environment, Food and Rural Affairs Committee

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SIXTH SPECIAL REPORT

The Environment, Food and Rural Affairs Committee reported to the House on *The Water Framework Directive* in its Fourth Report of Session 2002–03, published on 19 March 2003 as HC 130—I. The Government's Reply to the Report was received on 22 May 2003 and is appended.

Appendix

The Government has welcomed the decision of the Committee to carry out an inquiry into the Water Framework Directive. The Committee's report now provides a valuable contribution to debate on the key issues affecting future implementation.

The Government is committed to full and timely implementation of a Directive which has been rightly held up as a model for sustainable development, in that it allows us to balance environmental, economic and social considerations in the pursuit of better water quality as we set out in our document *Directing the Flow: Priorities for Future Water Policy* in November 2002.

Transposition of the Directive is an important step in a long programme of technical preparatory and implementation work, stretching through to 2015. But the Government has already instigated substantial preparation to ensure implementation is successful. It has confirmed that the Environment Agency will be the competent authority for the Directive. The Agency currently has a programme of 35 Agency and consultancy staff to manage and support preparation to roll out the necessary implementation measures according to the timetable set by the Directive. More staff will become involved progressively over time, as the Directive impacts on other aspects of the Agency's work. A pilot river basin project will provide invaluable insights into implementation and a focus for public interest in the Directive.

Defra is building on existing work with stakeholders, to consider how to most effectively communicate about the Directive to a wider audience. Defra is also in close contact with other Departments such as ODPM and DTI to ensure that they are closely associated with implementation and that proper integration is achieved with other policy areas.

This response takes the Committee's recommendations (in bold type below) and addresses each of them in order.

1. The Water Framework Directive offers the potential of enormous environmental and social benefits, but at the same time it will dramatically affect the ways in which farming, industries and others conduct their activities. Therefore the first - and perhaps over-riding - conclusion of our inquiry is that the Directive needs much

greater public promotion. We hope that all parties affected by the Directive, as well as the media, will now recognise the significance of the Directive, and begin to give it the attention and discussion it deserves, and that the Government gives a much clearer lead about its implications, techniques and costs of implementation (paragraph 8).

This Directive is indeed highly significant in terms of its implications for key business sectors and carries the potential to deliver significant benefits. The Government agrees that there is a need for its greater public promotion.

Defra has therefore established a stakeholder communications group, as a sub-group of its main stakeholder forum (which comprises key national stakeholders) to identify key issues and decide how best to communicate them, bearing in mind the likely need to change over time, in line with implementation progress on the ground. The group has agreed that the first step is to promote broader awareness of the Directive, including among businesses, farming and land managers, and key regional and sub-regional players. It has also agreed that the task of communications needs to be a shared one, with national stakeholders, as well as Government, taking part of the responsibility for communications, including to members of their own organisations.

A further group, including stakeholders, has been established to provide them with opportunities to be closely associated with the process of revising the existing Regulatory Impact Assessment (RIA). A revised assessment will be published together with the Government's proposed third consultation paper on transposing the Directive, later this year.

The Environment Agency is also developing a public participation strategy for the implementation of the Directive through river basin management plans. This will draw on a pilot river basin project in the Ribble basin that will test European guidance on public participation and inform the way stakeholder participation is developed at a local level. The pilot will involve local business and industries. (Also see Government response to recommendations 16, 22-24).

2. Past experience suggests that most if not all Member States will fail to achieve proper and full implementation of the Water Framework Directive within the timescale set out in the Directive. That is disappointing, but it is, as we have said, a common problem. Over time, Member States should address the issue, in particular by only agreeing to new Directives after the practical and economic implications of their implementation have been fully assessed and costed (paragraph 18).

The Government strongly agrees that Member States, and the EU institutions, should ensure that the implications of proposed Directives are fully assessed before agreement. That is already the Government's approach.

Across Government, all new or revised proposals, including European proposals, that may impose a cost or benefit are carefully examined and consulted upon in RIAs to ensure that the full impact is considered before implementation. In European Union negotiations we engage stakeholders at all key stages of the process to ensure that all the risks, options, costs and benefits of a proposal are considered as early as possible through the regulatory impact system. The European Commission has also, through its Better Regulation Action Plan adopted in June 2002, committed itself to key measures, which should help to improve the regulatory environment. These include the introduction of a two stage impact assessment process covering the economic, social and environmental impacts of policy proposals and a commitment to establishing and adhering to minimum standards for Community consultation to improve the openness and transparency of the policy making process.

In addition, Defra has agreed a strategy to improve the linkage between those negotiating a Directive and those charged with its implementation and to use a more structured project management approach to implementation. Project management for transposing EC Directives is currently being piloted in Defra and will be rolled out across the Department during 2003. The UK continues to meet the targets set for implementation of Single Market Directives. The UK was one of 5 Member States to meet the target of a 1.5% deficit (the percentage of Directives which have not been written into national law after the deadline for doing so has passed) and one of only 4 Member States to meet the 0% target for Directives whose transposition is more than two years overdue. This good record shows the UK's commitment to implementing Directives on time.

Science And The Directive

3. There are a number of predominantly scientific questions surrounding the Water Framework Directive. It is only by answering such questions that properly informed decisions can be made about the strategies and resources needed to implement the Directive. The questions which recurred throughout our inquiry were:

(a) How should we define water status in ecological terms - which groups of plants and animals should form the basis of this definition;

Annex V of the Directive provides the basis for defining water status in biological terms. Biological elements include aquatic plants from microscopic to large sizes, aquatic animals such as worms, molluscs, shrimps, insects and fish.

Member States have to apply the annex V definitions at national level through developing the necessary monitoring systems and a series of technical assessments. This work at national level will be underpinned by an intercalibration exercise at Community level, led by the Commission, to ensure comparability of the values recorded for biological elements of water status at the high/good and good/moderate status boundaries.

Some guidance has already been produced at Community level on understanding annex V of the Directive and further guidance is being prepared on classifying water status. The UK is co-leading this work with Germany.

(b) Which groups of plants and animals should be expected in waters of 'high' ecological status, and what scientific evidence exists to support this definition of a reference state?

The 'biological elements' referred to in 3(a) would be expected in water bodies of 'high' ecological status. For initial characterisation the reference state for each type will be defined generically by expert judgement using a risk assessment approach i.e. those communities found in water bodies or at sites which are assessed as being under little or no anthropogenic pressure.

Evidence from sites relatively unaffected by human activities exist for some water body types. This is particularly true for rivers in the UK where a large range of sites has been sampled for macro-invertebrates. However, this is not true for lakes or coastal waters where very little ecological data has been collected, and classification will be constrained until improved monitoring programmes have been implemented. The Agency will be improving monitoring, particularly of lakes, to collect the data needed to construct classification schemes in line with the recommendations made within the Community Implementation Strategy monitoring guidance. Similarly the Agency will be improving its information base for ecological monitoring of transitional and coastal waters via work with the National Marine Monitoring Programme, which will incorporate the Directive's requirements for monitoring and classification.

There will be some types of water body that do not have examples of 'reference' condition e.g. slow flowing lowland English rivers. In this case a combination of modelling, expert opinion and data from other EU countries in the same 'ecoregion' is likely to be required to decide how far our existing 'best' sites are from reference condition.

(c) What physical, chemical and biological conditions are required by these plants and animals, and to what extent can these deviate from this reference condition in waters of 'good' ecological status?

Annex V, table 1.2 of the Directive defines physico-chemical and biological conditions for high status waters. The definition is written in terms of what might be expected in undisturbed or nearly undisturbed conditions (good status is then defined as waters showing only slight deviations from those undisturbed conditions).

Annex II of the Directive requires Member States to develop a reference network of water body types representing reference conditions for biological elements at high ecological status by December 2004. The Environment Agency will be placed under a duty to carry out this task in the regulations transposing the Directive.

The Environment Agency expects to derive 'reference' ecological status and supporting physico-chemical conditions for surface water body types using best available knowledge and multivariate ecological modelling techniques. It will draw on existing guidance produced at Community level on reference conditions and guidance in the process of being produced on classification of water status.

(d) In what ways would the definitions of 'high' and 'good' ecological status vary between different regions of England and Wales and between different water body types?

Definitions will vary according to water body type rather than across regions, although, of course certain types occur more in some regions than others. For example the ecological community of a 'good' upland lake will differ from a 'good' lowland lake.

(e) How many waters in England and Wales currently fail to achieve 'high' or 'good' ecological status?

The most recent national ecological information available is from the Environment Agency's 2000 biological General Quality Assessment (GQA) survey which uses sites to assess one or more 'stretches' of classified water course. There is no information for lakes and little for estuaries or coastal waters and these deficiencies are being addressed through the Agency's implementation programme for the Directive.

The 2000 Biological GQA survey showed that 58% of 6,541 river sites (in England and Wales) were in class a or b and in 1995, 57% of 6,827 sites were in class a or b. This is the best measure we currently have but we do not yet know how closely biology GQA classes a and b will equate to WFD 'good' status until the characterisation programme has been progressed.

(f) What strategies and resources would we need to protect waters presently of 'high' or 'good' ecological status?

Policies and programmes are already in place to protect water quality as currently assessed. The Environment Agency applies a 'no deterioration' principle for both water quality and water resources, which already provides protection for a wide range of the elements which in practice will support and define ecological status in the future.

(g) How might we generate preferred conditions in other waters to restore these to at least 'good' status within the prescribed timetable of the Water Framework Directive?

The Directive spells out the steps to be followed to ensure all water bodies achieve good status by 2015, unless a derogation is applied. Necessary programmes of measures must be established by 2009 and be operational by 2012. These measures will have been

assessed in the preparatory work to diagnose the key factors militating against achieving good status and identify the most cost-effective measures or combinations of measures. Full account will also need to be taken of the benefits of investments in water quality already in place or planned, as part of the 1999 and 2004 periodic reviews of water price limits, covering the period 2000-2010.

(h) What scientific and financial resources are needed to answer all the scientific issues raised by the implementation of the Directive?

The Agency has provided Defra with estimates of the financial resources required to implement the Directive as part of the usual business planning process (see response to recommendation 17 below). The Environment Agency is working on technical issues in collaboration with Scottish Environment Protection Agency and Environment and Heritage Service Northern Ireland under the UK Technical Advisory Group (UKTAG) (which brings together both the environment and conservation agencies and was set up to coordinate technical implementation of the Directive across the UK, see recommendation 14). The Water Framework Directive is one of the priority themes in the current review of the Agency's science plan.

Perhaps the most important of these questions, at least initially, is that which asks what is the current state of water quality in surface and ground waters in England and Wales. Before decisions can be made about what policies are needed to meet the objectives of the Water Framework Directive, it is vital that a clear understanding is reached of the current status of these waters, as currently no comprehensive overview exists of the ecological state of waters in England and Wales (paragraph 22).

The Directive itself contains obligations to do the analysis to come up with answers about science and water status. The Directive spells out a sequence of pieces of scientific analysis which must be carried out.

The Directive includes a legal obligation to complete by December 2004 an initial assessment of the risk that water bodies will fail to achieve good status by 2015; the Government intends to place a duty on the Environment Agency to carry out this task. It will draw on existing classification systems and be based on the existing monitoring data from these systems and other relevant data about human environmental pressures on waters. Assessment against high or good ecological status is not yet possible therefore as 'status' is a new definition of how the 'quality' of a water body is measured. A network of reference sites for biological reference conditions of rivers, lakes etc at high status also has to be identified by 2004.

The initial risk assessment will then be built on by the operation of monitoring systems able to monitor the necessary biological and other parameters that form part of water status classification. As a further legal obligation, the Directive specifies that these

monitoring programmes must be operational by the end of 2006. All this will underpin work to produce proposed water status objectives for all waters in England by 2008.

The Present State Of Waters In England And Wales

4. We readily acknowledge the improvements in oxygen status that have been achieved in the rivers of England and Wales in recent decades and the return of key indicator species such as salmon to many of our river systems. We are aware, however, that this has been achieved largely through investment in improving the quality of effluent discharged from major sewage treatment works and to a lesser extent the reduction in industrial pollution resulting from shrinkage in the manufacturing sector and the better management of animal wastes on farm holdings - sources of pollution which are relatively easy to identify and, with technological advances, to treat. We are far less sanguine about the wider picture (paragraph 29).

The Government welcomes the Committee's acknowledgement that much has been achieved to improve river water quality, principally through massive water industry investment. Diffuse sources of pollution are now proportionately much more significant – the Government's plans to address agricultural sources of diffuse pollution are dealt with in the Government's response to recommendation 10.

The rationale for the approach written into the Water Framework Directive of monitoring elements such as fish, invertebrates and algae is that they each respond to different pressures. Such broad monitoring is more likely to pick up the impact of more significant pressures requiring control and mitigation measures.

The Biological GQA remains the best national classification system for ecological quality. Macro-invertebrates do respond to a variety of pressures including organic pollution and toxic metals, however it is recognized that this system is not designed to detect the impacts of, for example, nutrient pressures.

Methods have been developed using macrophytes and diatoms to assess the impact of nutrients and nutrient control measures in rivers. These methods (Mean Trophic Rank and Trophic Diatom Index) have mainly been applied by the Environment Agency to determine the impacts of waste water treatment works discharges for the purposes of the EC Urban Waste Water Treatment Directive. However this approach is concerned primarily with the impact of relatively large point sources of nutrients, especially phosphorus. As the Water Framework Directive is concerned with the impact of all pressures, both point and diffuse, the Environment Agency is working with Scottish Environment Protection Agency to develop operational tools to enable the prediction of the expected (reference condition) macrophyte or diatom community at any river or lake site, an assessment of ecological status based on the observed macrophyte community (expressed in terms of quantitative deviation from the reference condition), and a diagnosis of the anthropogenic pressures affecting the observed community.

5. We are very concerned about the eutrophication of British waters, especially in Sites of Special Scientific Interest (SSSIs) (paragraph 32).

The eutrophication process is complex, affected by a range of factors, and measuring its extent in particular waters can be technically difficult. As part of the overall response to the Water Framework Directive, improved reference-based methodologies will have to be developed. Research is in hand to formulate the new tools that will be required. Notwithstanding these issues, the risks and undesirable effects of eutrophication are acknowledged as a significant concern. The Government is in the process of implementing a range of management measures, particularly the Urban Waste Water Treatment, Nitrate and Habitats Directives and (for marine waters) an OSPAR strategy in this area. In addition, the Environment Agency published a strategy on eutrophication in 2000, implementation of which is part of the Agency's "Making It Happen" initiative.

It is important to bear in mind that phosphorus concentrations in rivers have significantly reduced since 1990, although there is no similar trend as yet for nitrates. Nutrients from point sources are increasingly coming under control through the implementation of the Urban Waste Water Treatment and Habitats Directives. With regard to diffuse nutrient pollution, the Nitrates Directive, with recently extended UK designations, is now being implemented to reduce nitrogen pollution and may also help further to reduce phosphorus pollution. The potential need for additional measures on diffuse agricultural nutrient pollution is being looked at in the current Government review (see responses to recommendations 7 – 10).

Regarding SSSIs, some riverine sites are already designated as Sensitive Areas (Eutrophic) under the Urban Waste Water Treatment Directive. There are currently 109 Sensitive Areas (Eutrophic) in England which are reviewed every four years. The Environment Agency is also introducing phosphorus standards for riverine Special Areas of Conservation (all of which are SSSIs) under the Habitats Directive. These standards will drive action under the periodic review of water price limits. The potential to extend those standards to all SSSI rivers will be considered.

The Environment Agency is working with partners to take forward Habitat Action Plans under the UK Biodiversity Action Plan which includes addressing key threats to chalk rivers, mesotrophic lakes and eutrophic standing waters – with priorities for protective action generally being sites of high conservation status. This is incorporated in a holistic approach to the improvement of biodiversity in the aquatic and wetland environment under the biodiversity strategy for England.

6. It will be necessary to integrate the response to the Water Framework Directive with domestic flood control and planning policies. And if the assessment of water quality is to go beyond current measures a wider range of pollutants and sources of pollution will have to be taken into account (paragraph 34).

The Directive does not cover flooding or land use planning explicitly, but both can have implications for environmental water quality. Defra is pursuing integration with the land use planning system in two main ways:

- by ensuring that national and regional land use planning guidance properly reflects new water priorities – for example the guidance on planning and pollution control. There is a regular programme for revising this guidance to reflect new considerations such as the Water Framework Directive;
- through applying the existing system of controls on water pollution, including the need to consult the Environment Agency on certain categories of development applications, and the powers which the Agency already has to control discharges and abstraction (the latter being subject to amendment in the Water Bill).

6.2 The implications for flood management in England and Wales are currently being assessed with the Environment Agency, recognizing that many flood defence measures play a significant role in protection of the public and property. We are also taking part in a European working group to develop best practice guidance on flood prevention and mitigation.

6.3 A review of project appraisal guidance is likely to be required to ensure that all flood defence projects are consistent with the application of the Directive, building on current approaches that are already being developed through shoreline management planning and catchment flood management plans which will, themselves, form building blocks in the river basin management plan process.

Defra already actively encourages a wide range of approaches to flood control and encourages consideration of options that include managed realignment of defences to create more sustainable and environmentally acceptable solutions as well as the creation of flood storage areas on agricultural, amenity and other suitable land.

Diffuse Pollution and Agriculture

7. It has been estimated that nitrogen loading on British waters is nearly three times higher now than it was in the first half of the last century, and that phosphorus loading is more than twice as high now as it was then (paragraph 46).

The Government takes the view that considerably more needs to be done to tackle nutrient pollution, from both agricultural and non-agricultural sources. The extension of the area of nitrate vulnerable zones from 8% of the agricultural area of England to 55% and the associated action programme measures will go some way towards reducing agricultural nitrogen loads. As point sources increasingly come under control diffuse pollution inputs will become more evident (see recommendations 8-10).

Phosphorus is one of the principal pollutants arising from diffuse agricultural sources and the Government's strategic review of diffuse water pollution from agriculture (DWPA) is looking at cost-effective measures to tackle this, and other nutrient related pollution issues. Measures adopted now to tackle phosphorus will take some time to have an impact in the water course, because of the need to both reduce the amount of phosphorus in reservoirs such as soil and sediment and restore ecosystems, which may involve processes such as species reintroduction and biomanipulation.

8. The extent of the diffuse pollution problem in the water bodies of England and Wales is symptomatic of the intensity with which we use the landscape (paragraph 47).

The intensity of land use is clearly an important factor in assessing and understanding diffuse pollution loads to water courses. However, particularly in some vulnerable catchments, the problem could be mitigated by the promotion and better targeting of existing good practice measures in agriculture and elsewhere. See recommendations 7 and 9-10 for DWPA.

9. Limiting diffuse pollution will be a costly and expensive undertaking, and will impact on an agricultural industry which is already under severe pressure. It is likely to require changes in agricultural practice - perhaps even to the direction and ethos of the CAP. As such it is emblematic of the significance and wide-ranging impact of the Water Framework Directive (paragraph 47).

Any changes in agricultural practice proposed in order to implement the Water Framework Directive will clearly have to be proportionate and cost-effective if they are to be successful in reducing diffuse pollution inputs. The Department's review referred to above is examining a wide range of potential policy instruments, including regulation, voluntary and advisory measures as well as economic instruments, and will aim to choose the most appropriate and cost-effective measures, tailored to suit local circumstances. What is appropriate in one river basin district will not necessarily be appropriate in another. The Directive's RIA is currently being updated but any measures adopted will adhere to the general principles set out in annex A to the Sustainable Food and Farming Strategy – Facing the Future, published in December 2002.

The European Commission published its formal proposals on Reform of the CAP – 'A Long Term Perspective for Sustainable Agriculture' on 22 January 2003. The Government supports the Commission's proposals, the central element of which is to decouple agricultural production from subsidy. If agreed, this would bring farmers closer to the market, delivering economic, environmental and international benefits. The Government supports the Greek Presidency in its aim of reaching agreement in June 2003.

10. The Government should now clarify the timetable for completion of the strategic review of diffuse pollution from agriculture. We trust that the review will consult as widely as possible about the scale of the problem, and the strategies and resources needed to bring this most intractable of pollution sources under control. Given the likely impact that dealing with diffuse pollution will have on the agriculture industry we recommend that the review assess carefully the financial implications of the Directive for the agricultural industry to ensure that the costs of implementation for this sector are proportionate in respect of its present ability to pay (paragraph 48).

Following a discussion paper¹ published in June 2002 a further discussion document was published 30 April 2003. By the end of 2003-04 we will have developed an Action Plan which will include specific policy instruments on which we will have consulted formally.

The purpose of the review is to identify the most cost-effective approaches for reducing this pollution, and so the costs of different options and the principles of sustainable development will be considered in formulating proposals for consultation. The choice of policy instruments will have an effect on the distribution of the costs of reducing diffuse water pollution from agriculture and the potential impacts on all stakeholders will be carefully considered as part of the policy development process. Full consultation with stakeholders is being conducted as part of the process.

11. We urge the Environment Agency and others to be more aware of the status of lakes and ponds (paragraph 51).

Lakes are a water body category under the Directive, so their status will be assessed according to the requirements of the Directive.

In considering which lakes should be considered, the Directive provides a minimum area cut off value of greater than 50 hectares. This would in effect mean that many small but important standing waters might not be considered. To overcome this the Agency and the UKTAG are proposing a series of significance tests for smaller water bodies, such as conservation value, to justify their inclusion.

For lakes and ponds that do not fall within these either of these criteria, it is expected that the measures taken to protect other surface water bodies will provide protection for small lakes and ponds within the same catchment.

Coastal Waters

12. In short, there is again clearly little agreement about the scale of the problem faced and about the implications of implementing the Directive, and this must be resolved as soon as possible (paragraph 52).

¹ 'Initial Thinking on the Problem and Solutions'

The Environment Agency is assessing what additional monitoring capacity will be needed in coastal waters.

In the Government's second consultation, we asked for views on the proposition that, in giving legal effect to the Directive, we should extend the seaward limit of the definition of coastal waters from one nautical mile to three. We have received a range of views on this topic and are now considering them. We will publish our response in the third consultation paper later this year.

Conclusions About the Science

13. The scale of the task involved in achieving good ecological status in our waters is not yet known (paragraph 56).

The Government is addressing this through an initial assessment of the risk that water bodies will fail to meet their environmental objectives because of environmental pressures caused by society (see Government response to the last part of recommendation 3). This must be completed by the end of 2004. The Directive then requires monitoring to be in place by 2006 adequate to supplement this initial assessment and inform identification of the most cost-effective combination of measures necessary to meet ecological and other environmental objectives.

The Government will publish a revised overall assessment of the costs of implementing the Directive later this year.

14. As a matter of urgency, we recommend that a scientific Steering Group be set up to advise Defra and the Environment Agency on the science surrounding the Water Framework Directive. The Steering Group should comprise leading experts in freshwater, estuarine and marine ecology. The Group should be charged with the task of:

- reviewing the evidence which already exists regarding the physical, chemical and biological status of waters across England and Wales;
- assessing the extent to which our waters in their present state could be classed as of 'high' or 'good' ecological status;
- identifying gaps in the evidence needed to make that assessment; and
- commissioning research on behalf of Defra and the Environment Agency to fill such gaps in knowledge (paragraph 57).

The UK Technical Advisory Group brings together both the environment and conservation agencies of the UK² and was set up to coordinate technical implementation of the Directive across the UK. The Group is already addressing the subjects detailed in

² Environment Agency; Countryside Council for Wales; English Nature; Scottish Natural Heritage; Scottish Environment Protection Agency; Environment and Heritage Service for Northern Ireland; Department of Environment and Local Government (Republic of Ireland).

paragraph 93.14 of the report and in effect constitutes a scientific steering group addressing the issues highlighted by the Committee. Therefore, another steering group would appear to be unnecessary duplication.

The Group is identifying gaps in knowledge and methods and is sponsoring research in a co-ordinated way to fill these gaps. The scientific community across Europe is engaged with the Directive and the Water Research Centre leads the European Topic Centre for water. Various experts from UKTAG's member organisations are also contributing to the EC Community Implementation Strategy working groups to provide non-binding guidance on the operation of the Directive. The Agency's review of its science plan is making the Directive one of the priority themes and this will drive both in house work and commissioned research to support the science needs of the Directive.

Administration And the Directive

15. We recommend that Defra clarify what its role is and will be in respect of the Water Framework Directive, and exactly what role will be taken by the Environment Agency if it is decided that it is to be the competent authority under the Directive. We further recommend that a 'ministerial champion' be designated in relation to the Water Framework Directive, able to bring together representatives from all Government Departments and other organisations involved in the implementation of the Directive (paragraph 60).

The Government has already clearly set out in its second consultation paper (October 2002) the respective roles it and the Environment Agency will play. It confirmed its intention to designate the Environment Agency as competent authority. The formal designation will be effected through the transposing regulations. The Directive requires legal effect to be given to the Directive by December 2003. The Environment Agency will be given statutory duties to administer the implementation of the Directive and to ensure that its environmental objectives are met within the Directive's time limits. Agency tasks will relate to key implementation duties such as: production of river basin management plans— – the Secretary of State will approve them; co-ordination of the programme of measures necessary to meet objectives – the Secretary of State will have powers to approve programmes of measures or elements of them such as derogations.

The Government already has a 'ministerial champion' for the Directive in Elliot Morley as the Government's Water Minister. It also has effective fora in the form of an inter-departmental steering group and stakeholder forum. Both meet regularly and cover strategic water policy issues and transposition and implementation of the Directive.

Clarifying What the Directive Requires

16. Nevertheless, underlying our recommendations is a plea that the Government should engage those directly affected by the Directive in dialogue to explain what steps they are or will be required to take (paragraph 61).

Defra agrees that this is an important part of successful implementation and we are taking action to ensure key messages are communicated. That is why we have set up a stakeholder communications group (see response to recommendation 1).

In March 2001 the first consultation paper was distributed to about a thousand stakeholders including organisations representing government agencies, local authorities, environmental NGOs and a wide range of businesses including farming. Many of these interests are represented on Defra's stakeholder group. The paper was further distributed by some of these stakeholder organisations to individual members, some of whom responded in their own right. This process was repeated for the second paper and will be repeated again for the third.

The Environment Agency's public participation strategy is also relevant here (recommendation 1).

Resources

17. Any failure adequately to resource the Environment Agency to perform its responsibilities under the Water Framework Directive would be wholly unacceptable. Having signed up to the Directive the Government is obliged to provide the resources to ensure that the Directive can be implemented, and implemented well (paragraph 63).

The Government agrees that the Environment Agency must continue to be adequately resourced. The Agency has continued to receive significant grant-in-aid from the Department. This has increased from £103.7m in 1999/2000 to £116.7m in 2002/03 (figures in EA Corporate Plan for 2002/03) and proposed grant-in-aid of £123.7m for 2003/04.

In total, the Agency's budget, comprising grant plus charges and levies, has increased from £620m in 1999/2000 to just short of £800m in 2003/04. These are substantial resources, and in the Government's view, the Agency is sufficiently funded to deliver its statutory responsibilities.

It is for the Agency to organise those resources so that the Water Framework Directive is adequately resourced but the Government is confident that the Agency has been provided with adequate means to do so.

Conflicts of Interest

18. We recommend that the Government examine concerns about possible conflicts of interest arising as a result of the designation of the Environment Agency as competent authority, and that it act to resolve them as necessary (paragraph 64).

The Government has carefully considered the concerns that there might be conflicts of interest between the Agency's duties as "competent authority" and its responsibilities for areas such as flood defence, or the need to abide by the water industry investment consequences of periodic reviews of water price limits.

The Government's view is that such conflicts will not arise in practice. The Government intends (through regulations transposing the Directive) that in exercising its functions the Agency will be under a duty to do so in a way which gives effect to the requirements of the Directive. This duty will include the Agency's navigation and flood defence responsibilities. In addition, there are well established arrangements for ensuring that EU environmental obligations that give rise to water industry investment requirements are factored into periodic reviews of water price limits and that necessary provision is made. The Secretary of State, the Agency and English Nature all have roles in shaping such planned water industry investment, which underpins Ofwat decisions on water price limits.

Lack of Democratic Mandate

19. We have considered the arguments made about the disparity between the designation of the Environment Agency as sole competent authority under the Directive and its perceived lack of a democratic mandate. We are not persuaded by them, particularly since most of the alternatives proposed would require yet another layer of government to be created to oversee river basins. Instead, we believe that mechanisms which allow proper consultation with the public and other relevant bodies will respond to concerns about the democratic legitimacy of the process (paragraph 66).

The Government welcomes the Committee's acknowledgement that no additional administrative layers should be created. The Government remains firmly of the view that, as the Environment Agency is accountable through Ministers to Parliament, the Agency's role as competent authority will not create a democratic deficit. The Government agrees that proper consultation mechanisms, as well as arrangements for actively involving interested parties in implementation of the Directive, will be an important way of responding to concerns about the democratic legitimacy of the implementation process.

Integration and Powers

20. We strongly recommend that the Government begin now to develop the arrangements, agreements and protocols which will be needed to ensure that the river basin management plans drawn up by the Environment Agency as competent authority carry sufficient force – and to ensure that the Agency is required to take into account the views of others in drawing up the management plans. Clarity about such matters is in any event essential, but settling the details of these administrative

arrangements sooner rather than later will allow shortcomings to be identified and addressed (paragraph 70).

The Government agrees that river basin management plans must carry sufficient force. It therefore proposed in its second consultation paper that the Agency would be under a duty to prepare such plans and that the Secretary of State will have an explicit role in approving plans. It is also proposed that the Agency would be under a duty to consult at key stages of plan preparation as well as actively involving interested parties generally.

As noted above (recommendation 18), the Government intends (through regulations transposing the Directive) that in exercising its functions the Agency will be under a duty to do so in a way which gives effect to the requirements of the Directive. In addition, the Government intends, through regulations, to place other bodies with relevant functions under such a duty. To complement these regulatory measures, in order to be sure that the influence of other bodies with relevant functions are fully reflected in the measures and plans required by the Directive, both the Regulations and guidance to the Agency will set out which bodies need to be involved and which functions will need to be taken into account.

21. But until the administrative arrangements which will enable the Environment Agency to function as the competent authority have been properly explored, Defra cannot be certain that primary legislation is not required. We therefore repeat our recommendation that possible shortcomings in such administrative arrangements be identified as early as possible, and we recommend that the Government keep an open mind about the need for primary legislation to address such shortcomings. To address this issue the Government should publish a legislative impact study on the requirements of the Directive. In particular it should examine how it relates to existing law in planning, abstraction controls, discharges and flood defence requirements. It should also address the question of whether any new laws are required, particularly in areas such as groundwater management (paragraph 71).

The Government believes that secondary legislation is a suitable and well established method for implementing EC legislation.

The process for identifying the administrative arrangements to enable the Agency to function as the competent authority is well in hand. The Government's first consultation paper proposed the Environment Agency as competent authority and the boundaries of river basin districts. This approach was confirmed in the Government's second consultation paper in October 2002. That paper also included extensive proposals covering regulatory arrangements for river basin planning. The Environment Agency has also consulted on technical issues. A third consultation is due later this year, covering draft regulations.

In terms of legislation, the Government is well placed to transpose the Directive in England as the existing legislative framework already provides many of the powers

needed to comply with the Directive. In the Government's first consultation paper, therefore, views were invited on the proposed use of secondary legislation (though some provisions of the Water Bill will in practice assist in transposing the Directive). Responses to that consultation generally supported this proposal. This approach was confirmed in the second consultation paper (October 2002) which also asked invited views on the Government's assessment of the gaps in existing legislation and how they might be filled (para 1.3). These proposals also covered groundwater management, abstraction licensing, discharges, as well as links with flood defence and planning. The paper went on to explain that the third consultation will include proposed draft regulations and transposition notes setting out how the regulations transpose the main elements of the Directive (para 15.1).

A Pilot River Basin Management Plan

22. We welcome the Government's belated decision to conduct a pilot in the Ribble valley basin. We trust that the pilot will be comprehensive, and not just a token exercise. We also trust that the results of the pilot will be published. We seek from the Government confirmation that the study will fully address the following points; clarification of the concept of good water status and the extent of the improvements necessary to achieve this; provision of an economic assessment of all aspects of implementing the Directive in the Ribble basin; trialing of measures designed to address different aspects of diffuse pollution; an assessment of the links between biodiversity and river basin plans, including the role of wetlands and salt marshes; and the means whereby all interested parties can be fully involved in the implementation process. We recommend that the lessons learnt in the Ribble valley inform decisions about the administrative arrangements concerning the Environment Agency's role as competent authority (paragraph 73).

The Ribble pilot river basin project will formally test elements of the Common Implementation Strategy guidance on the 'Planning Process' and 'Public Participation', as part of the EU network of pilot projects. The UK Pilot will also test emerging Environment Agency guidance and tools to support implementation needs. This project will develop the Agency's and stakeholders' understanding of the likely impacts of implementation of the Directive, and will aid the Agency in refining its administrative role. A report on UK testing of the strategy guidance will be submitted to the Commission by their July 2004 deadline.

Key regional and national stakeholders have already been engaged in defining and developing the project, which will explore methods and techniques for local stakeholder engagement in the planning process. The project will draw on expertise from the pilot's external partners, particularly for the work on public participation.

23. Many of our recommendations will inevitably lead to greater involvement by local government in the process of implementing the Water Framework Directive. Nevertheless, we recommend that the Government take further urgent steps to

encourage local authorities, as well as all affected sectors of industry, to become involved in discussions about the implementation of the Directive (paragraph 75).

Defra agrees that local authorities will have an important role to play, particularly through their land use planning functions. We are discussing with the Local Government Association (LGA) how they can advance awareness of the Directive in local government. Following that meeting, LGA have developed an outline strategy to raise awareness and have written to a range of Local Authority advisors to seek their input at an initial meeting to be arranged with the Environment Agency and Defra. They have also agreed with the Environment Agency to meet to explore wider issues arising from the WFD and new approaches to strategic land management.

The Environment Agency are a key interface with local government, both directly and through their Regional Environment Protection Advisory Committees (REPACs). REPACs have a generic format with five places offered for 'local authorities', although how they are distributed (between Regional Assemblies and local authorities) varies between the regions. These Committees have already been invited to give their views on the Agency and Defra consultation material on the Directive.

Defra's stakeholder group and sub-groups (recommendation 1 and 16), Ribble pilot (recommendation 1 and 22) and the updated Regulatory Impact Assessment (recommendation 1 and 27) are all relevant here.

24. We recommend that Defra begin work now to determine how best to interest the public in the Water Framework Directive. Information should be provided both nationally, in terms of the reasons for, and potential impact of, the Directive as a whole, and locally, in the context of river basin management plans (paragraph 76).

The Government's work with stakeholders to see how best to communicate the key messages of the Directive to a wider audience are discussed in response to recommendations 1 and 16.

The Government has also proposed that the Environment Agency will have a duty to encourage the 'active involvement' of interested parties in each of the proposed river basin districts. The Agency has a strong track record in consultation and involving stakeholders – particularly relevant to the Water Framework Directive, for example, are the catchment management abstraction strategies. The Government believes that this track record will ensure the delivery of the public participation requirement of the Directive.

The Agency's public participation strategy, on which Defra will want to work closely with the Agency, is relevant here, as are the lessons to be learnt from the Ribble pilot. So by this process, by the time river basin planning reaches its more developed stages, for example through the publication of draft plans by the end of 2008, the groundwork for

active involvement of interested parties will have been done within the framework of a worked out strategy.

Conclusions About Administration

25. In short, there is a palpable lack of urgency – perhaps even a sense of complacency—in the approach currently taken to making administrative arrangements to implement the Directive (paragraph 78).

The Government does not agree. Both Defra and the Environment Agency are working with all urgency to progress all aspects of implementation, including administrative arrangements. Neither is complacent about the work that this massive task involves – hence the Agency’s projects which tackle specific areas of the Directive, such as those on river basin “characterisation” and river basin planning, as well as more cross-cutting work streams such as those on communications, data and information systems and R&D. Within the Department the work programme is being delivered by a multi-skilled team of administrators, lawyers and economists. More staff are being added as we move forward.

The process for identifying administrative arrangements is well in hand (see response to recommendation 21).

Instituting linkages between the Environment Agency and other interested parties is an ongoing process – Defra’s stakeholder forum, inter-departmental steering group, lessons of the Ribble pilot and regional activities such as REPAC meetings have already been mentioned.

Integration: A New Way of Thinking?

26. Implementation of the Water Framework Directive gives an opportunity for Defra to give real meaning to the rather nebulous concept of 'sustainable development'. We strongly urge the Department to approach it in that spirit, and to act positively and with enthusiasm in dealing with the Directive (paragraph 80).

The Directive has been rightly held up as a model for sustainable development. As such the Government welcomes the benefits it will bring about and is committed to its full and timely implementation.

As noted above in Directing the Flow, the Government set out how its water policies are intended to be consistent with sustainable development, and it intends to follow this through in its implementation of the Directive’s requirements.

Costs, ‘Gold-Plating’ And The Directive

27. These ambiguities need to be resolved urgently so that an approach to cost distribution set out in the Directive is generally accepted as a fair one; but as we have

said agriculture can ill-afford the significant expense that it would incur if that approach was applied to diffuse pollution. 'End-of-pipe' treatment is likely to prove expensive to water companies and their customers, and will not tackle the root of the problem (paragraph 81).

The Government agrees that better cost estimates are needed. These will need to develop incrementally as further work is carried out on implementation. Earlier cost/benefit work was based on consultancies in late 1997 and early 1999. They formed the basis for the Government's RIA published in 2001. Clearly much has happened since the original costing work was done, not least on the periodic review of water price limits for the water industry. As already noted (see response to recommendation 1) the Government will be publishing a revised RIA with its third consultation paper later this year.

The Government agrees that the principles of sustainable development including the polluter pays principle are the right starting point to approach implementation of the Directive. As far as agricultural pollution is concerned, this is being addressed in the Government's strategic review of diffuse pollution from agriculture (see response to recommendation 10).

As part of action needed to reduce agricultural pollution, the Government also wants to see farmers rewarded for positive environmental action – through the market place and re-direction of support for farmers. A new "broad and shallow" entry-level agri-environment scheme is currently being piloted and Government is also reviewing the overall architecture and scope of agri-environment schemes. In addition, the Government wants to see further reform of the CAP to shift subsidy from production towards rewarding action to enhance the environment (see recommendation 9).

Gold-Plating And Strategic Thinking

28. We recognise and support the Government's reluctance to 'gold-plate' the implementation of the Water Framework Directive. It is worth noting, though, that concerns about 'gold-plating' of the Directive do not, as they usually do, relate to additions to the Directive, but rather to the timing of its implementation. It is illogical categorically to rule out early completion of certain aspects of the Directive, particularly when so many of the affected parties are keen to make progress, or at least to have issues clarified. A 'last-minute' approach to implementation may keep short-term costs down, but it may prove more expensive in the long-run - and is hardly in keeping with the spirit of the Directive. And moving more quickly towards implementation will help to identify and iron out difficulties in good time (paragraph 86).

The Government intends to comply with the implementation timetable set out in the Directive – those are the legal obligations it has agreed to.

The Government agrees, however, that implementing aspects of the Directive's timetable early should not be ruled out where the benefits of doing so clearly

outweigh the costs. For example, the Government has accepted in principle that there may be some measures necessary to meet environmental objectives which need to be made operational earlier than the latest date allowed under the Directive. In the 'Initial Guidance from the Secretary of State to the Director-General of Water Services' in relation to the 2004 periodic review of water price limits, the possibility of some water company investment relating to the Directive being included in this review is not ruled out. While most of the water industry investment which will be required under the Directive will probably fall after 2010, we recognise that some schemes may need a start date during 2005-10. If a need for schemes in 2005-10 is proven when Ofwat sets new price limits for 2005, the schemes will be taken into account.

Synchronising Current Economic Planning Cycles With the Directive

29. We recommend that Defra, together with Ofwat, consider whether or not to synchronise the periodic review and River Basin Management Plan cycles. We recommend that they report back to us about the benefits and disadvantages they perceive would be the result of such synchronisation (paragraph 87).

It is for Ofwat to decide the process for setting price limits, including the intervals between periodic reviews. They are open to the possibility of periodic reviews beyond 2010 taking place at intervals other than five years.

Ofwat consulted in October 2002 on whether to extend the period covered by the price review they will undertake in 2009. There was no clear consensus in the responses although a number of environmental bodies suggested that the review should be synchronised with the implementation of the Water Framework Directive and its six year cycle. Some water companies supported a longer period between periodic reviews, but this was conditional on there being a robust way of dealing with mid-term changes in costs.

Ofwat are committed to their current review in 2004 and the subsequent review in 2009. They will consult again in 2005-06 before making any change to the price limit period post 2010.

The Water Framework Directive and the river basin management plans to be made under it, though important, are not the only factor. There have been calls for both more and less frequent reviews. Whatever period is taken, it will inevitably fit better with some cycles or events and less with others. What is needed is a period between reviews that is as long as practicable, given the availability of reasonably certain information to allow long term planning.

Conclusions About Costs and 'Gold-Plating'

30. Deciding not to 'gold plate' the Water Framework Directive, and carefully to scrutinise the costs and benefits of it, does not necessarily equate to implementing it at the last possible moment and in a minimalist fashion. Such an approach both flies

in the face of the spirit of the Directive, and is not helpful to the water industry and others who must make investments as a result of it. Putting in place the administrative arrangements needed to implement the Directive, making decisions about investments by water companies and the allocation of resources by the Government itself, and even determining the total costs of the Directive depend on clarity about the Government's approach. We believe that a clear commitment to the Directive, and far-reaching decisions about its implementation, made now would benefit all those affected by it, provided that the Directive is implemented no faster and no slower, no more elaborately nor more laxly, than in other major Member States (paragraph 90).

The Government is committed to ensuring successful implementation of the Directive and in this response has set out action already complete and future plans. The Government's approach to early implementation is explained in its response to recommendation 28. The Government has consulted extensively on the administrative arrangements for giving legal effect to the Directive. As already noted a revised RIA is planned for later this year. At a European level, the UK has been heavily involved in developing guidance on implementation of the Directive and this involvement continues. Administrative arrangements necessary to implement the Directive are covered in recommendations 15, 20 and 21.

Conclusions and Recommendations

31. We urge the Government to address the Water Framework Directive with more urgency. It presents challenges, particularly to agriculture, which is facing financial difficulty. But the Directive also presents opportunities. We urge the Government to view the Directive positively, and, rather than doing the bare minimum required at the last possible moment, to implement it in such a way that the benefits are maximised. The Directive could be an opportunity to make real the concept of 'sustainable development': we urge the Government to seize that opportunity (paragraph 92).

Both Defra and the Environment Agency are working with all urgency to progress implementation and involve other departments and stakeholders. In doing so, the Government will want to comply with the requirements set out in the Directive in step with the timetable it establishes. The Government does not agree that this equates to doing the bare minimum at the last possible moment.

The Directive does present challenges – particularly for agriculture which was identified by the Policy Commission on Food and Farming as the number one polluter of water. The strategic review of diffuse water pollution from agriculture was set up to find practical and cost-effective solutions to the problem of agricultural diffuse pollution (see recommendation 10). The Government is committed to tackling this difficult issue effectively. We are however conscious of the need to ensure proportionality, particularly

in an industry which cannot pass costs on to its customers, and to make the best use of environmental regulation without overburdening the industry.

As the Committee rightly notes, the Water Framework Directive also presents opportunities. For the first time a water Directive deals with the whole spectrum of inland and coastal waters, managed on a river basin basis. The "joining up" part of the Directive is not only about the integration of surface/groundwater and quality/quantity, integration of links with EU biodiversity objectives and supporting the water needs of wetlands. It is equally about moving towards joining up the management of water with other policy sectors that have an impact on the water environment such as land use planning. The Directive's emphasis on public participation will mean that there will be proper public involvement in shaping the development of river basin plans.

There is no doubt that in meeting the ambitious environmental objectives set by the Directive, all those involved will help make real the concept of 'sustainable development'.

Department for Environment, Food and Rural Affairs
May 2003