



House of Commons  
Environment, Food and Rural  
Affairs Committee

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**The Environment  
Agency: Government  
and Environment  
Agency Responses to  
the Committee's  
Seventh Report**

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**Sixth Special Report of Session 2005–  
06**

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## Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Environment, Food and Rural Affairs and its associated bodies.

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### Committee staff

The current staff of the Committee are Matthew Hamlyn (Clerk), Jenny McCullough (Second Clerk), Jonathan Little and Dr Antonia James (Committee Specialists), Marek Kubala (Inquiry Manager), Andy Boyd and Alison Mara (Committee Assistants) and Lizzie Broadbent (Secretary).

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# SIXTH SPECIAL REPORT

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The Environment, Food and Rural Affairs Committee reported to the House on *The Environment Agency* in its Seventh Report of Session 2005-2006, published on 11 May 2006 as HC 780-I. The Government's response to the Report was received on 26 June 2006 and the Environment Agency's response was received on 7 July 2006.

## 1 Government response

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### Introduction

This Memorandum is the Government's response to the Environment, Food and Rural Affairs Committee's Report on the Environment Agency (hereafter the 'Agency'). It reflects the views of the sponsor Department (the Department for Environment, Food and Rural Affairs - Defra), and of other Government Departments with an interest in the Agency's work. The Welsh Assembly Government, which sponsors the Agency's activities in Wales, has also been consulted, though the terms of the response reflect the position and views of the UK Government. The Environment Agency is submitting a separate Memorandum.

The Government welcomes the Committee's report. The Committee has identified a number of key areas where the Agency is performing well, including in its partnership work with Government and other stakeholders. Where improvements can be made the Committee has offered helpful recommendations, which will inform Government's thinking as it takes forward its environmental priorities. Some of the recommendations are already being progressed, for example on enforcement, the use of Programme and Project Management (PPM), and the Agency's role in the planning system.

The Government has carefully considered the Committee's report and its response is set out in detail below. This is structured in line with the Committee's 25 recommendations.

### The Agency's role as a regulator and 'Champion of the Environment'

#### Recommendation 1

**The Agency's involvement in environmental protection and conservation has increased considerably over the past ten years. We note the concerns of some stakeholders that the Agency is experiencing difficulties managing its wide range of responsibilities and, in particular, that the Agency is struggling to combine its regulatory role with that of 'Champion of the Environment'. In this context, we were disappointed that Defra, in its written evidence to the Committee, did not include any robust appraisal of whether the Agency had achieved the objectives it was designed to achieve. Neither did the Minister set out the Government's ideas as to whether the role and responsibilities of the Agency should change to take into account the Government's commitment to the sustainability agenda. Given the range of cross-cutting environmental issues faced by Government, we strongly support the Agency's role as a 'Champion of the Environment'. However, it**

**is important that there should be clarity between all the Agency's different functions, particularly between its regulatory and environmental champion roles. (Paragraph 17)**

The role and responsibilities of the Agency regarding the Government's sustainability agenda are clearly set out in Statutory Guidance: 'The Environment Agency's Objectives and Contribution to Sustainable Development'<sup>1</sup>, which followed wide consultation.

The Agency has two roles in contributing to the achievement of sustainable development. These are:

- to protect or enhance the environment in a way which takes account (subject to and in accordance with the 1995 Environment Act and any other enactment) of economic and social considerations; and
- to be an independent advisor on environmental matters affecting policy-making, both within Government and more widely.

These roles are an integral part of the Agency's normal business.

The guidance was updated in December 2002 and was intended to cover at least 5 years. Government will take into account the findings of the EFRA report on the Agency when it next revises the guidance.

The statutory guidance provides a broad framework for the Agency's roles and responsibilities. Within this framework the Government has considered the Agency's objectives for the next 5 years as part of its approval of the Agency's new Strategy, 'Creating a Better Place', and will continue to keep under review year-on-year as part of the approval of the Agency's Corporate Plan.

A performance management system is in place to ensure that there is robust appraisal of the Agency's work. In year, Government monitors Agency performance against Corporate Plan targets, using the Agency's balanced scorecard. This forms the basis for biannual performance reviews between Defra Ministers and the Agency Chairman and Chief Executive. At the end of the year delivery against Corporate Plan targets are recorded in the Agency's Annual Report.<sup>2</sup> Where the Agency's objectives risk not being delivered, Government and the Agency agree to put mechanisms in place to ensure progress.

In relation to 2004/05, Government made clear in its evidence that that the Agency had broadly met its objectives. Government is currently considering the outturn information for 2005/06.

## **Recommendation 2**

**We recommend that Defra examine whether the Agency is adequately equipped for the cross-cutting environmental challenges facing it today, not least its important role as environmental champion and how it balances this with its regulatory role. In particular, the Agency's capability to address the challenges that climate change poses for its areas of responsibility should be fully explored. As part of this examination,**

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<sup>1</sup> See <http://www.defra.gov.uk/environment/ea/sustain/index.htm>

<sup>2</sup> See <http://www.environment-agency.gov.uk/aboutus/275292/234823/>

**Defra should also hold a series of stakeholder workshops with the Agency's main contacts and customers to critically appraise the Agency's ability effectively to deliver its current regulatory functions. (Paragraph 18)**

Government agrees with the Committee's support for the Agency's role as 'champion' of the environment. Government sees no contradiction with the Agency's regulatory role, although it agrees that in terms of resources and prioritisation the two need to be appropriately balanced. As part of the Government-wide Comprehensive Spending Review (CSR07), Government expects the Agency to provide the evidence required to demonstrate that existing resources are effectively used, and to confirm that the ratio of benefit and cost are proportionate and consistent with strategic aims. This will inform any necessary reprioritisation and will help to ensure the Agency is adequately equipped for the challenges it faces.

In line with Cabinet Office guidance, Government is committed to reviews of its delivery bodies at appropriate intervals. The Hampton Review (2004/05) provided Government with an opportunity to hear the views of the regulated community about the functions and structure of Government regulators, including the Agency. The Hampton Review<sup>3</sup> recommended the consolidation of regulators into seven thematic bodies, including an 'expanded Environment Agency'.

The Government is also committed to effective engagement with the regulated community. Defra Ministers have regular contact with major industry trade groups who are regulated by the Agency (e.g. the water industry, the Confederation of British Industry), as do Defra senior officials. In addition the Agency reports the results of its customer satisfaction surveys in its balanced scorecard and in the regular performance reviews (as discussed in the response to recommendation 1). The Agency's record against Customer Charter standards is published in its Annual Report.

In relation to the challenge of climate change, 'Limiting and adapting to climate change' is one of the Agency's nine key themes and is incorporated, along with detailed commitments, into its new Corporate Strategy and Corporate Plan. Government will continue to monitor the Agency's performance against plan regularly.

The Agency has a role in mitigating climate change by regulating the emissions of CO<sub>2</sub> from the sites it is responsible for and for implementing the EU Emissions Trading Scheme (ETS). For 2004/05 the Agency met its objectives for its climate change mitigation work. Government will be considering the lessons learnt from the first year of ETS and will review roles, responsibilities and resources required for implementation of the EU ETS in the longer term.

The Agency also reports to Government on the adaptation of its policies and processes in order to cope with the impacts of climate change. The Agency has a dedicated unit which operates internally to embed adaptation strategies into the work of their teams. Government provides guidance on specific climate change impacts. For example, on flood risk management the Government will further develop its response to the potential impact of climate change through the *Making space for water*<sup>4</sup> programme. In particular, Defra is

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<sup>3</sup> Reducing Administrative Burdens: effective inspections and enforcement', Philip Hampton, March 2005, HM Treasury

<sup>4</sup> <http://www.defra.gov.uk/environ/fcd/policy/strategy.htm>

working on revised policy guidance on appraisal of flood risk problems for those implementing measures to manage flood risk, primarily the Agency. This updated guidance will take account of latest research and developments of good practice to ensure that adaptability to climate change through robust and resilient solutions and full consideration of all economic, environmental and social impacts continues to be an integral part of all flood and coastal erosion risk management decisions. Government is aiming to publish the guidance in 2007.

### Recommendation 3

**We note the views of business witnesses that the Agency should focus more on providing advisory services for companies trying to comply with legislation. Small and medium enterprises (SMEs) in particular often require greater attention, especially in areas where there is new environmental legislation. We were concerned, therefore, to hear that some SMEs are discouraged from approaching the Agency for advice because they fear prosecution. The establishment of the NetRegs web-guidance tool is one effective means by which SMEs can obtain advice, as it can be accessed anonymously and for free. We recommend that the Agency continue to develop its NetRegs web tool and to increase awareness amongst SMEs about its existence. The Agency should also remember that not all small businesses will turn automatically to the internet for information, and therefore consider other forms of dissemination as well. This would also improve its image amongst SMEs. We recommend that Government provide additional ring-fenced funding for the development of NetRegs and other advisory services aimed at SMEs. (Paragraph 24)**

Government is supportive of the Agency's work on NetRegs, and has worked closely with the Agency and stakeholders in establishing it. Ring-fenced funding from the Business Resource Efficiency and Waste (BREW) Programme has been secured for 2006/07. BREW funding for 2007/08 is yet to be determined. Whether NetRegs is funded by BREW for 2007/08 will depend on whether any proposal from the Agency adequately meets the criteria to be set for successful proposals. Government will consider the Committee's recommendation as it determines the criteria and evaluates proposals submitted for BREW funding for 2007/08.

### The Agency's Performance as regulator

#### Recommendation 4

**Proper implementation of environmental legislation is the antidote to prosecution. Therefore, we further recommend that the Agency undertake survey work with a representative range of SMEs to ensure that the right balance is achieved between the Agency's roles as an advisor and as a prosecutor. (Paragraph 25)**

Government welcomes the Committee's recommendation for the Agency to continue its work to engage with the business community, including SME's in particular to seek views as to the right balance between advice and prosecution. This is consistent with the Hampton Review recommendation that all regulators should judge the effectiveness of

their advice by monitoring business awareness and understanding of regulations.<sup>5</sup> The Government has accepted the Hampton Review recommendations in full. The Agency's new Corporate Strategy recognises the need for more partnership working with the business community and Government welcomes this approach.

## Recommendation 5

**We strongly support the Agency's commitment to a risk-based approach to regulation. Not only does such an approach target those operators with the worst environmental records, it also reduces the regulatory burden on compliant operators and, by providing financial incentives to companies to improve their environmental performance, improves standards across the board. However, we recognise the force of the criticisms from some operators that the full benefits of this approach are still yet to be realised. We recommend the Agency continue to hone its risk-based approach to regulation. In particular, it should emphasise the financial benefits businesses can gain by improving their environmental performance. (Paragraph 31)**

Government welcomes the Committee's support of the Agency's risk-based work. This reflects the Government's Better Regulation priorities. Government is keen for the Agency to continue to develop its risk-based approach to regulation to ensure regulatory effort is proportionate to the level of risk. It is important that the Agency strikes the right balance between rewarding good performance, reducing administrative burdens and taking enforcement action for those who fail to meet the standards or act illegally.

## Inconsistencies in approach

### Recommendation 6

**We welcome the measures taken by the Agency over the past six years to improve consistency in its regulatory and enforcement functions. Real progress has been made with initiatives such as the establishment of Strategic Permitting Groups in respect of issuing waste permits. However, we remain concerned that inconsistencies still occur because of poor communication between the policy centre and the inspectors on the ground. Variations in policy and practice between the different regions of the Agency should be limited to those areas where they are a result of a genuine need for local differences in approach, rather than a lack of policy clarity or a failure to communicate national policy and standard working practices to local staff. The Agency must continue to improve its communication processes to ensure a consistent approach across the country to regulation and advice. It should also publish a work plan to indicate what steps it plans to take to further address the problem. (Paragraph 38)**

Government agrees with the conclusions of the Committee with regards to any inconsistencies in the Agency's approach and looks to the Agency to continue to make improvements in this regard, whilst taking into account the need to be sensitive to variations in local conditions.

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<sup>5</sup> Recommendation 4 from 'Reducing Administrative Burdens: effective inspections and enforcement', Philip Hampton, March 2005, HM Treasury

## Specialist staff

### Recommendation 7

We are extremely concerned that the Agency is experiencing difficulties recruiting specialist staff, such as flood risk engineers, hydrologists and geomorphologists. By its nature, much of the Agency's work requires a high level of specialist knowledge. It is therefore essential that the Agency employs staff with the necessary skills to undertake its work. We understand that, to some extent, these difficulties are indicative of a more general industry-wide problem relating to a decline in the number of engineers and opportunities to study specific technical environmental courses. We welcome the Agency's attempt to improve this situation by working with the Institute of Civil Engineers and with universities, and encourage the Agency to continue this collaboration in order to encourage more young people to take engineering and technical environmental courses, and to seek employment in the Agency. As part of this work, the Agency should consider a system of bursary payments to encourage young people to study in the disciplines which it needs but where graduates are in short supply. The Agency should also be discussing with the Department for Education and Skills further measures to increase the number of graduates in these areas. (Paragraph 44)

### Recommendation 8

It is clear from our evidence that the credibility of the Agency depends largely on the performance of its specialist staff in the front-line, such as its inspectors and flood risk engineers. The importance of such specialist positions should therefore be reflected in the pay structure of the Agency. If the Agency is not able to offer more pay, it should ensure its own generalists acquire appropriate technical skills as part of their training. We therefore recommend the Agency expand the opportunities available for Agency trainees to take a foundation degree in the first stage of engineering. (Paragraph 45)

### Recommendation 9

Our evidence showed that witnesses regarded lack of specialist staff as one of the Agency's most significant drawbacks. The Agency should therefore issue a work plan with specific deadlines to set out how it aims to solve its recruitment problems, and publish details about its future graduate requirements. (Paragraph 46)

The Government agrees that the Agency should ensure that it has access to an appropriately skilled workforce now and in the future. Problems recruiting and retaining sufficient numbers of specialist staff potentially affects all the flood and coastal erosion risk management operating authorities - local authorities and internal drainage boards - as well as the Agency. The Institution of Civil Engineers' report<sup>6</sup> in 2004, produced in response to a request from the Government, concluded that there were considerable doubts over public sector capacity, especially in relation to the Agency's ability to perform the role of intelligent client in managing inputs from the private sector. The Government continues

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<sup>6</sup> Engineering Skills for Flood Risk Management, [http://www.environment-agency.gov.uk/commondata/acrobat/action\\_report\\_pdf\\_995192.pdf](http://www.environment-agency.gov.uk/commondata/acrobat/action_report_pdf_995192.pdf)

to view this as a risk to successful delivery which is monitored under the delivery plan for Defra's Spending Review target relating to flood risk.

## The Agency's charges

### Recommendation 10

**The provision of clear and comprehensive information to businesses and companies about their regulatory charges is crucial. In evidence, we heard contradictory opinions about the current degree of transparency provided by the Agency in this area. The Agency believes it provides adequate information about its charges and how they are reached, through its website, leaflets and the establishment of a Charges Review Group including Government, trade associations and partners and representatives of SMEs. We support such initiatives and encourage the Agency to take particular note of the comments made by representatives of charge-payers on the Charges Review Group so that it can truly demonstrate that they are, in the Agency's words, "fully involved in the process". (Paragraph 50)**

Government agrees with the Committee that clear and comprehensive information to business and companies about their regulatory charges is crucial and it encourages the Agency to continue to ensure that charge payers are fully aware of the availability of information regarding charges and that representatives of charge payers are fully involved in the processes of development and review.

### Recommendation 11

**Our evidence showed, however, that a large number of charge-payers are still dissatisfied with the information they receive from the Agency, particularly in relation to where the money received from charges is being spent. The problem here could be a lack of communication with stakeholders about where they can obtain information about charges. We recommend that Defra examine how the Agency calculates its charges to satisfy itself that this process is conducted in the most transparent way possible, so that all stakeholders understand why they are charged as they are. (Paragraph 51)**

Government agrees that charges need to be transparent, and has already asked the Agency to establish a programme of work to ensure that effective communication on charges is developed. The Agency should set out work that needs to be undertaken, the costs, how they are calculated and how performance is measurement.

### Recommendation 12

**Business witnesses are concerned that revenue raised from charges on legitimate operators is being used for the policing of illegal operators. We believe that the risk of this occurring should be minimised. Business charges must reflect the costs of regulatory effort. The Agency should make clear how much of the money derived from charges it is currently using for enforcement and produce a plan to show how it intends to end this practice. Enforcement of illegal and poor-performing operators should be funded by Grant-in-Aid or from environmental fines. If the Agency is struggling to**

**fund its enforcement duties, Government should provide additional resources ring-fenced for this purpose. (Paragraph 54)**

Charges from business only fund enforcement action against charge-paying businesses; for example against licensed businesses, which fail to meet the conditions of their permit. This reflects the key principle of ‘polluter pays’ and the aim of full cost recovery. The Agency calculates these charges on the basis of a risk-scoring methodology, which reflects operator performance, and therefore ensures that the businesses most likely to incur enforcement action (e.g. poor performers) are charged the most (to cover additional services such as inspections).

Any prosecution costs and costs incurred in enforcement of illegal activities e.g. fly-tipping, and activities which should have been permitted but were not, are funded by Grant-in-Aid. The exception to this rule is the enforcement of Producer Responsibility (Packaging Waste) Regulations where an element of the charge was specifically approved by packaging waste businesses for enforcement of ‘free-riders’.<sup>7</sup>

Where prosecution of illegal activity or permitted businesses is successful any costs awarded by the court against the defendant will off-set Grant-in-Aid used in the prosecution process.

Government is currently undertaking a review of environmental enforcement, to develop options for improving its effectiveness. Once the mechanisms for more effective and proportionate environmental enforcement are established Government will be in a better position to address funding requirements, including those of the Agency.

## **Prosecution of environmental offences**

### **Recommendation 13**

**We believe a strong case exists for placing more of the burden of enforcement costs onto fines, rather than charges. Fines for environmental offences are still relatively small and often do not reflect the severity of the offence. We also believe that consistency in sentencing of environmental crimes should be improved, and therefore support the Agency’s proposal that a team of magistrates be trained specifically to deal with environmental cases. Consideration should be also given to the Agency having the ability to propose payment of a fixed penalty by the offender as an alternative to court action. We welcome the fact that discussions are taking place within Government about the prosecution of environmental cases. The Environment Agency and business representatives should be closely involved in such discussions. Defra should, without delay, publish a Green Paper detailing its proposals on the roles to be played by other branches of Government in devising ways to fundamentally improve the system by which courts administer environmental prosecutions. (Paragraph 60)**

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<sup>7</sup> The charges for Packaging Waste are set in the regulations and following consultation with packaging waste businesses allow for the recovery of costs for the enforcement of ‘free-riders’. Bringing ‘free-riders’ into the regime has clear benefits for regulated packaging waste businesses as EU targets are then shared between more businesses which lowers the individual burden.

The Government agrees that environmental enforcement must be effective and proportionate. The enforcement issues raised by the Select Committee are being considered in two reviews currently underway. Defra is leading an interdepartmental review of the effectiveness of environmental enforcement. The Better Regulation Executive is reviewing the use of penalties by a range of bodies including, but not limited to, environmental regulators. The Agency, business and other stakeholders are participating in these separate but complementary initiatives.

The Reviews will conclude by the autumn. The Government will then decide how best to proceed on the basis of the evidence presented about the weaknesses in the present enforcement system and options for improvement. This will include finding ways to ensure criminal sentencing, including fines, adequately supports environmental protection. Government will also be in a position to consider how this might affect Agency funding. However, as stated in response to recommendation 12, charging *within* regulatory regimes reflects the key principle of ‘polluter pays’ and the aim of full cost recovery.

### Recommendation 14

**At present, money received from environmental fines goes directly into the Consolidated Fund, and is recycled to the Agency through Grant-in-Aid. If the amount of fines increases significantly, the Agency should receive the full value of any additional revenue either through retaining fine income or through the present arrangement. Our preference, however, is for the Agency to be able to retain income directly from fines. We recommend that the Treasury examine the case for allowing the Agency to keep the fines which result from successful prosecutions and report to Parliament about its conclusions on this matter. (Paragraph 61)**

The rules governing the proposal that the Agency should be able to keep the fines that result from successful prosecutions are covered under Paragraph 239 of the Consolidated Budgeting Guidance for 2006-07.<sup>8</sup> Paragraph 239 identifies that fines and penalties, in the nature of a punishment, are compulsory unrequited payments to general Government. However in exceptional cases, the Chief Secretary to the Treasury may agree that fines and penalties be netted off budgets. Whether the Agency meets these latest criteria will be reviewed in light of the conclusions of Defra’s interdepartmental review of the effectiveness of enforcement.

## The Agency’s relationship with Government

### Recommendation 15

**Business representatives are concerned that the Agency appears to be increasingly involved in the development of policy. The Agency acknowledges that, due to incoherence and inconsistencies in legislation, it occasionally fills a “policy void” in order to apply regulations at an operational level. This is partly caused by poorly defined and broadly written European Union legislation. We agree with the Agency that a common EU regulatory code for the environment—covering such issues as definitions, permitting, consultation periods, and monitoring arrangements—would**

<sup>8</sup> [http://www.hm-treasury.gov.uk/media/915/8B/consolidated\\_budgeting\\_guidance-dec05-chap2-9.pdf](http://www.hm-treasury.gov.uk/media/915/8B/consolidated_budgeting_guidance-dec05-chap2-9.pdf)

**facilitate the effective implementation and transposition of EU environmental legislation by the Agency, comparative agencies in other Member States and other EU governments. We therefore task the Government with publishing proposals to address these problems and committing itself to raising its conclusions in the Council of Ministers within the next six months. (Paragraph 70)**

Government agrees with the Committee's recommendation 17 that it is essential for the Agency to be involved on a regular basis at every stage of policy development to ensure that policies can be implemented and delivered in the most effective and least burdensome way.

Common approaches to the implementation and transposition of environmental regulation by EU agencies have been tried in specific areas such as environmental inspections.<sup>9</sup> However, common approaches to implementation and transposition must balance the desire for consistency with the principle of subsidiarity. There is no guarantee that the UK's preferences for a code would be those favoured by other Member States or that the benefits of a compromise would outweigh the costs. Currently issues such as consultation and permitting are left to Member States to decide what works best within national systems.

### **Recommendation 16**

**We agree with the Agency that developing legislation at the national level within separate regulatory 'silos' can create problems for the effective interpretation and enforcement of policy. It can also complicate matters for businesses and individuals affected by that legislation. We welcome the moves to develop a common regulatory framework for the Pollution Prevention and Control and waste management licensing regimes. We recommend that Defra and the Agency seek to extend this common framework to other regimes and EU directives, ensuring that business interests are kept fully informed of developments. (Paragraph 72)**

Government agrees with the Committee's recommendation and anticipates that, once successfully implemented, the integrated permitting and compliance system established through the Environmental Permitting Programme will be extended to other permitting regimes in England and Wales.

### **Recommendation 17**

**We strongly believe that it is essential for the Agency to be involved on a regular basis in the early stage of policy discussions with Defra. If it is not, effective assessment of the feasibility and costs of proposed regulations is hindered. We note Defra's reluctance in the past always to involve the Agency in such discussions, and we hope that recent initiatives—such as the programme and project management (PPM) approach and the Concordant on EU and International Relations—are indicative of a more collaborative relationship between Defra and the Agency at the initial stages of policy discussion. In particular, we believe PPM has considerable value in promoting systematic engagement**

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<sup>9</sup> 'Recommendation of the European Parliament and of the Council providing for minimum inspection criteria for environmental inspection in the Member States'

**with the Agency. We recommend Defra expand the use of the PPM approach throughout its work. (Paragraph 77)**

Government agrees that the Agency needs to be involved on a regular basis in policy development discussions. This is reflected in Defra's 5 key Partnership Principles, one of which is 'deliverers inform policy development and decision making'. Defra has worked closely with the Agency in developing policy, for example in the preparation for the start of the EU Emissions Trading Scheme and in development of the Whole Farm Approach.

The Government is pleased by the Committee's endorsement that the PPM approach is working. Defra is seeking to strengthen and formalize partnership working by considering extending the mandatory use of PPM (including engagement of delivery bodies and other stakeholders) from transposition of EU Directives (for which use of PPM is established) to negotiations (for which a pilot for PPM use is currently underway).

## The Agency's role in the planning system

### Recommendation 18

**We are concerned that the Agency's advice on development in areas of flood risk has sometimes been ignored. In some instances, the Agency has not even been consulted. Along with the majority of our witnesses, we strongly support the proposal in the current consultation on the revision of PPG25 to grant the Agency statutory consultee status for planning applications involving development in flood risk areas. We are aware, however, that this new status will not necessarily ensure the Agency's advice will be accepted: only that its advice is considered. We recommend that, where the Government allows development to go ahead against Agency advice, the Government should publicly explain the reasons for not accepting the Agency's advice. We believe this would significantly improve transparency in this area. (Paragraph 82)**

The Government aims to prevent inappropriate development in areas at risk of flooding, but recognises that it is not realistic, or indeed desirable, to prevent all development in such areas.

Planning applications are determined by local planning authorities taking a balanced view based on all relevant material considerations. The Committee is correct that the Agency is not always consulted on planning applications within flood risk areas and that a small percentage of planning applications are approved against advice from the Agency on flood risk grounds.

As the Committee notes, as one of the projects under *Making space for water*, the Department for Communities and Local Government (DCLG) is currently considering responses to its recent consultation<sup>10</sup> on revised planning policy guidance, that is on a draft Planning Policy Statement (PPS) 25 to replace Planning Policy Guidance Note (PPG) 25, *Development and Flood Risk*, which was published in 2001. Among other things, the consultation proposed:

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<sup>10</sup> <http://www.odpm.gov.uk/index.asp?id=1162059>

- making the Agency a statutory consultee for all planning applications for non-householder developments<sup>11</sup> in flood risk areas and for major developments in other areas (in recognition of such effects as the impact of increased run off on surface water levels), and
- introduction of a standing planning Direction on flooding to require planning authorities to refer applications for major development that they are minded to approve against sustained objections from the Agency to the Government Office to decide whether to call-in the application for decision by the Secretary of State; such decision would be made public through a decision letter, which would include reasons for the decision.

The DCLG are considering the responses to public consultation with a view to publishing revised guidance, and related changes to the planning system, in Autumn 2006.

### Recommendation 19

**We are concerned that the Agency lacks adequate resources to respond appropriately to many planning applications. This situation will only worsen if the demands on the Agency increase considerably, as a result of it being granted statutory consultee status in the revised PPG25. At present, the Agency receives no income for the provision of its advice in relation to planning, despite estimated costs of £8 million per year in this area. We recommend that the Government re-examine the way the Agency is funded for its work in providing information for development and planning applications, and assess whether some of its work in this area should be funded by the developer concerned. (Paragraph 85)**

The Agency's performance in responding to requests for guidance on development proposals is monitored as part of Defra's flood and coastal erosion risk management High Level Target 5.<sup>12</sup> The Agency has reported occasions when it did not provide timely advice. The introduction of clearer planning guidance in the DCLG's new policy guidance to planning authorities, along with the issue by the Agency of standing guidance to assist planning authorities with smaller planning applications, as part of its more strategic risk-based approach to regulation, should help to reduce these delays.

Funding of the Agency for this activity will be considered further in the 2007 Comprehensive Spending Review (CSR07). Developers do bear the costs of carrying out flood risk assessments in support of planning applications.

### Recommendation 20

**Even if, as expected, the Agency is granted statutory consultee status for planning applications involving development in flood risk areas, we believe action will still be necessary to reduce the number of planning applications made in such areas in the first**

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<sup>11</sup> 'Householder' development comprises for example sheds, garages, games rooms etc. within the curtilage of the existing dwelling in addition to physical extensions to the existing dwelling itself. This definition excludes any proposed development that would create a separate dwelling within the curtilage of the existing dwelling e.g. subdivision of houses into flats.

<sup>12</sup> The Agency report to Defra and DCLG on High Level Target 5

place. To help achieve this, the Agency should further improve its provision of information to developers regarding the environmental and financial consequences of development in flood risk areas. In doing so, the Agency should spell out to developers and other stakeholders the extent to which flood risk is likely to increase in the longer term. (Paragraph 87)

Government agrees with the Committee's recommendation that the Agency should improve information provision and spell out likely increases in flood risk. Government supports the Agency's increasingly risk-based approach to planning, directing its efforts towards strategic planning documents and concentrating its advice on those developments most likely to pose environmental risks or to provide significant environmental benefits.

## Flood defence and management

### Recommendation 21

We welcome the Government's recent funding increases for the Agency in relation to its flood defence work. However, flooding risks can only increase in the future, due to the effects of climate change. The Minister has acknowledged that spending in this area will consequently also have to increase. We expect him to listen closely to the Agency's advice in this area before decisions are made in advance of the next Spending Review. We agree with the Agency that Government should aim to increase the Agency's funding in this area to £1 billion per year in the long term. (Paragraph 93)

### Recommendation 22

With such a large budget comes increased responsibility to ensure the money is wisely spent. As part of its zero based review of flood risk management in the next Spending Review, Defra should examine how effectively the Agency is spending its flood management funding. (Paragraph 94)

The Government's Foresight Future Flooding report<sup>13</sup> in 2004 recognised the potential for flood risk to increase as a result of climate change and sea level rise and also the increased value of assets at risk. However, this forecast covered a long time period. There remains a great deal of uncertainty about the impact of climate change and the resources which will be needed to manage this and over what time period.

The Committee has noted the marked increase in Government funding for flood risk management in recent years. Government is working with the Agency to better define the investment that will be needed in future years to manage flood risk effectively as part of *Making space for water* and preparatory work for the Government's Comprehensive Spending Review in 2007 which will set Departmental spending limits for 2008-09 to 2010-11. This will take account of work being done to ensure Government gets best value from its investment. The Zero Based Review is currently being discussed and will identify ways in which the pressures on the flood risk management budget might be managed.

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<sup>13</sup> [http://www.foresight.gov.uk/previous\\_projects/flood\\_and\\_coastal\\_defence/index.html](http://www.foresight.gov.uk/previous_projects/flood_and_coastal_defence/index.html)

It is important to note that effective flood risk management will be achieved through a portfolio of measures not all of which require significant public funding.

### Recommendation 23

**The provision of information and advice to households in areas of flood risk is a crucial element of the Agency's work. The Agency has achieved much in this area with relatively limited resources, through initiatives such as the flood map available on its website and its 24-hour telephone helpline. If the Agency is to maintain and improve its work in raising awareness about flood risk amongst the general public, Government should review with the Agency the funding available for this work and jointly publish proposals showing how this part of the Agency's work will be further developed. The Agency should also consider other innovative ways to reach out to the general public in these areas of work, bearing in mind that not everybody uses the internet as their main source of information. (Paragraph 99)**

The Agency is leading a project to develop stakeholder and community engagement as part of *Making space for water*. This will look at ways of increasing participation by the public in the overall decision making process and developing a better understanding of how people perceive and understand risk. The findings will be published in a report in 2007 that will be publicly available.

Allied to this, another *Making space for water* project, also being led by the Agency, is looking at continuing development of the flood warning service which currently focuses on flooding from rivers and the coast. The Agency will continue to develop the most effective mechanisms for delivery and ways to increase coverage, reliability and accuracy. Defra will work with the Agency and other relevant bodies to explore the feasibility of developing a warning service for urban drainage, sewers and groundwater flooding.

## The Government's agri-environmental budget

### Recommendation 24

**We welcome the progress made by officials in the Agency and the Natural England Partnership in establishing a close and constructive working relationship. Due to the overlapping nature of some of the Agency and Natural England's responsibilities, it is essential that these good relations continue once Natural England is established. We are concerned, however, that—even before the new body has been created—tensions already exist relating to the potential use of the agri-environment budget. This budget will be controlled by Natural England but, in effect, used to deliver both organisation's objectives. We therefore agree with the Agency that, in order to avoid potential disputes, Defra should provide Natural England with clear guidance on using the agri-environmental funding to achieve both organisations' objectives. It is also essential that any budget constraints that arise do not hinder the Agency's performance in relation to its core shared outcomes, such as the Water Framework Directive and SSSI responsibilities. (Paragraph 105)**

Agri-environment schemes are critical levers to help secure the protection of England's natural resources. However incentives are only one of the levers available. Regulation is

needed to eliminate worst practice, whilst incentives encourage action to conserve and enhance the natural environment. Natural England and the Agency must work together to combine these levers to achieve the best outcomes for the environment.

Government has decided that, as announced in the Rural Strategy 2004, Natural England will administer the agri-environment schemes, working with the Forestry Commission to deliver woodland schemes. These schemes are designed to cover a range of environmental outcomes. The Agency therefore has an important role to play in advising Defra on national priorities and working with Natural England to achieve flood risk and water quality benefits.

Agri-environment schemes form part of the Rural Development Programme for England. Consultation on the priorities for the next programming period (2007-13) has just concluded and Government is reviewing the responses before finalising the National Strategy Plan and Programme. In its consultation, Government made clear that national policy must have the flexibility to respond to regional and local priorities. However, the National Strategy Plan will require this regional approach to respond to major national challenges such as implementing the Water Framework Directive and improving SSSIs. Defra will work closely with all its delivery bodies to ensure that the programme is developed in a way which will ensure the desired outcomes are achieved.

## Biodiversity

### Recommendation 25

**The current arrangement between the Agency and English Nature—soon to be Natural England—in relation to the UK Biodiversity Action Plan is complicated. Each organisation has lead responsibility for certain Habitat Action Plans, depending on its type. However, the two organisations are often required to work together on specific Habitat Action Plans, as can occur with the restoration of SSSIs. Evidence suggests that all the parties involved believe that the current arrangement is the most logical one and, more importantly, that it is delivering results. We believe that rules and regulations defining responsibilities and boundaries are important, but ultimately it is the people involved in these collaborations that are vital. Provided the Agency and Natural England continue to work closely—with the lead organisation for each Biodiversity Action Plan Group providing the necessary lead and vision—and deliver results in this area, we are satisfied that the present arrangements should continue. (Paragraph 110)**

Government welcomes the Committee's recognition of the current close and effective working relationship between the Agency and English Nature with regard to the UK Biodiversity Action Plan process and considers there to be an effective working relationship between the Agency and English Nature on all biodiversity issues. Government supports the committee's recommendation that current arrangements in relation to the UK Biodiversity Action Plan should continue and agrees it is vital that the Agency and English Nature, and in future Natural England, work closely together to ensure results continue to be delivered. Results indicate that stakeholders recognise the value of their participation in the delivery of UK Biodiversity Action Plans co-ordinated by various leads.

*Department for Environment, Food and Rural Affairs*  
*June 2006*

## 2 Environment Agency response

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### Introduction

We welcome the Committee's report and in particular the strong endorsement for our role as 'Champion of the Environment'.

We consider that we have made a real difference to the environment and peoples' lives over the last 10 years, and agree with the Committee that we will need to respond to the increasing challenges of climate change and flood risk management.

We thank the Committee for their acknowledgement of the improvements we have made since the 2000 inquiry, particularly our approach to modern, risk-based regulation, improvements to our consistency, transparency and steps taken to enhance our skills base. However, we agree we have more to do.

The changes we have initiated as part of our new corporate strategy *Creating a Better Place* will continue to develop our approach to achieving environmental improvements and making the Environment Agency more effective.

The Committee's report will be invaluable as we go forward to meet the demands of the next five years and beyond. We value the constructive working relationship we have with our sponsors in Defra and the Welsh Assembly Government as well as the advice we receive from our statutory committees. We will need the further support of these partners in driving forward our action plan to address the Committee's recommendations.

We have addressed the Committee's conclusions and recommendations in the order in which they appear in the report.

### The Agency's roles as a regulator and 'Champion of the Environment'

#### Recommendation 1

**The Agency's involvement in environmental protection and conservation has increased considerably over the past ten years. We note the concerns of some stakeholders that the Agency is experiencing difficulties managing its wide range of responsibilities and, in particular, that the Agency is struggling to combine its regulatory role with that of 'Champion of the Environment'. In this context, we were disappointed that Defra, in its written evidence to the Committee, did not include any robust appraisal of whether the Agency had achieved the objectives it was designed to achieve. Neither did the Minister set out the Government's ideas as to whether the role and responsibilities of the Agency should change to take into account the Government's commitment to the sustainability agenda. Given the range of cross-cutting environmental issues faced by Government, we strongly support the Agency's role as a 'Champion of the Environment'. However, it is important that there should be clarity between all the Agency's different functions, particularly between its regulatory and environmental champion roles. (Paragraph 17)**

We are pleased the Committee recognises our increased involvement in environmental protection and we value their strong support for us as ‘Champion of the Environment’. In the last 10 years, we have continued to develop an integrated approach across air, land and water and have achieved real results for people and the environment as both a ‘champion’ and a regulator. We consider being an environmental champion, regulator and adviser to be facets of the same integrated role.

We note the Committee’s comments concerning an appraisal of whether we have achieved our objectives and the possible need for changes to our role and responsibilities to take account of the Government’s commitment to the sustainability agenda.

We do however work within a clear framework of governance, including periodically reviewed statutory guidance, that demonstrates we have achieved the objectives set for us by Government. This information is available to the public in our published Corporate Strategy, Corporate Plans and Annual Reports.

Looking ahead, our new corporate strategy, recently agreed with Government, sets out how we should take account of future needs.

We recognise the need for others to be clear about our different functions and consider that our new corporate strategy will help develop a better understanding. In the light of the Committee’s comments we will see how we might go further.

## Recommendation 2

**We recommend that Defra examine whether the Agency is adequately equipped for the cross-cutting environmental challenges facing it today, not least its important role as environmental champion and how it balances this with its regulatory role. In particular, the Agency’s capability to address the challenges that climate change poses for its areas of responsibility should be fully explored. As part of this examination, Defra should also hold a series of stakeholder workshops with the Agency’s main contacts and customers to critically appraise the Agency’s ability effectively to deliver its current regulatory functions. (Paragraph 18)**

We agree with the Committee’s view that we should be properly equipped for the cross-cutting environmental challenges we face today and in the future.

These challenges, including that of climate change, are set out in our new corporate strategy which shows how we will use all our roles to achieve our goals. We have reviewed the impacts of climate change on all our functions in order to help focus our future work.

In preparing our strategy we have had extensive dialogue with all our stakeholders to ensure we are taking the right approach across all our functions and are agreeing plans with a number of regulated sectors which specifically set out how we should carry out our regulatory functions.

We will however continue to listen carefully to those with an interest in our work to ensure we are able to respond to their concerns. The evidence submitted to the Committee as part of this inquiry will be an important part of our customer feedback, and is being used in a programme to increase our levels of responsiveness and service to our regulated customers.

### Recommendation 3

**We note the views of business witnesses that the Agency should focus more on providing advisory services for companies trying to comply with legislation. Small and medium enterprises (SMEs) in particular often require greater attention, especially in areas where there is new environmental legislation. We were concerned, therefore, to hear that some SMEs are discouraged from approaching the Agency for advice because they fear prosecution. The establishment of the NetRegs web guidance tool is one effective means by which SMEs can obtain advice, as it can be accessed anonymously and for free. We recommend that the Agency continue to develop its NetRegs web tool and to increase awareness amongst SMEs about its existence. The Agency should also remember that not all small businesses will turn automatically to the internet for information, and therefore consider other forms of dissemination as well. This would also improve its image amongst SMEs. We recommend that Government provide additional ring-fenced funding for the development of NetRegs and other advisory services aimed at SMEs. (Paragraph 24)**

We aim to protect the environment in partnership with SMEs and have produced a strategy specifically for this sector that includes an objective to provide clear, readily understandable environmental information and support, within the resources available to us.

We are pleased the Committee has joined others in recognising the great value of NetRegs. We are improving the service further in 2006-7 with funding from Defra through the Business Resource Efficiency and Waste (BREW) programme. Whilst the number of NetRegs users has doubled to 240,000 in the last two years, we want to increase this still further.

Future development of NetRegs and other SME advisory services will need further, secure financial support and we therefore welcome the Committee's recommendation for additional funding to enable us to make further progress.

We also accept the Committee's recommendation that we should consider other ways of reaching SMEs and will look for new methods of providing advice and sign-posting our website, working with the appropriate trade associations and the Small Business Council.

In addition we will explore the extent to which the Government's proposed new Environment Direct service for the wider public could enhance our own advisory capacity.

We note the Committee's comments about the fear of prosecution. Whilst we accept the point in principle, we remain to be convinced of the extent of the supporting evidence, particularly as SMEs are generally unaware of their environmental responsibilities. Indeed our recent survey of this sector showed that only seven per cent of businesses were aware that their activities could be potentially harmful to the environment. We will however review our inspection and enforcement policies and practice to minimise the risk of inappropriate fear of prosecution when advice is being sought.

## The Agency's performance as a regulator

### Recommendation 4

**Proper implementation of environmental legislation is the antidote to prosecution. Therefore, we further recommend that the Agency undertake survey work with a representative range of SMEs to ensure that the right balance is achieved between the Agency's roles as an advisor and as a prosecutor. (Paragraph 25)**

We agree with the Committee's views about the importance of proper implementation of legislation and in our drive towards modernising regulation we give advice to business on compliance with the law.

Without specific Government funding, our general approach is to use our limited resources by providing advice through our front-line staff who give practical advice based on their technical knowledge, understanding of regulations and experience.

An exception to this approach, stemming from the particular needs of the farming community, is our Defra-funded Catchment Sensitive Farming pilot initiative, through which we provide officers whose principal purpose is to give advice on pollution prevention, including good practice, the availability of financial incentives and the requirements of regulation.

As the Committee recommends, we will continue to engage ever more closely with SMEs and are putting a much greater emphasis on customers' needs in our new corporate strategy. This work has already begun through our SME strategy (see above) and is being expanded further as part of the work we are doing on NetRegs with BREW funding.

We already undertake much customer and stakeholder research to gauge how effectively we are working and communicating with others. We will continue to listen carefully to stakeholders' concerns and will take action wherever possible, within available funding, to achieve the right balance between our roles as an advisor and as a prosecutor.

### Recommendation 5

**We strongly support the Agency's commitment to a risk-based approach to regulation. Not only does such an approach target those operators with the worst environmental records, it also reduces the regulatory burden on compliant operators and, by providing financial incentives to companies to improve their environmental performance, improves standards across the board. However, we recognise the force of the criticisms from some operators that the full benefits of this approach are still yet to be realised. We recommend the Agency continue to hone its risk-based approach to regulation. In particular, it should emphasise the financial benefits businesses can gain by improving their environmental performance. (Paragraph 31)**

We value the Committee's support for our modern, risk-based approach to regulation which is central to the way we now work and will be carried forward in our new corporate strategy.

We acknowledge that this approach is still evolving and with regard to charges we need to progressively widen the gap between those for the highest and lowest performing operators in line with our regulatory effort. With this intention, for the first time this year we have used operators' compliance ratings to determine fees.

We are working with Government on the 'better regulation agenda' to reduce the complexity of regulation and allow us to further target our resources where they are most effective. Reductions in our routine inspections are therefore set to continue with a corresponding increase in less frequent, but more comprehensive audits. We are also engaged in a programme to ensure that the modern regulation approach is embraced by staff at all levels in the organisation.

We strongly agree that the financial benefits of better performance need to be emphasised in an increasingly competitive global economy. A greater number of companies are already finding it pays to improve environmental performance, not only through reduced charges, but also through more efficient use of resources, avoiding penalties and tapping into consumer demand. We will continue to emphasise these benefits and along with other EU environmental protection agencies we have published a report showing how environmental regulation can improve competitiveness.

## Recommendation 6

**We welcome the measures taken by the Agency over the past six years to improve consistency in its regulatory and enforcement functions. Real progress has been made with initiatives such as the establishment of Strategic Permitting Groups in respect of issuing waste permits. However, we remain concerned that inconsistencies still occur because of poor communication between the policy centre and the inspectors on the ground. Variations in policy and practice between the different regions of the Agency should be limited to those areas where they are a result of a genuine need for local differences in approach, rather than a lack of policy clarity or a failure to communicate national policy and standard working practices to local staff. The Agency must continue to improve its communication processes to ensure a consistent approach across the country to regulation and advice. It should also publish a work plan to indicate what steps it plans to take to further address the problem. (Paragraph 38)**

We are pleased that the Committee recognises the progress we have made and we are determined to build on this to further increase consistency and speed of delivery.

We must however also seek to balance demands from industry for consistency with calls for flexibility within a regulatory framework.

We are confident that we have now got the structures in place to drive a more consistent approach and wherever practical will extend the successful use of our Strategic Permitting Groups to other types of permit.

We agree internal communications will have a large role to play in improving the consistency of interpretation and approach between our policy centre and operational staff. We are therefore implementing a training programme for our front-line staff with an immediate focus on waste, water quality and agriculture.

We welcome examples of situations where stakeholders feel we are inconsistent so that we can investigate and take appropriate action. This approach to driving consistency has worked well in the past, for example during the implementation of the Hazardous Waste Regulations.

## Specialist staff

### Recommendation 7

**We are extremely concerned that the Agency is experiencing difficulties recruiting specialist staff, such as flood risk engineers, hydrologists and geomorphologists. By its nature, much of the Agency's work requires a high level of specialist knowledge. It is therefore essential that the Agency employs staff with the necessary skills to undertake its work. We understand that, to some extent, these difficulties are indicative of a more general industry-wide problem relating to a decline in the number of engineers and opportunities to study specific technical environmental courses. We welcome the Agency's attempt to improve this situation by working with the Institute of Civil Engineers and with universities, and encourage the Agency to continue this collaboration in order to encourage more young people to take engineering and technical environmental courses, and to seek employment in the Agency. As part of this work, the Agency should consider a system of bursary payments to encourage young people to study in the disciplines which it needs but where graduates are in short supply. The Agency should also be discussing with the Department for Education and Skills further measures to increase the number of graduates in these areas. (Paragraph 44)**

We agree that our difficulties in recruiting specialist staff are a matter of concern and that this is an industry-wide problem.

One key area for us is flood risk management where we have already implemented a range of actions to begin to meet our needs.

These actions include: appointing a senior manager to give focus and direction to this area of work; creating bespoke advertising for flood risk management, which is already generating significant interest; working with specialist engineering agencies to spot talent; recruiting engineers from overseas; introducing an improved employee referral scheme where staff members can recommend their professional contacts for employment; increasing salary levels to keep pace with the market; planning a graduate development scheme for 2007 and offering sponsorship for final year students.

In addition to these initiatives: we will extend our succession planning; promote a programme of continuing professional development to refresh and expand capabilities; we will offer opportunities for individuals to achieve professional accreditation; we are keen to continue our work with the Institution of Civil Engineers and with universities in order to encourage more young people to take engineering and technical environmental courses and to seek employment in the Agency; we sponsor a number of graduates and have outline plans to extend this further to mechanical engineering undergraduates.

We will consider how a system of bursary payments could support these initiatives and we will open a dialogue with the Department for Education and Skills regarding further measures to increase the number of graduates in these areas.

## Recommendation 8

**It is clear from our evidence that the credibility of the Agency depends largely on the performance of its specialist staff in the front-line, such as its inspectors and flood risk engineers. The importance of such specialist positions should therefore be reflected in the pay structure of the Agency. If the Agency is not able to offer more pay, it should ensure its own generalists acquire appropriate technical skills as part of their training. We therefore recommend the Agency expand the opportunities available for Agency trainees to take a foundation degree in the first stage of engineering. (Paragraph 45)**

We agree that our credibility depends largely on the performance of our front-line staff. These staff rely on smaller, dedicated teams of specialists to support them in order to carry out their duties on the ground.

We are already doing much to enhance the technical skills of front-line officers for existing and new duties. We seek accreditation and advice from Professional Institutes for our training programmes and have secured CIWEM and CIWM validation of our Environment Officer Skills Development Scheme. Our industry secondment scheme for Environment Officers in partnership with the Environmental Services Association (ESA) gives our staff direct experience of the waste industry, and is in its fourth successful year.

We have increased the salaries for our specialists as appropriate; including raising salaries at local discretion for externally recruited chartered engineers. Our pay system can also be used flexibly to respond to market needs.

In spite of this, we recognise that we have lost the competitive edge on pay in some areas and are looking at how we can improve this situation.

We are also developing mechanisms to formally manage and reward the development and application of technical skills and experience to ensure that we develop technical resilience and provide attractive career structures. The retention of front-line staff is also being addressed through restructuring proposals that will support better internal progression.

Our Foundation Degree in River and Coastal Engineering (led by the University of West England) is a two-year course combining academic study and learning on the job here at the Environment Agency. We created the course in partnership with universities to respond to our growing need for flood management engineers and to the widespread shortage of people with the right skills. Details are available on our website.

In addition, we are fast tracking new graduates and existing staff to achieve chartered status.

## Recommendation 9

**Our evidence showed that witnesses regarded lack of specialist staff as one of the Agency's most significant drawbacks. The Agency should therefore issue a work plan**

**with specific deadlines to set out how it aims to solve its recruitment problems, and publish details about its future graduate requirements. (Paragraph 46)**

We are developing workforce action plans to address the resourcing requirements of the organisation. In particular, we will focus on building and retaining the level of expertise of our specialist staff. These plans have already been developed for flood risk management and will be extended across other critical skill areas such as planning liaison and geoscience.

In our approach to developing resourcing plans, we are developing national graduate schemes to meet our future needs. Work is underway to market a national scheme in flood risk management from September 2006; this will be extended to other skill areas within the organisation.

## The Agency's charges

### Recommendation 10

**The provision of clear and comprehensive information to businesses and companies about their regulatory charges is crucial. In evidence, we heard contradictory opinions about the current degree of transparency provided by the Agency in this area. The Agency believes it provides adequate information about its charges and how they are reached, through its website, leaflets and the establishment of a Charges Review Group including Government, trade associations and partners and representatives of SMEs. We support such initiatives and encourage the Agency to take particular note of the comments made by representatives of charge-payers on the Charges Review Group so that it can truly demonstrate that they are, in the Agency's words, "fully involved in the process". (Paragraph 50)**

We appreciate the Committee's support for initiatives aimed at increasing transparency. Although we believe that we have already made significant progress, we have put in train a series of actions to further improve the transparency of our charging schemes and level of charges. For example we are developing a 'transparency framework' agreed through the Charges Review Group to be applied progressively to each of our charging schemes during 2006-07.

We will continue to listen carefully to comments from representatives of charge-payers on the Charges Review Group and to consult with them in taking forward further actions to improve transparency.

### Recommendation 11

**Our evidence showed, however, that a large number of charge-payers are still dissatisfied with the information they receive from the Agency, particularly in relation to where the money received from charges is being spent. The problem here could be a lack of communication with stakeholders about where they can obtain information about charges. We recommend that Defra examine how the Agency calculates its charges to satisfy itself that this process is conducted in the most transparent way**

**possible, so that all stakeholders understand why they are charged as they are. (Paragraph 51)**

We understand the importance of being as transparent as possible and therefore ensure that we provide information explaining the reasons for changes to charges and how charges are calculated.

In consultation with Defra and the Charges Review Group, we have agreed a programme of further actions designed to further improve the transparency of where the money from charges is spent.

We will continue to work with Defra as we take forward these further actions, as well as to seek feedback from the Charges Review Group to ensure the improvements address the requirements of our charge-payers.

## **Recommendation 12**

**Business witnesses are concerned that revenue raised from charges on legitimate operators is being used for the policing of illegal operators. We believe that the risk of this occurring should be minimised. Business charges must reflect the costs of regulatory effort. The Agency should make clear how much of the money derived from charges it is currently using for enforcement and produce a plan to show how it intends to end this practice. Enforcement of illegal and poor-performing operators should be funded by Grant-in-Aid or from environmental fines. If the Agency is struggling to fund its enforcement duties, Government should provide additional resources ring-fenced for this purpose. (Paragraph 54)**

We agree that our charges should reflect the cost of regulatory effort. Charges from business are only used to enforce compliance with their permits.

Our enforcement work on illegal operators i.e. those working without permits, is funded by grant-in-aid. There is one exception to this general rule, for the enforcement of the Producer Responsibility (Packaging Waste) regulations. These charges are set in the regulations and after consultation with packaging waste businesses, provide for the recovery of costs for the enforcement of 'free-riders'.

We would welcome the provision of additional resources to fund more risk-based enforcement to stop those operating outside the law. Action against illegal operators is, necessarily, increasing and Grant-in-Aid is likely to continue to be under pressure.

The possibility of recovering through charges the cost of enforcement against illegal operators was an option for further consideration identified by the Defra/Environment Agency charging review. Current Government enforcement reviews are looking at the best way of tackling enforcement and we will work with Government to consider any impact this may have on funding for enforcement activity and in exploring possible funding options. Of course any new initiatives would involve full consultation with Defra, the Treasury and the affected industries.

## Prosecution of environmental offences

### Recommendation 13

**We believe a strong case exists for placing more of the burden of enforcement costs onto fines, rather than charges. Fines for environmental offences are still relatively small and often do not reflect the severity of the offence. We also believe that consistency in sentencing of environmental crimes should be improved, and therefore support the Agency's proposal that a team of magistrates be trained specifically to deal with environmental cases. Consideration should be also given to the Agency having the ability to propose payment of a fixed penalty by the offender as an alternative to court action. We welcome the fact that discussions are taking place within Government about the prosecution of environmental cases. The Environment Agency and business representatives should be closely involved in such discussions. Defra should, without delay, publish a Green Paper detailing its proposals on the roles to be played by other branches of Government in devising ways to fundamentally improve the system by which courts administer environmental prosecutions. (Paragraph 60)**

We have explained that enforcement costs, with one exception, are not borne by charges and support the Committee's view that there is a strong case for using the income from fines for enforcement in relation to illegal operators. We also agree the Committee's views on penalties for environmental offences, which are currently a weak deterrent for both criminals and the anti-social.

Both Defra and the Better Regulation Executive are currently reviewing penalties and enforcement. We are making a significant contribution to this work. We will continue our input as the current reviews progress and are grateful that the committee support our involvement.

We hope the Committee's recommendations on specialist magistrates and fixed penalties will receive full consideration, both as part of these reviews and across Government. These, along with more flexible penalties would have a major impact on the effectiveness of our enforcement.

We note the Committee's recommendation to Government to publish a Green Paper to improve these processes and look forward to the practical implementation by whatever route of the outcomes of current and future reviews.

### Recommendation 14

**At present, money received from environmental fines goes directly into the Consolidated Fund, and is recycled to the Agency through Grant-in-Aid. If the amount of fines increases significantly, the Agency should receive the full value of any additional revenue either through retaining fine income or through the present arrangement. Our preference, however, is for the Agency to be able to retain income directly from fines. We recommend that the Treasury examine the case for allowing the Agency to keep the fines which result from successful prosecutions and report to Parliament about its conclusions on this matter. (Paragraph 61)**

We have previously made the case to the Treasury for the Environment Agency to retain the income from fines. Defra has supported our view, however the Treasury has not seen the merit of our case.

We recognise that this would not provide significant income while fines remain low, but combined with increased fines awarded by the courts could provide welcome funding for more, targeted, enforcement work.

However, in view of the Treasury's previous position on the matter, we would need confirmation from them that they would be prepared to reconsider the proposal in the light of the Committee's recommendation before investing significant further effort in this cause.

We are of course mindful of the need to ensure transparent use of income and the ring fencing of the prosecution decision to avoid accusations of using fines as a revenue-raising exercise.

## The Agency's relationship with Government

### Recommendation 15

**Business representatives are concerned that the Agency appears to be increasingly involved in the development of policy. The Agency acknowledges that, due to incoherence and inconsistencies in legislation, it occasionally fills a "policy void" in order to apply regulations at an operational level. This is partly caused by poorly defined and broadly written European Union legislation. We agree with the Agency that a common EU regulatory code for the environment—covering such issues as definitions, permitting, consultation periods, and monitoring arrangements—would facilitate the effective implementation and transposition of EU environmental legislation by the Agency, comparative agencies in other Member States and other EU governments. We therefore task the Government with publishing proposals to address these problems and committing itself to raising its conclusions in the Council of Ministers within the next six months. (Paragraph 70)**

We welcome this recommendation and will be pleased to assist Government in assessing the feasibility of such a code which if adopted by Government, could potentially reduce red-tape and the overall cost of compliance for regulated industry.

We are always interested in looking at ways to improve consistency across the EU. For example, the European Commission's Environment Directorate-General has expressed interest in using NetRegs to provide guidance to EU member states and we will work with them to explore this possibility.

### Recommendation 16

**We agree with the Agency that developing legislation at the national level within separate regulatory 'silos' can create problems for the effective interpretation and enforcement of policy. It can also complicate matters for businesses and individuals affected by that legislation. We welcome the moves to develop a common regulatory**

**framework for the Pollution Prevention and Control and waste management licensing regimes. We recommend that Defra and the Agency seek to extend this common framework to other regimes and EU directives, ensuring that business interests are kept fully informed of developments. (Paragraph 72)**

We fully support this recommendation. We are working with Government to create a common platform for the waste licensing and pollution prevention and control regimes and to demonstrate that it can deliver real benefits to business. We will then be seeking to extend it to other regimes in consultation with industry.

This common framework should result in £8 million savings a year to industry and lead to a 17 per cent saving in administration costs to the waste management industry. It will also result in faster permit determinations, an increase in applications for waste recovery activities and greater certainty for business.

### **Recommendation 17**

**We strongly believe that it is essential for the Agency to be involved on a regular basis in the early stage of policy discussions with Defra. If it is not, effective assessment of the feasibility and costs of proposed regulations is hindered. We note Defra’s reluctance in the past always to involve the Agency in such discussions, and we hope that recent initiatives—such as the programme and project management (PPM) approach and the Concordant on EU and International Relations—are indicative of a more collaborative relationship between Defra and the Agency at the initial stages of policy discussion. In particular, we believe PPM has considerable value in promoting systematic engagement with the Agency. We recommend Defra expand the use of the PPM approach throughout its work. (Paragraph 77)**

We fully support this recommendation and are keen to continue our work with Defra to ensure that implementation issues are considered from the very outset of discussions on draft policies and legislation.

In our experience, PPM has been successful because of earlier and better planning of new duties and more effective engagement between Defra and ourselves. This has helped with the timely delivery of policy and legislation.

## **The Agency’s role in the planning system**

### **Recommendation 18**

**We are concerned that the Agency’s advice on development in areas of flood risk has sometimes been ignored. In some instances, the Agency has not even been consulted. Along with the majority of our witnesses, we strongly support the proposal in the current consultation on the revision of PPG25 to grant the Agency statutory consultee status for planning applications involving development in flood risk areas. We are aware, however, that this new status will not necessarily ensure the Agency’s advice will be accepted: only that its advice is considered. We recommend that, where the Government allows development to go ahead against Agency advice, the Government**

**should publicly explain the reasons for not accepting the Agency’s advice. We believe this would significantly improve transparency in this area. (Paragraph 82)**

We welcome the Committee’s support for a stronger role for us in the planning process. It is essential that our advice on development in the flood plain is listened to and acted on in order to protect people, property and the environment.

We also strongly support the proposal in the PPG25 consultation to give us statutory consultee status for development applications in flood risk areas.

We agree the Committee’s recommendation that the Government should make public its reasons for allowing development against our advice.

### **Recommendation 19**

**We are concerned that the Agency lacks adequate resources to respond appropriately to many planning applications. This situation will only worsen if the demands on the Agency increase considerably, as a result of it being granted statutory consultee status in the revised PPG25. At present, the Agency receives no income for the provision of its advice in relation to planning, despite estimated costs of £8 million per year in this area. We recommend that the Government re-examine the way the Agency is funded for its work in providing information for development and planning applications, and assess whether some of its work in this area should be funded by the developer concerned. (Paragraph 85)**

We welcome the Committee’s comments on this important area and would support any examination into increasing and securing funding for our work in providing advice on development plans, planning applications and development proposals.

Such a review should examine the most efficient way of raising income including from the 60,000 planning-related consultations we respond to each year and the opportunity for cost-reflective charges raised from the developer concerned. This review would also need to consider proposals to raise Planning Gain Supplement from developers and whether other means of funding our planning work might be more effective.

We have however, already committed to provide considerable extra resources for this work in the next three years, in particular funding for additional staff.

### **Recommendation 20**

**Even if, as expected, the Agency is granted statutory consultee status for planning applications involving development in flood risk areas, we believe action will still be necessary to reduce the number of planning applications made in such areas in the first place. To help achieve this, the Agency should further improve its provision of information to developers regarding the environmental and financial consequences of development in flood risk areas. In doing so, the Agency should spell out to developers and other stakeholders the extent to which flood risk is likely to increase in the longer term. (Paragraph 87)**

We work to raise awareness of flooding in a number of ways and agree with the Committee that we should continue to work with developers and stakeholders.

One example of our work is in the Thames Gateway growth area, where we are working with developers to produce a pack which will include information on a range of environmental issues including flooding.

## Flood defence and management

### Recommendation 21

**We welcome the Government's recent funding increases for the Agency in relation to its flood defence work. However, flooding risks can only increase in the future, due to the effects of climate change. The Minister has acknowledged that spending in this area will consequently also have to increase. We expect him to listen closely to the Agency's advice in this area before decisions are made in advance of the next Spending Review. We agree with the Agency that Government should aim to increase the Agency's funding in this area to £1 billion per year in the long term. (Paragraph 93)**

We strongly support these recommendations. Climate change is a long-term pressure that will significantly increase flood risk in the future. According to the Foresight report, *Future for Flooding*, annual damage from flooding could rise from the present level of £1 billion to about £25 billion in the worst case scenario later this century. Increased resources will be needed to address this escalating risk.

The impacts of climate change will however go beyond our flood defence work. Government will need to ensure resources are carefully allocated to secure adaptation to climate change in other key areas such as water resource management, coastal impacts, waste management and biodiversity. We will need to play a major role in Defra's current initiative to develop the UK adaptation policy framework.

### Recommendation 22

**With such a large budget comes increased responsibility to ensure the money is wisely spent. As part of its zero based review of flood risk management in the next Spending Review, Defra should examine how effectively the Agency is spending its flood management funding. (Paragraph 94)**

We support this recommendation. We are already accountable to Defra for our budget and can demonstrate that we provide value for money and have achieved real results with the funding we are given.

We exceeded the target given to us by Government in Spending Review (SR)2002 by increasing the level of flood protection to around 100,000 additional homes in England in this period and are well on the way to meeting our SR2004 target of reducing flood risk to a further 85,000 homes. We published an improved flood map on our internet site in 2004 and update this quarterly as part of our continuing investment in enhancing our understanding of flood risk across England and Wales. However we will continue to look, with Defra, for further improvements and efficiencies.

## Recommendation 23

**The provision of information and advice to households in areas of flood risk is a crucial element of the Agency's work. The Agency has achieved much in this area with relatively limited resources, through initiatives such as the flood map available on its website and its 24-hour telephone helpline. If the Agency is to maintain and improve its work in raising awareness about flood risk amongst the general public, Government should review with the Agency the funding available for this work and jointly publish proposals showing how this part of the Agency's work will be further developed. The Agency should also consider other innovative ways to reach out to the general public in these areas of work, bearing in mind that not everybody uses the internet as their main source of information. (Paragraph 99)**

We agree that the provision of advice and information in areas of flood risk is a crucial element of our work and are pleased that the Committee acknowledges our achievements in this area.

We welcome the recommendation that we should work closely with Defra regarding funding for and development of this work.

Recognising that not everyone has access to the internet, our free Floodline Warnings Direct service provides alerts by telephone, mobile, fax or pager. In addition, as part of our annual flood awareness campaign, we have recently written to 430,000 people to encourage them to sign up to receive direct flood warnings through this new service and were successful in encouraging some 113,000 new customers to register. This increased the total number of properties for which direct warnings can be issued by over 90 per cent.

We will however continue to look at other innovative ways to reach out to the public on these issues.

## The Government's agri-environmental budget

### Recommendation 24

**We welcome the progress made by officials in the Agency and the Natural England Partnership in establishing a close and constructive working relationship. Due to the overlapping nature of some of the Agency and Natural England's responsibilities, it is essential that these good relations continue once Natural England is established. We are concerned, however, that—even before the new body has been created— tensions already exist relating to the potential use of the agri-environment budget. This budget will be controlled by Natural England but, in effect, used to deliver both organisation's objectives. We therefore agree with the Agency that, in order to avoid potential disputes, Defra should provide Natural England with clear guidance on using the agri-environmental funding to achieve both organisations' objectives. It is also essential that any budget constraints that arise do not hinder the Agency's performance in relation to its core shared outcomes, such as the Water Framework Directive and SSSI responsibilities. (Paragraph 105)**

We welcome the opportunity to work with Natural England as an important partner in delivering the Government's environmental objectives.

The Memorandum of Understanding we have signed with the Natural England confederation needs completion in further detail so that it cements good working relationships and clarifies roles and responsibilities in areas such as agriculture and the environment, flood risk management and access and recreation. We will continue to develop our partnership through more detailed working agreements.

We welcome the Committee's agreement that the agri-environment budget must deliver for both Natural England's and our own objectives and that guidance should be given by Government in this regard. This will be particularly important as pressures on these budgets grow and the sums available diminish. As noted by the Committee, this will be particularly important in meeting our responsibilities under the Water Framework Directive.

## Biodiversity

### Recommendation 25

**The current arrangement between the Agency and English Nature—soon to be Natural England—in relation to the UK Biodiversity Action Plan is complicated. Each organisation has lead responsibility for certain Habitat Action Plans, depending on its type. However, the two organisations are often required to work together on specific Habitat Action Plans, as can occur with the restoration of SSSIs. Evidence suggests that all the parties involved believe that the current arrangement is the most logical one and, more importantly, that it is delivering results. We believe that rules and regulations defining responsibilities and boundaries are important, but ultimately it is the people involved in these collaborations that are vital. Provided the Agency and Natural England continue to work closely—with the lead organisation for each Biodiversity Action Plan Group providing the necessary lead and vision—and deliver results in this area, we are satisfied that the present arrangements should continue. (Paragraph 110)**

We welcome the Committee's recommendation that the current working arrangements regarding biodiversity should continue.

We hope that the good working relationships we have with the bodies that will make up Natural England will further develop and help to achieve our shared objectives for biodiversity.

*Environment Agency*

*July 2006*