

Defra Statement of Position

March 2011

Defra statement on the principles of River Basin Planning Guidance and the future direction of Water Framework Directive implementation.

This document outlines commitments from Defra to Water Framework Directive implementation following on from the legal action taken by WWF-UK and the Angling Trust.

Defra Statement of Position

1. The Government is committed to the successful implementation of the Water Framework Directive (WFD). The following provides clarity on the Government's position and includes additional actions that will be put in place to help us achieve our objectives.

Implementation Planning

2. The Government believes that more action is desirable at the catchment level. This will start to be delivered by the Environment Agency but will also require greater engagement and delivery by stakeholders.

3. In order to achieve this, by 22 December 2012 the Environment Agency will develop and start to implement at least 10 catchment plans, which will set out a water body analysis (including the current status, known reasons for failure and source apportionment), and identify further measures to secure improvements in status/potential and, working with others, set out how and when they will be implemented. In these catchments the Environment Agency will drive action vigorously and pay particular attention to dealing with violations of baseline legislation, including undertaking any necessary enforcement action and seeking to provide the required information to regulatory partners to allow them to take action. These will in effect be trials for second phase catchment plans that will form the basis of the second cycle of river basin planning.

4. In order to ensure that the second cycle plans make the best possible use of the knowledge and experience gained from the pilot catchments and all other measures deployed, the Environment Agency will provide by June 2014 an assessment of progress on what has been achieved through the pilot process and more generally, including lessons learnt on the measures needed to deliver Good status/potential, the contribution of civil society groups, the effectiveness of additional measures, and an assessment of whether the new measures and mechanisms identified will be sufficient to achieve the objectives of the Directive.

5. In addition to this, the Environment Agency will develop over the next 12 months tools which will make simple draft catchment level plans available everywhere by 22 June 2014 that will enable any interested parties to take co-ordinated action and provide a sound foundation for the engagement process for the second cycle river basin management plans. The plans will be regularly updated with progress and provide a common platform on which to include third party evidence and information. All information will be publicly available and accessible to stakeholders to enable them to play a greater role in achieving the WFD objectives.

6. The development of the additional plans outlined in paragraph 3 is designed to achieve further and faster improvements in the number of water bodies achieving good status/potential. The Environment Agency will drive action to achieve this both by itself and by others, but the inherent uncertainty in the process means it is not possible to have a specific target beyond those set out in the River Basin Management Plans (RBMPs).

Addressing Uncertainty

7. Uncertainty unavoidably played a significant role within the first set of River Basin Management Plans and the plans committed the Environment Agency to delivering a programme of over 8,500 investigations by the end of 2012 to assist in addressing this.

8. The programme is being rolled out and over 1100 investigations have been undertaken to date.

9. To provide further transparency, the investigations programme has been published and includes:

- the programme of investigations profile for each quarter up to the end of 2012,
- details of the investigations that have been completed within the last quarter,
- details of what is currently being investigated, and
- details of what investigations will be initiated over the next quarter.

10. It contains information on what is being investigated (e.g. confidence of failure, reason for failure or possible measures) and where (the water body). The programme will be updated on a quarterly basis so that stakeholders can see the detail of forthcoming investigations within the next 3 months and monitor progress.

11. From spring 2011 we will be able to provide headline information on progress with the investigations programme and over the course of that year the Environment Agency will provide more detailed information on the specific results of each investigation. This information will feed into taking possible additional measures in the remainder of the first cycle of river basin management as well as providing the platform of evidence required to develop the second cycle plans.

12. The Government's aim is that, prior to the preparation of the second cycle of RBMPs in 2015, a clear decision will have been made for each water body as to whether it is below good status/potential, so that uncertainty over status does not prevent the introduction of the measures necessary to achieve improvements in status. The Government believes the Environment Agency's programme of monitoring and investigation is sufficient to achieve that aim and has provided the resources necessary for it to be undertaken.

13. By 22 June 2011 the Government will publish information about how certain it needs to be that a water body is below good status before introducing different types of measures. This will also inform the Environment Agency's programme of monitoring and investigations. As lessons are learnt from the implementation of the first cycle plans, revisions to these issues may be required.

14. By 22 September 2011 the Environment Agency will produce an outline of the evidence required to identify the main pressures causing biological elements to fail to achieve good status as part of the process used to identify reasons for failure and their associated levels of certainty. This will inform its monitoring and investigation programme and also help partners who wish to contribute their own evidence towards the assessments. Over time, as the understanding of the natural environment develops, this explanation of levels of evidence required to support action may change.

15. The aim set out in paragraph 12 may not be achieved in all cases . As part of the normal river basin planning process, the Environment Agency will identify where this is the case, why, and explain what further action is being taken to establish its status.

Required Evidence for Action

16. With regards to explaining the evidence levels required to drive measures, the Government is happy to provide the following by way of clarification.

17. The Environment Agency has recently updated their guidance on reasons for failure. In this guidance people can associate a confidence level to the reason for failure they have identified. These confidence levels are:

Suspected - There is some information that points to a possible reason for failure.

Probable - There is reasonable evidence that points to the reason for failure.

Confirmed - There is compelling evidence for the reason for failure.

18. These terms are defined further in the guidance.

19. For expensive regulatory action we need a higher degree of confidence (95% certain or equivalent based on a weight of evidence approach) that a water body fails good status, plus the activity we seek to control is 'confirmed' as the reason for failure.

20. For the use of non-regulatory measures, for example those to promote or incentivise action on diffuse pollution, a lower degree of confidence that a water body fails to achieve good status is adequate. Before promoting action an investigation would need to conclude that the activity we seek to control is the 'probable' reason for failure.

21. There will always be uncertainty and the characteristics of an ever changing ecosystem means it's impossible to be 100% certain, but it is our intention to reduce the level of uncertainty as much as possible for the second cycle plans, a process which has started already. The intensive investigation programme as well as the further years of monitoring data will greatly enhance our confidence in the reasons for failure and the level of certainty in the assessment of those water bodies that fail to achieve good status/potential. This will enable us to make decisions based on a greater level of certainty than the first plans and therefore require more action, subject to the provisions applicable within the WFD.

22. Therefore the Government's further aim is that uncertainty over reasons for failure is removed as a barrier to setting out the measures to achieve the objectives of the Directive in the second cycle RBMPs. Specifically, its aim is that sufficient information on the reasons for failure to achieve good status/potential is available to allow appropriate measures to be identified and/or alternative objectives justified for the majority of water bodies in the second River Basin Management Plans to be published by 22 December 2015.

23. In addition to the quarterly report on progress with the investigations programme, the Environment Agency will produce;

- by 22 June 2011 a list of water bodies where additional monitoring is required to increase certainty of classification by 2015 or earlier,
- linked to the monitoring programme, a profile of how we expect uncertainty of classification to reduce over time, and
- starting in 2011, an annual progress report on reducing uncertainty of classification and reasons for failure and the additional monitoring and investigations that would be put in place in order to meet any shortfalls in meeting the Government's aims.

The acceptable level of uncertainty within classifications will be related to the confidence levels set out in paragraphs 12 and 13 so that monitoring and investigations will deliver sufficient certainty for the action that may be required.

Action where there is information

24. Through the intensive catchment approach mentioned above, the Environment Agency will be undertaking increased investigations and identifying pollution issues through catchment walking. They will use this to ensure further regulatory powers for baseline measures are used to deliver environmental outcomes. The information gained through this process will be shared with other regulator partners to drive up compliance.

25. Unsustainable abstraction has been identified as an issue which requires further action in order to deliver our WFD objectives. The Environment

Agency's Restoring Sustainable Abstraction (RSA) programme involves a long term programme of action to reduce unsustainable abstractions and this is expected to run beyond 2027. Delivery of change under the RSA programme is dependent on thorough investigation of the impacts and viable solutions.

26. The Government's Water White Paper will consider how we can ensure the sustainable management of water resources into the future and how in the shorter term we might address the issue of unsustainable abstraction in a more flexible way. The White Paper is due for publication in the summer and will contain a timetable and process for longer term reform of the abstraction regime. This will note amongst other things the need for River Basin Management Plans to set out how Water Framework Directive requirements will be met where abstraction is a reason for failure, taking account of relevant investigations that are in hand or planned.

27. The Government's aim is to set out in the second cycle of RBMPs clear timetables for actions on all water bodies in order to achieve the objectives of the Directive, under article 4. This will be possible as a result of the additional monitoring information obtained during the first cycle as well as the intensive investigation programme.

28. In setting that aim, the Government notes that such timetables need an element of flexibility because it may not be possible to be certain that proposed measures will work as contemplated. The second cycle RBMPs will therefore explain the steps which are proposed to meet water body objectives (including deadlines), including the progressive steps to be taken if existing or proposed measures will not reach those objectives within the prescribed timeframe. These steps will involve the introduction of stricter approaches, including the introduction of further regulatory measures on a local or more generalised basis, in circumstances where it is plain that a particular measure or measures are needed and justifiable but cannot be generated voluntarily/through the deployment of advice/ incentives or through the application of existing regulatory measures. When publishing the timetables, the Government will identify review dates for each timetable at which progress towards achieving water quality objectives can be assessed with a view to introducing more stringent measures if the existing measures are not on track. To support this process, the Environment Agency will evaluate what is achieved in catchments through the measures that are deployed and the gap between what has been achieved and what needs to be achieved.

29. In addition, once the detailed results of the Spending Review are known, further actions may be possible. We will engage with interested parties at the earliest opportunity.

Department for Environment Food and Rural Affairs
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