

Consultation on Draft Statutory Instrument to amend provisions of the Water Resources Act 1991 for Water Protection Zones, and related Draft Statutory Guidance for the Environment Agency.

December 2008



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London SW1P 3JR
Telephone 020 7238 6000
Website: www.defra.gov.uk

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Information about this publication and further copies are available from:

Defra
Area 2a Ergon House
Horseferry Road
London
SW1P 2AL
Tel: 0207 238 6635

Email: WPZ.consultation@defra.gsi.gov.uk

This document is available on the Defra website:

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DECEMBER 2008 CONSULTATION ON:

(1) DRAFT STATUTORY INSTRUMENT TO AMEND PROVISIONS OF THE WATER RESOURCES ACT 1991 FOR

- (a) WATER PROTECTION ZONES,**
- (b) WORKS NOTICES; AND**

(2) RELATED DRAFT STATUTORY GUIDANCE FOR THE ENVIRONMENT AGENCY

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1. Background and purpose of consultation

1.1 This consultation follows from the 17 March 2008 Government response¹ on the way forward after the August 2007 consultation on diffuse sources in England for the protection of waters against pollution from agriculture (see **Annex A**). In particular, it is about Water Protection Zones (WPZs) which are one element of the policy package which Ministers have decided to use to tackle diffuse water pollution from agriculture. It is not about the other two elements in that package which are referred to as Scheme and Advice.

1.2 This consultation also follows on from the joint Defra/WAG consultation in February 2007 on “Mechanisms to Deliver Water Framework Directive² Requirements on Hydro-morphology” and the associated October 2007 Government response³. This process identified a number of gaps in the legal controls available to prevent damage to, or restore the hydromorphology (physical structure and flow conditions) of, water bodies, where this is necessary to achieve WFD objectives. Ministers undertook to consider whether to develop additional controls to remedy this and to consult on any proposals.

1.3 The driver for amending the WPZ and works notices (WN) provisions in the Water Resources Act 1991 remains achieving the requirements of the Water Framework Directive (WFD). Article 11.3(h) of the WFD requires, for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants. Article 11.3(i) requires measures to ensure that the hydro-morphological conditions of bodies of surface water are consistent with the achievement of the required ecological status or ecological potential.

1.4 In particular, the use of WPZs is envisaged for the Programmes of Measures (PoMs) under River Basin Management Plans (RBMPs). Volume 2 of River Basin Planning Guidance⁴, which was published on 21 August 2008, anticipates that the mechanism of WPZs would be available to the Environment Agency for this purpose.

1.5 This consultation is about amending **existing** powers to designate WPZs and serve WN. It is not about the designation of individual WPZs, or the service of individual WN. Each WPZ will require its own Order on which there will be local consultation for a period of at least twelve weeks before the Environment Agency puts proposals for WPZs to the Secretary of State, or Welsh Minister, for approval. The procedure for service of WN will not change – they remain a response to individual instances of damage. Provisions relating to consultation with persons to be served a WN and rights of appeal will continue to apply.

¹ <http://defraweb/farm/environment/water/csf/index.htm#govresponse>

² Directive 2000/60/EEC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy

³ Copies of these documents are available on request.

⁴ <http://www.defra.gov.uk/environment/water/wfd/pdf/riverbasinguidance-Vol2.pdf>

1.6 This consultation also concerns draft statutory guidance to the Environment Agency on the use of WPZ to address diffuse water pollution from agriculture and damage to the physical characteristics of water bodies for the purposes of WFD implementation.

1.7 While the consultation and the guidance focus on the use of WPZ in the context of achieving WFD objectives through the river basin planning process, the Environment Agency is not bound to use them solely for WFD purposes and may apply for the designation of a WPZ in order to meet other obligations relating to protection of the water environment. A WPZ could be established for more than one purpose.

1.8 We expect the EA to follow the statutory guidance in regard of the requirements to gather sufficient evidence, carry out public consultations and review designations periodically, whether the WPZ is being used in the context of achieving WFD objectives, or for other purposes.

Non-agricultural pollution

1.9 There is currently one WPZ in the UK, designated for the river Dee in Wales. This was established in 1999 to reduce point source pollution from local industries and so protect water abstraction points. As a WPZ can already be designated under existing legislation to tackle point source as well as diffuse sources of non-agricultural water pollution this mechanism will continue to be available for use in PoMs.

1.10 Defra and the Welsh Assembly Government are considering a number of specific mechanisms to tackle non-agricultural diffuse pollution - for example, the introduction of controls on phosphates in domestic laundry cleaning products and options for resolving the question of responsibility for the ownership and adoption of sustainable drainage systems.

Timing

1.11 It is too early to give indications about the nature, scope, size and location of WPZs and the management of activities within WPZs for WFD implementation. They will be a response to requirements for protection of the water environment identified in the course of the river basin planning process. As noted in 1.4 above, WPZs will be contained within RBMPs which have to be signed off by December 2009 and made operational by December 2012. This means that the new WPZ provisions have to be in force by the time RBMPs are signed off. To meet this timetable it is our intention to lay the Statutory Instrument and statutory guidance for England before Parliament in the spring of 2009 and for them to come into force on 1 October 2009. This will provide the Environment Agency (and River Basin Liaison Panels) with the assurance that WPZ provisions can be factored into the development of RBMPs.

Wales

1.12 The Water Resources Act 1991 applies to both England and Wales. The Welsh Assembly Government has joined Defra in consulting on the legislative changes for WPZs in order to provide the Environment Agency in Wales with the same powers to implement such zones (as in England). The

use of WPZs in Wales will be subject to separate statutory guidance to the Environment Agency from the Welsh Minister.

Purpose of consultation

1.13 Views are invited on:

- the proposed approach for WPZ designation; the priorities for identifying WPZs, and the provisions for appeals (Section 2).
- further extending the scope of WPZ so that they can be used to protect the hydromorphology of water bodies and of the use of Works Notices to restore a water body where damage has been caused;
- a draft Statutory Instrument amending relevant powers in the Water Resources Act 1991 for the designation of WPZs (Section 3 and **Annex B**) and the service of Works Notices.
- draft statutory guidance for the Environment Agency on the exercise of these powers (Section 4 and **Annex C**).

2. Proposed approach for WPZ designation

2.1 The process of designation begins with extensive evidence gathering by the Environment Agency. Once the Agency has gathered what it considers to be sufficient evidence to justify the application for a WPZ and associated control or management measures, it will apply to the Secretary of State or Welsh Minister for a WPZ designation.

2.2 If the Secretary of State or Welsh Minister considers it is appropriate to prevent or control damage to, or to control the entry of poisonous, noxious, or polluting matter into, controlled waters, he may designate an area as a WPZ and prohibit or manage the carrying on of activities which are likely to result in damage to, or pollution of, such waters.

2.3 WPZs are very versatile, and can potentially be used to cover areas of varying size with tailored measures appropriate to each area. The evidence required in each case will vary according to the situation but in order to justify asking for designation it is expected that the EA should be able to provide at a minimum – (i) sufficient monitoring, modelling or other data to demonstrate that the polluting or other damaging activity is a significant contributor to a failure to achieving WFD environmental objectives, and (ii) an analysis of the sources of that pollution or damage and the likely impact of proposed mitigation measures. Other relevant evidence could also be supplied from bodies such as water companies and environmental organisations.

2.4 It will be required that the EA should consult with stakeholders on the proposed WPZ, and provide impact assessments and other analysis to establish the balance of costs and benefits. The requirement to consult persons to be served a WN will continue to apply.

2.5 It will be possible to de-designate WPZs, but it is expected that the EA would normally, but not exclusively, take advantage of the 6-year River Basin

Planning cycle to review its WPZs, and apply to the Secretary of State, or Welsh Minister for modifications and updates in the measures, with supporting evidence for these changes.

3. Designation of WPZ and the service of Works Notices to protect the hydromorphology of water bodies

3.1 In common with many other Member States, hydromorphological pressures in England are one of the most significant risks to the protection or achievement of good ecological status. It is essential that mechanisms are available to control these pressures where necessary to achieve WFD ecological objectives.

3.2 WPZ and WN are established mechanisms contained in section 93 and section 161A respectively of the Water Resources Act 1991. However, current provisions restrict their use to preventing and remedying the effects of activities causing pollution of controlled waters. The proposed changes will allow the EA to use WPZs to manage or prohibit a specific set of high risk activities causing direct or indirect damage to the bed, banks and riparian zone of surface water bodies, thus limiting the loss or degradation of habitat upon which the biology depends. In many cases, actions required in a WPZ would address multiple pressures. For example, a buffer strip might prevent direct damage to the riparian zone, and reduce losses of soil and pollution from nutrients and pesticides.

3.3 The proposed changes would allow a WN be used, where damage has been caused to the physical condition of controlled waters, to require restoration of those waters to their state immediately before the damage occurred. It is envisaged that this power would be used where the damage was causing harm to the ecological quality of the water concerned and causing a risk to the achievement of the environmental objectives established by the WFD.

3.4 A similar amendment to Section 161 of the Act is proposed extending the power of the Agency to act to restore controlled waters where damage has been caused or to investigate the cause of damage.

4. Priorities for identifying WPZ

4.1 The Environment Agency will seek the designation of WPZs as a statutory mechanism to control polluting or damaging activities when there is evidence that existing (or other proposed) regulatory measures and/or voluntary action are insufficient to meet WFD environmental objectives.

Protected Areas (WFD Art. 4)

4.2 The EA will use WPZs principally to tackle diffuse pollution to achieve WFD requirements for Protected Areas (Art 4.1(c)). Their use will therefore primarily concern:

- Drinking Water Protected Areas
- Recreational waters including Bathing Waters,
- Shellfish Waters and Freshwater Fish Waters,
- Natura 2000 Protected Areas

4.3 The EA will also use WPZs for:

- Water bodies at significant risk from deterioration between status class due to diffuse pollution, including sedimentation or transfer of sediment between water bodies.
- Water bodies requiring restoration to good status, where other measures are not sufficient to ensure such restoration (subject to the application of alternative objectives).

Drinking Water Protected Areas

4.4 Article 7.3 of the WFD requires Member States to protect bodies of water used for the abstraction of water intended for human consumption so as to reduce the level of treatment required. The EA will use WPZs in England and Wales where necessary as zones within the catchments of abstraction sources for drinking water, to deal with specific point or diffuse source problems.

4.5 The EA proposes to use WPZs as statutory safeguard zones at high priority sites where there is an actual or high predicted risk of failing the Article 7.3 objective and existing statutory measures are insufficient or where the outcome of voluntary measures is too uncertain. The use of the mechanism will be prioritised according to the risk of failure.

WPZs for recreational waters including Bathing Waters

4.6 The EA will seek the use of WPZ at waters predicted to be classified as 'poor' or at risk of failing to achieve 'sufficient', and where other mechanisms for preventing pollution have not, or are unlikely to be, successful, and in line with the statutory guidance.

WPZs for Shellfish Waters and Freshwater Fish Waters

4.7 The Environment Agency will seek the use of WPZs at waters to address the failures to comply with the guideline standards of the two Directives which stem from diffuse pollution sources. The use of the mechanism will be prioritised according to the risk of failure, where other mechanisms for preventing pollution have not, or are unlikely to be, successful, and in line with statutory guidance.

WPZs for Natura 2000 sites

4.8 Water-dependent Natura 2000 sites are required to achieve Favourable Conservation Status (FCS) by 2015. At present diffuse water pollution contributes significantly to the failure to meet the objectives for these sites. WPZs for Natura 2000 sites will be prioritised based on factors such as the likelihood of failing to achieve FCS and where other mechanisms for preventing pollution have not been, or are unlikely to be, successful and in line with statutory guidance.

5 Provisions for appeals

WPZ

5.1 There will be opportunity to consider and challenge proposals regarding designations of WPZs prior to any designations taking effect. The Environment Agency will be required to consult local stakeholders for a period of at least twelve weeks prior to approaching the Secretary of State, or Welsh Minister, with a proposal to designate. This will be followed by a 28-day period for objections which could lead to a local inquiry. As far as possible we intend to resolve any disputes with regard to designations of WPZs principally via consultation.

5.2 We will also consider the need to include an appeal mechanism which might, for example, involve an appeal to the Land Tribunal⁵. The detail of any appeal process will be set out in the Orders designating individual WPZs.

Works Notices.

5.3 The procedure for serving a WN will not be changed by the proposed amendments. When the Agency intends to serve a Works Notice on any person, it must endeavour to consult that person about the works or operations to be required by the Notice. Any person served with a Notice has a right to appeal to the Secretary of State.

Comments are invited on the proposed approach for WPZ designation, the priorities for identifying WPZs, the service of Works Notices to restore damage and the provisions for appeals.

6. Draft Statutory Instrument amending Water Resources Act 1991

6.1 The August 2007 diffuse sources consultation did not include a draft Statutory Instrument although comments were invited on various aspects relating to its scope for tackling diffuse agricultural pollution. We are now able to invite comments on the draft Statutory Instrument (SI). The SI includes the provisions relating to hydromorphology referred to in Section 2 above.

6.2 The Draft Statutory Instrument at **Annex B** amends existing legislation to make WPZ provisions more flexible. It does this in a number of ways.

- It removes the Nitrates exemption from Section 93 of the Water Resources Act 1991 allowing the use of WPZs to tackle nitrate pollution where measures under the Nitrates Directive are insufficient to achieve WFD objectives. It follows that WPZs can overlap with Nitrate Vulnerable Zones.

⁵ The Tribunals, Courts and Enforcement Act 2007 establishes two Tribunals (the 1st Tier and Upper Tribunals) which in the future will subsume all existing areas covered by existing Tribunals. These Tribunals will be divided into Chambers. The Land Tribunal is expected to become a Chamber in April 2009 and to be operational by December 2009.

- It takes a broader view of the controls which can be applied in a WPZ. In particular, it introduces the ability to put in place different management for activities in WPZs, rather than just prohibiting them. This provides for a more positive approach where an activity can continue if its adverse environmental impact is managed. This could be particularly relevant to farming.
- It allows measures to deal with damaging activities, as well as polluting activities. This is intended to deal with activities that cause hydro morphological damage to water as such damage may adversely affect water quality..
- It requires the Environment Agency to give effect to any guidance issued by the Secretary of State, or Welsh Minister before seeking the designation of a WPZ.
- It amends Sections 161 and 161A of the Water Resources Act 1991 so that the Environment Agency can carry out works or serve a works notice requiring others to carry out works to restore a WB where damage to the hydromorphological conditions poses a risk to achievement of WFD objectives, including of deterioration.

Comments are invited on the draft Statutory Instrument and the purposes for which it is intended.

7 Draft statutory guidance

7.1 The August 2007 consultation on diffuse pollution from agriculture included a first draft of this guidance as Annex F to the consultation document). Comments were specifically requested on this draft guidance. Of the 43 responses received to the whole consultation, 29 respondents addressed the draft statutory guidance.

7.2 Defra published a summary of the comments received⁶. In broad terms the key points on the guidance were as follows:

- It should cover non-agricultural diffuse pollution.
- It should give more information on WFD 'good status' objectives.
- It should refer to WFD Article 7 objectives for drinking water.
- It should be clearer about what constitutes an "area" for a WPZ.
- It should require the Environment Agency to show how it has taken account of views from stakeholders; it should provide for a consultation period of more than 12 weeks and adequate arrangements to notify farmers of a proposed WPZ.
- It should require an economic assessment to be carried before a proposal for a WPZ is made.
- It should include an appeals process.

⁶ See <http://www.defra.gov.uk/corporate/consult/waterpollution-diffuse/index.htm>)

- It should allow other organisations to approach the Environment Agency with designation requests and to have access to any monitoring data underpinning proposed designations.
- It should exclude river basin characterisation data and unsubstantiated modelling as supporting information (and rightly include source tracing data).
- It should not allow Environment Agency monitoring data to be used on its own as supporting information; other data should be used in conjunction, i.e. water company data, or data from local sources, Rivers Trusts etc.
- It should allow decisions to be made on the balance of probabilities.
- It should take a broader and less prescriptive view of mitigation measures, and be clear about adding to the list of measures as necessary.
- It should not refer to the selection of the most cost-effective measures because more research is needed before this can be done.
- It should give more detail on the process for introducing and enforcing WPZ requirements.
- It should make clear how the designation of WPZs is linked with the WFD River Basin Management Planning cycle.

7.3 We do not propose to go into the detail of these individual comments. Some can only be addressed either when proposals are made for designation, or in the Order designating an individual WPZ. Others have been addressed elsewhere in this consultation document. Many are covered in the revised draft guidance at **Annex C**.

7.4 It should be noted that the guidance may be revised from time to time to take account of new circumstances.

Comments are invited on the draft statutory guidance and the purposes for which it is intended.

Annex A

Department for Environment, Food and Rural Affairs

Government response on way forward following consultation on diffuse sources in England for the protection of waters against pollution from agriculture

Date: 17 March 2008

This Government response sets out how Defra has decided to shape future action on diffuse water pollution from agriculture – following a consultation last year.

The consultation, which closed on 13 November, sought views on the right combination of policy instruments to tackle diffuse water pollution from agriculture. Such pollution must be addressed in Programmes of Measures to improve and protect water quality under the Water Framework Directive.

Defra invited views on three policy packages:

- (i) Water Protection Zones (WPZs)
- (ii) WPZs + Scheme
- (iii) WPZs + Scheme + Advice

WPZs would be based on existing powers in Section 93 of the Water Resources Act 1991. These can be used on a large or small scale to control land management activities in order to protect the water environment from pollution.

“Scheme” stood for more water quality-related options in Environmental Stewardship. “Advice” was based on an extension of the England Catchment Sensitive Farming Delivery Initiative nationwide.

The consultation sought comments on four specific questions, including on draft statutory guidance for the Environment Agency:

Question 1 Do you agree with the three policy packages we have chosen for this consultation? If not, please suggest an alternative.

Question 2 Which of the policy packages do you think should be added to the range of Programme of Measures to tackle diffuse water pollution from agriculture?

Question 3 If we take forward WPZs, should we consider merging WPZs with NVZs? What are the advantages and disadvantages?

Question 4 Do you agree with content of the draft WPZ Guidance at Annex F? If not, please suggest any additions or deletions to the content.

There were 43 respondents to the consultation and a summary of their responses is available on the Defra website at <http://www.defra.gov.uk/corporate/consult/waterpollution-diffuse/ds-summary-response.pdf>

Having considered the responses carefully, Defra has decided that future policy would be based on a package that consists of WPZs + Scheme + Advice.

This means that there will continue to be an important role for working with farmers through advice, and through incentives in the form of agri-environment schemes to secure voluntary action by farmers to tackle diffuse pollution from agriculture. It also means that we will need to take account of the extent of such action before deciding whether to bring in regulation, in the form of WPZs.

Catchment sensitive farming is a key part of this voluntary approach and Defra recently confirmed in the Water Strategy, launched on 7 February, that it would continue to support farmers on catchment sensitive farming. We are also encouraging water companies to work with farmers. Further support and incentives will continue to be available under agri-environment schemes.

However, voluntary measures are unlikely, on their own, to be sufficient to tackle the problem in all catchments at risk. It is therefore necessary to proceed to put in place the amending legislation to enable a targeted regulatory approach to be applied where necessary, as a last resort, through WPZs. This will complement the contribution from other regulatory instruments including the Nitrate Action Programme and cross compliance.

Although the powers to designate WPZs exist already we want to amend the legislation to make WPZs more flexible. We also wish to improve the process of designation, including engagement with stakeholders and to provide for robust and clear evidence to support designation. These are key aspects that respondents commented on, and we will address them in the accompanying statutory guidance.

On the merger of WPZs with NVZs we have noted that whilst a majority of those who responded were in favour in principle there were many reservations about practicalities and we have concluded that it would be premature to consider this further.

The next step on this is for Defra to consult on the draft amendment to the legislation and statutory guidance. We intend to do this in the summer, with a view to having the legislation and statutory guidance in place by early 2009.

Annex B

Draft Order

[Note that this is not the final version, it is included for information and guidance]

STATUTORY INSTRUMENTS

2009 No. XXXX

WATER RESOURCES, ENGLAND AND WALES

The Water Resources Act (Amendment) (England and Wales) Regulations 2009

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - *1st October 2009*

The Secretary of State [and the Welsh Ministers] are designated for the purposes of section 2(2) of the European Communities Act 1972⁽⁷⁾ in relation to the environment⁽⁸⁾ and make the following Regulations in exercise of the powers conferred by that section:

Title, commencement, extent and application

1. These Regulations—

- (a) may be cited as The Water Resources Act (Amendment) (England and Wales) Regulations 2009;
- (b) apply in relation to England and Wales;
- (c) come into force on 1st October 2009.

Amendments to the Water Resources Act 1991

2. The Water Resources Act 1991⁽⁹⁾ is amended as follows—

- (a) in subsection (1)(b) of section 93, for the word “restricting”, substitute “managing”.
- (b) for subsection (2) of section 93, substitute—

“(2) For the purposes of subsection (1) above this subsection is satisfied in relation to any area if it is appropriate, with a view to preventing or controlling—

- (a) damage to; or
- (b) the entry of any poisonous, noxious or polluting matter into,

controlled waters, to prohibit or manage the carrying on in that area of activities which the Secretary of State considers are likely to result in damage to, or the pollution of, any such waters.”;

- (c) omit subsection (3) of section 93;
- (d) in subsection (4)(a) of section 93, delete the words after “any activities is” and substitute “prohibited or managed”;
- (e) in subsection (4)(c) of section 93—

⁽⁷⁾ 1972 c.68.

⁽⁸⁾ In relation to England by S.I. 2008/301 and in relation to Wales by [xxxxxx]

⁽⁹⁾ 1991 c.57.

- (i) delete the words “a prohibition or restriction contained in”, and
- (ii) for the words “any such prohibition or restriction”, substitute “the order”;
- (f) omit section 94, 95 and Schedule 12;
- (g) for section 161 and 161A, substitute—

“161 Anti-pollution works and operations

- (1) Subject to subsections (3) and (4) below, where it appears to the Agency that any—
 - (a) poisonous, noxious or polluting matter or any waste matter is likely to enter, or to be or to have been present in; or
 - (b) damage has been caused to,

any controlled waters, the Agency shall be entitled to carry out the following works and operations specified in subsection (2).

- (2) The specified works and operations are—
 - (a) in a case where the matter appears likely to enter any controlled waters, works and operations for the purpose of preventing it from doing so;
 - (b) in a case where the matter appears to be or to have been present in any controlled waters, works and operations for the purpose—
 - (i) of removing or disposing of the matter,
 - (ii) of remedying or mitigating any pollution caused by its presence in the waters, or
 - (iii) so far as it is reasonably practicable to do so, of restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters; or
 - (c) in a case where damage has been caused to any controlled waters, works and operations for the purpose, in so far as it is reasonably practicable do so, of restoring the waters to their state immediately before the damage occurred.

(3) In any of the cases specified in subsection (2), the Agency shall be entitled to carry out investigations for the purpose of—

- (a) in the case of the entry, or likely entry, of matter into controlled waters, establishing the source of the matter and the identity of the person who has caused or knowingly permitted it to be present in controlled waters or at a place from which it was likely, in the opinion of the Agency, to enter controlled waters; or
- (b) in the case of damage caused to any controlled waters, establishing the nature of the damage and the identity of the person who has caused or knowingly permitted the damage to those waters.

(4) Without prejudice to the power of the Agency to carry out investigations under subsection (3) above, the power conferred by that subsection to carry out works and operations shall only be exercisable in a case where—

- (a) the Agency considers it necessary to carry out forthwith any works or operations falling within paragraph (a), (b) or (c) of that subsection; or
- (b) it appears to the Agency, after reasonable inquiry, that no person can be found on whom to serve a works notice under section 161A below.

(5) Nothing in subsection (1) above shall entitle the Agency to impede or prevent, the causing of damage to, or the making of any discharge into, controlled waters in pursuance of a consent given under Chapter II of Part III of this Act.

(6) Where the Agency carries out any such works operations or investigations as are mentioned in subsections (1) and (3) above, it shall, subject to subsection (7) below, be entitled to recover the expenses reasonably incurred in doing so from any person who, as the case may be—

- (a) caused or knowingly permitted the matter in question to be present at the place from which it was likely, in the opinion of the Agency, to enter any controlled waters; or
- (b) caused or knowingly permitted the matter in question to be present in any controlled waters; or

(c) caused or knowingly permitted the damage to be caused to the controlled waters.

(7) No such expenses shall be recoverable from a person for any works operations or investigations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to reach such a place as is mentioned in subsection (6) above or to enter any controlled waters.

(8) Subsection (7) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(9) Subsections (3B) and (3C) of section 89 above shall apply in relation to subsections (7) and (8) above as they apply in relation to subsections (3) and (3A) of that section.

(10) Nothing in this section—

(a) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this section; or

(b) affects any restriction imposed by or under any other enactment, whether public, local or private.

(11) In this section—

“controlled waters” has the same meaning as in Part III of this Act; and

“expenses” includes costs;

“mine” has the same meaning as in the Mines and Quarries Act 1954.

161A Notices requiring persons to carry out anti-pollution works and operations]

(1) Subject to the following provisions of this section, where it appears to the Agency that any —

(a) poisonous, noxious or polluting matter or any waste matter is likely to enter, or to be or to have been present in; or

(b) damage has been caused to,

any controlled waters the Agency shall be entitled to serve a works notice as specified in subsection (2).

(2) The Agency may serve a works notice on any person who, as the case may be—

(a) caused or knowingly permitted any poisonous, noxious or polluting matter to be present at the place from which it is likely, in the opinion of the Agency, to enter any controlled waters;

(b) caused or knowingly permitted any poisonous, noxious or polluting matter to be present in any controlled waters; or

(c) caused or knowingly permitted damage to be caused to any controlled waters.

(3) For the purposes of this section, a “works notice” is a notice requiring the person on whom it is served to carry out such of the following works or operations as may be specified in the notice, that is to say--

(a) in a case where any poisonous, noxious or polluting matter appears likely to enter any controlled waters, works or operations for the purpose of preventing it from doing so;

(b) in a case where any poisonous, noxious or polluting matter appears to be or to have been present in any controlled waters, works or operations for the purpose—

(i) of removing or disposing of the matter;

(ii) of remedying or mitigating any pollution caused by its presence in the waters;

(iii) so far as it is reasonably practicable to do so, of restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters; or

(c) in a case where damage has been caused to any controlled waters, works or operations for the purpose of restoring the waters to their state immediately before the damage occurred.

(4) A works notice—

(a) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and

(b) is without prejudice to the powers of the Agency by virtue of section 161(4) above.

(5) Before serving a works notice on any person, the Agency shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.

(6) The Secretary of State may by regulations make provision for or in connection with--

- (a) the form or content of works notices;
- (b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served;
- (c) steps to be taken for the purposes of any consultation required under subsection (5) above or regulations made by virtue of paragraph (b) above; or
- (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a works notice.

(7) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (5) above or of regulations made by virtue of paragraph (b) of subsection (6) above.

(8) Nothing in subsection (1) above shall entitle the Agency to require the carrying out of any works or operations which would impede or prevent, the causing of damage to, or the making of any discharge into, controlled waters in pursuance of a consent given under Chapter II of Part III of this Act.

(9) No works notice shall be served on any person requiring him to carry out any works or operations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to reach such a place as is mentioned in subsection (1)(a) above or to enter any controlled waters.

(10) Subsection (9) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(11) Subsections (3B) and (3C) of section 89 above shall apply in relation to subsections (9) and (10) above as they apply in relation to subsections (3) and (3A) of that section.

(12) Where the Agency—

- (a) carries out any such investigations as are mentioned in section 161(3) above, and
- (b) serves a works notice on a person in connection with the matter to which the investigations relate,

it shall (unless the notice is quashed or withdrawn) be entitled to recover the costs or expenses reasonably incurred in carrying out those investigations from that person.

(13) The Secretary of State may, if he thinks fit in relation to any person, give directions to the Agency as to whether or how it should exercise its powers under this section.

(14) In this section—

“controlled waters” has the same meaning as in Part III of this Act;

“mine” has the same meaning as in the Mines and Quarries Act 1954.”;

(h) for paragraph 1(a) and (b) of Schedule 11, substitute—

“(a) submit to the Secretary of State a draft of the order applied for together with—

- (i) such information as the Secretary of State requires in accordance with any guidance issued by the Secretary of State from time to time; and
- (ii) any other information which the Agency considers relevant;

(b) publish a notice with respect to the application—

- (i) at least once in each of two successive weeks, in one or more newspapers circulating in the locality proposed to be designated as a water protection zone by the order; and
- (ii) not later than the first date of publication pursuant to sub-paragraph (i) above, on its website;”;

(i) in paragraph 1(c) of Schedule 11, after the words “first publish serve”, insert “or send by electronic communication”.

Consequential amendment to the Anti-Pollution Works Regulations

3. In the Anti-Pollution Works Regulations 1999⁽¹⁰⁾, for paragraph (b) of regulation 2, substitute—

“(b) in the case of—

- (i) an actual pollution incident affecting controlled waters, or
- (ii) damage caused to controlled waters

describe the nature and extent of the pollution or damage, identifying the controlled waters affected by such pollution or damage;”

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made to the Water Resources Act 1991 (“the Act”) by making some changes to the power to designate Water Protection Zones (“WPZ”) together with the powers to undertake anti-pollution works and serve notices to undertake such works. The purpose being to ensure that England and Wales are able properly to comply with the obligations imposed by the Water Framework Directive. The Regulations amend the Act by—

- amending sections 93, 161 and 161 by extending controls on activities to include to those which cause damage to controlled waters in addition to activities which risk or cause pollution;
- amending section 93 to require that the Secretary of State be satisfied that it is necessary manage activities which the Secretary of State considers are likely to result in the pollution of controlled waters;
- revoking section 93(2) to remove the exception in relation to nitrates and revoking section 94, 95 and Schedule 12 in consequence;
- amending Schedule 11 to require the Environment Agency to consider any guidance issued by the Secretary of State before seeking the designation of a WPZ
- making a consequential amendment to the Anti-Pollution Works Regulations 1999/1006.

A full impact assessment has not been produced for this instrument as it is only an enabling instrument – to be given effect only when individual WPZs are designated. Each designation proposal will be accompanied by an appropriate impact assessment as required by the statutory guidance this instrument will put in place.

⁽¹⁰⁾ S.I. 1999/1006.

Annex C

Draft Guidance to the Environment Agency on the use of Water Protection Zones in England to address diffuse water pollution from agriculture and damage to the physical characteristics of water bodies

1. Introduction

- 1.1 This guidance sets out the expectations of the Secretary of State on the use of the Water Protection Zone (WPZ) Orders under Section 93 of, and Schedule 11 to, the Water Resources Act 1991 (WRA 1991) so as to prohibit or manage any activities that can cause diffuse water pollution or damage to the physical characteristics of water bodies, in order to meet the objectives of the EC Water Framework Directive (WFD).
- 1.2 WPZs are already available to control water pollution outside of the requirements of the WFD. The focus of this guidance is the use of WPZ orders for the purpose of achieving the objectives of the WFD. In the context of this guidance, it is assumed that they will comprise part of the Programmes of Measures contained in the River Basin Management Plans which will be created pursuant to the WFD.
- 1.3 This guidance applies to WFD River Basin Districts (RBDs) wholly in England, the Northumbrian River Basin District, and cross-border River Basin Districts (Severn, Dee and Solway Tweed) in so far as catchments up to the border with Wales and Scotland are covered by the WRA. Where catchments cross the border this guidance must be considered alongside the Guidance to the Environment Agency on the use of Water Protection Zones in Wales as issued by the Welsh Assembly Government.
- 1.4 For RBDs wholly in England and the Northumbrian River Basin District, this is statutory guidance to the Environment Agency (the Agency) on the practical implementation of the WFD issued by the Secretary of State of the Department for Environment, Food and Rural Affairs (Defra) under regulation 20(3) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003; and that provision as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003.

2. Background

- 2.1 Article 11.3(h) of the WFD requires for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants. Article 11.3(i) requires measures to ensure that the hydro-morphological conditions of bodies of surface water are consistent with the achievement of the required ecological status or ecological potential.
- 2.2 The Agency has a general duty to exercise its relevant regulatory functions to secure compliance with nationally agreed objectives under

the WFD. This involves amongst other things taking action to tackle any pollution where this is needed to achieve environmental objectives. Mechanisms to achieve WFD environmental objectives by 2015 need to be agreed under Programmes of Measures in River Basin Management Plans which have to be agreed by 22 December 2009. These Plans have to be made operational by 22 December 2012.

- 2.3 WPZ Orders under Section 93 of the Water Resources Act 1991 are one of a range of mechanisms available to tackle pollution. They are a means of introducing additional mandatory controls on activities in designated areas with a view to tackling water pollution and damage.

3. WPZ applicability

- 3.1 The Agency should propose to designate an area as a WPZ where further controls, beyond existing regulatory and voluntary/supportive mechanisms, are deemed necessary.
- 3.2 The Agency can propose to designate a WPZ in RBDs wholly in England and in wholly English catchments within the Dee and Severn RBDs. In these situations a draft Order and supporting information must be sent to, and agreed, with the Secretary of State.
- 3.3 Where the Agency proposes to designate a WPZ in the Dee or Severn RBDs that traverses the geo-political boundary with Wales, the Agency will consider the Guidance to the Environment Agency on the use of Water Protection Zones in Wales as issued by the Welsh Assembly Government. A draft Order must be sent to, and agreed, with both the Secretary of State and the Welsh Ministers.
- 3.4 The Agency can also propose to designate a WPZ in the Northumbrian RBD and a wholly English catchment in the Solway Tweed RBD. However, a WPZ crossing the geo-political boundary between England and Scotland would not be possible since Section 93 of the Water Resources Act 1991 does not apply in Scotland.

4. Prioritisation

- 4.1 In each River Basin District, the Agency should apply WPZs to tackle pressures where identified by WFD Article 5 reports and subsequent river basin characterisation updates, and where there is evidence to show that existing (or other proposed) regulatory and voluntary/supportive mechanisms are insufficient to achieve the relevant environmental objectives in the River Basin Management Plan.

5. Consultation and Draft Order submission

- 5.1 The Agency should strive to identify and subsequently involve all interested and affected parties whilst developing proposals for a draft WPZ Order, and undertake a 12 week consultation in the area that would be impacted by the prospective WPZ in accordance with

Government guidelines. This consultation should focus on the specific content of individual WPZs.

- 5.2 The Agency should include a summary of the consultation steps, responses and how the Agency has taken the responses into account, in the supporting information accompanying a draft WPZ Order.
- 5.3 The draft WPZ Order would be draft legislation to be made under section 93 of the Water Resources Act 1991. The provisions in the Order must therefore fall within the scope of Section 93 (as amended). The draft Order would need to set out the area to be designated, the circumstances in which certain activities are to be managed, and the measures to manage those activities and also the consequences of non-compliance with the WPZ requirements.
- 5.4 Schedule 11 to the Water Resources Act 1991 sets out the procedure for submitting a draft WPZ Order and supporting information to the Secretary of State, and also Welsh Ministers if a cross-border WPZ is proposed. Notices publicising the draft WPZ Order must be served on the relevant local authorities and water undertakers, and published in local papers and on the Agency's website at the same time.

6. Supporting information

- 6.1 As required by Schedule 11 to the Water Resources Act 1991, the Agency should submit to the Secretary of State information supporting and justifying its application for a WPZ Order.
- 6.2 Supporting documents accompanying a WPZ Order should provide evidence and information, including the relevant target(s) needed to meet WFD environmental objectives in the zone. This information should be gathered from the river basin management planning process and other sources, including from the following:
- 6.3 **Pollution apportionment** The Agency should include business sector apportionment for the pollutants, or causes of damage, to be targeted. This apportionment should, as far as is feasible, be at a similar scale to the proposed Water Protection Zone. Such evidence would also be greatly enhanced if underpinned by source tracing studies.
- 6.4 **Risk assessment** The Agency should submit relevant information derived from any of their regional or local area assessments supported by WFD river basin characterisation maps and any other data relevant to the source, impact and cost of water pollution or damage. These assessments should indicate the risk of pollution from the relevant sources and the level of confidence in that assessment.
- 6.5 **Water Quality monitoring** Relevant data from the Water Framework Directive monitoring programme and other EA monitoring regimes can be used to support an application for a WPZ Order. Relevant raw water quality data provided by water companies can also be included. It is expected that monitoring data would be used to help calibrate any modelling work used to justify proposed WPZ designation.

- 6.6 **Catchment appraisal** The Agency should include the outcome of catchment appraisals where they are satisfied that the appraisal would enhance the supporting information for an application for a WPZ Order.
- 6.7 **Modelling scenarios** Where water quality monitoring data is absent or inconclusive, the Agency should include relevant modelling data to justify WPZ designation to tackle particular pollutants.
- 6.8 **Other relevant plans and surveys** Where a WPZ is proposed for a WFD Protected Area then any EA plans or surveys specific to that particular area can be submitted to enhance the case for WPZ designation.

7. Delivering Water Protection Zone requirements

- 7.1 Whilst the Agency is able to choose the appropriate delivery and enforcement mechanism to ensure WPZ requirements are met, they should in the interests of better regulation, outline in their supporting information where efforts have been made to minimise administrative burdens.
- 7.2 If the Agency can demonstrate that WPZ requirements are best enforced using a consenting or permitting regime, then provisions can be made as per S93 of the WRA. The Agency should also check that any such regime does not duplicate any similar consent/permit requirements already applicable.
- 7.3 The Agency should also advise on and encourage other measures to minimise pollution or damage in the WPZ.
- 7.4 Draft WPZ Orders will need to set out the consequences of breaching WPZ requirements. If such breaches are to be an offence, the maximum penalty (as referred to in Section 93(4)(c) of the Water Resources Act 1991) is three months imprisonment or a £20,000 fine (in a magistrates court); or two years imprisonment or an unlimited fine (in a Crown court).
- 7.5 The Agency should also consider whether enforcement notices would be a suitable alternative means of enforcing WPZ controls. These could be issued in cases of non-compliance, requiring action to rectify the breach. Draft Orders would need to make provision for enforcement notices.

8. Water Protection Zone Review

- 8.1 The Agency should take account of future WFD River Basin Management Planning cycles when conducting any review of Water Protection Zone requirements so that any WPZ changes can feature as part of the WFD Programme of Measures for 2015-2021 and for 2021-2027 or beyond, as necessary.

- 8.2 Where evidence from water quality monitoring and WPZ compliance assessment suggests that existing mitigation measures in a WPZ are not delivering the improvements needed to meet WFD objectives, then the Agency should initiate a review of the WPZ.
- 8.3 Such a review should in the first instance take account of any time lag between the action to tackle pollution and the expected water quality improvements, before proposing any changes to the diffuse pollution mitigation measures required within the zone. It would be expected that the proposed changes would amount to adding further measures and/or substituting measures where new evidence suggests that an alternative action would be more effective.
- 8.4 The Agency should only consider proposing repeal of a Water Protection Zone Order where they can demonstrate to the Secretary of State or Welsh Minister that relevant WFD objectives have been achieved and that removal of WPZ requirements will not lead to a deterioration in water quality and failure to meet these WFD objectives. Repeal of a Water Protection Zone should normally coincide with the end of a WFD River Basin Management Plan cycle.

Annex D

TACKLING DIFFUSE WATER POLLUTION USING WATER PROTECTION ZONES: Q&A BRIEF

The purpose of this Q&A brief is to provide stakeholders with further information. Views are not being sought on this brief but the information it contains can be referred to in responses to the questions posed in this consultation.

1. What are Water Protection Zones?
2. Is a Water Protection Zone the same thing as a Nitrate Vulnerable Zone?
3. Why are Water Protection Zones needed to tackle diffuse water pollution?
4. What is damage?
5. Why are Water Protection Zones and Works Notices needed to tackle damage?
6. Could WPZs also be used to help meet the requirements of other water policies?
7. Why amend WPZ legislation and provisions for service of Works Notices?
8. Why are you planning on revoking the nitrates exemption when nitrates are covered by the Nitrates Directive?
9. Who designates an area as a WPZ?
10. What is the role of the Environment Agency?
11. Who checks the quality of evidence justifying designation?
12. How will the requirements be decided in each WPZ designation?
13. What pollutants will be targeted using WPZs?
14. Will I be in a WPZ?
15. Can I be in a WPZ and an NVZ at the same time?
16. What would I have to do in a WPZ?
17. Can we object to a proposed WPZ designation?
18. Can we appeal against a Works Notice?
19. What are the consequences of non-compliance with requirements of a WPZ or Works Notice?
20. Will there be any financial assistance to help comply with requirements of a WPZ or Works Notice?
21. How will you demonstrate that WPZ requirements are leading to a reduction in water pollution?
22. How long will it take before we see any water quality improvements?
23. Can WPZs be de-designated once the required improvements to water status are achieved?

1. What are Water Protection Zones?

Water Protection Zones designated under Section 93 of the Water Resources Act 1991 can be used to control activities that can cause water pollution within a particular area. They can be applied over any spatial scale and target almost any pollutant and any polluting activity across any business sector.

2. Is a Water Protection Zone the same thing as a Nitrate Vulnerable Zone?

No. Nitrate Vulnerable Zones are designated under the Nitrates Regulations, which implement the Nitrates Directive. Water Protection Zones are designated using the Water Resources Act 1991. They have different purposes, and different governing legislation.

A Defra Consultation in 2007 found that most responses were opposed to any merger of the two types of zone, and so this has not been considered.

3. Why are Water Protection Zones needed to tackle diffuse water pollution?

In some areas of England and Wales, existing supportive and regulatory approaches aimed at reducing the level of pollutants such as phosphorus are likely to be insufficient to meet the water quality objectives of the EU Water Framework Directive. Therefore, introducing additional controls through Water Protection Zones will ensure more significant pollutant reductions can be achieved where necessary.

The Environment Agency also considers that the requirement to protect drinking water abstraction points from nitrates, in particular for groundwater sources, goes further than the protection afforded by the Nitrates Directive. Consequently WPZs may be required to protect drinking water abstraction points from further nitrate pollution.

4. What is damage?

Damage is anything that affects the hydromorphological functioning of a surface water body. For example, input or movement of large amounts of sediment could destroy spawning grounds and affect the population of fish fauna in a water body. Physical changes to the structure of banks and beds of a surface water body could destroy habitat that aquatic fauna depend on and they can also affect the ecological quality of the water body, change the flow of water through the system more widely or alter the dilution of pollutants.

5. Why are Water Protection Zones and Works Notices needed to tackle damage?

Damage to the condition of the bed and banks of water bodies (morphology) can prevent or limit the achievement of the values required for aquatic fauna and flora. Existing controls for the protection of the water environment do not address this type of damage. Since the WFD requires us to ensure that morphological conditions are consistent with the achievement of good status for biology, we need to be able to control or manage activities that cause this type of damage.

6. Could WPZs also be used to help meet the requirements of other water policies?

Yes. WPZs, as amended, may be applied as a measure to help deliver policy requirements for bathing waters, drinking water, Natura 2000 sites, hydro-morphology etc.

7. Why amend WPZ legislation and provisions for service of Works Notices?

The legislation needs to be more flexible, for example to address hydro-morphological damage and to provide for more comprehensive and positive management of pressures and risks. We also need to revoke the current nitrates exemption to better protect drinking water sources where necessary and we need to update and improve the designation process.

8. Why are you planning on revoking the nitrates exemption when nitrates are covered by the Nitrates Directive?

A number of requirements that could be introduced in WPZs to deliver phosphorus and/or microbial pollution reductions may also achieve a residual reduction in nitrate levels. Revoking the nitrates exemption is designed to reflect this and allow the future integration of nitrates policy with policy tackling other diffuse sources of water pollution. For now though, nitrate pollution is targeted separately through Nitrate Vulnerable Zones under the Nitrates Directive. However, as noted above the Environment Agency considers that, to meet WFD targets, there may well be a need to go further than what is required under the Nitrates Directive as regards nitrates in drinking water protected areas in particular.

9. Who designates an area as a WPZ?

The Secretary of State for Environment, Food and Rural Affairs is responsible for designating Water Protection Zones in England, based on Environment Agency proposals. In Wales this responsibility rests with Welsh Ministers.

10. What is the role of the Environment Agency?

The Environment Agency is the competent authority responsible for proposing Water Protection Zones and enforcing their requirements. The Environment Agency will identify the need for a WPZ, the

pollutants to be controlled, the activities to be prohibited or managed and the method of enforcing the requirements within that zone. The Environment Agency submits this information to the Secretary of State or Welsh Ministers in accordance with Schedule 11 to the Water Resources Act 1991. The Secretary of State or Welsh Ministers then makes a designation decision based on the Environment Agency's evidence.

11. Who checks the quality of evidence justifying designation?

In England Defra will review the evidence provided by the Environment Agency, which will be available to all interested parties, and advise the Secretary of State accordingly. The Secretary of State can modify the Agency's proposals if necessary. To help ensure the Environment Agency submit sufficient evidence that will enable a robust designation decision, Defra and WAG will each produce statutory guidance for the Agency on the use of Water Protection Zones to tackle diffuse water pollution and damage to the physical characteristics of water bodies. In Wales, Welsh Assembly Government exercises the same function as Defra in England, advising Welsh Ministers.

12. How will the requirements be decided in each WPZ designation?

The Environment Agency will determine the level of pollution reduction needed in a WPZ and then select the most cost-effective mitigation measures that will be required to achieve that reduction.

13. What pollutants will be targeted using WPZs?

It is expected that phosphorus, sediment and microbial pollution from agriculture will be tackled in WPZs. Chemical storage, pesticides and veterinary medicines could also be targeted if necessary. Nitrate pollution is targeted separately via Nitrates Directive requirements but additional requirements to meet WFD standards for nitrates, in particular for abstracted groundwater, may also be necessary.

14. Will I be in a WPZ?

It depends on the risk to water status from diffuse water pollution or damage in your area, and whether a particular activity is a significant contributor to that pollution. Even if diffuse water pollution is identified as a problem in your area, WPZs will only be introduced if existing regulation and supportive approaches do not, or are unlikely to, tackle the problem to the extent required.

15. Can I be in a WPZ and an NVZ at the same time?

Yes. NVZs were designated on 04/09/2008, and will come into force on the 01/01/2009. There is currently one existing WPZ, on the River Dee. Future WPZs will be designated in areas where there is a need for action to control pollution that would otherwise cause a water body to fail Water Framework Directive requirements. This could be due to nitrates, phosphates, or a combination of pollutants.

Since NVZs currently cover about 70% of the agricultural land in England, it is highly likely that there will be some overlaps with future WPZs. In these WPZs, specific measures over and above those required by the NVZ may be required to be taken.

16. What would I have to do in a WPZ?

This will vary from WPZ to WPZ and depend on the pressures and risks that need to be tackled. In general diffuse pollution mitigation measures are well understood. For example, for industry and agriculture many of these amount to good practice. Some site managers and farmers may find they are doing them already. Some measures may be required under other regulations, for example cross compliance or the Nitrates Action Programme. For farmers, there is a presumption that farming will be able to continue but certain additional controls may be required.

17. Can we object to a proposed WPZ designation?

Yes. Interested parties can object to the making of a WPZ to the Secretary of State or Welsh Ministers who, under paragraph 4 of Schedule 11 to the Water Resources Act 1991, can hold a local inquiry if he/she considers it appropriate to do so. Objectors would need to provide evidence to back up their objections.

18. Can we appeal against a Works Notice?

Yes. If the Environment Agency intends to serve a Works Notice on anyone, it must endeavour to consult that person and any person who is served with a Works Notice is entitled to appeal against the Notice to the Secretary of State in England and Welsh ministers in Wales. The recipient of the Works Notice then has 14 days to notify the Secretary of State that they wish to appeal.

19. What are the consequences of non-compliance with requirements of a WPZ or Works Notice?

The Environment Agency will decide the most appropriate action for non-compliance depending on the specific circumstances surrounding each compliance breach. The maximum penalty that can be set for non-compliance with a WPZ requirement is three months imprisonment or a £20,000 fine or both (in a magistrates court); or two years imprisonment or an unlimited fine or both (in a Crown court). Experience suggests that the consultation which takes place in advance of the service of a Works Notice usually results in an agreed course of action.

20. Will there be any financial assistance to help comply with requirements of a WPZ or Works Notice?

No.

21. How will you demonstrate that WPZ requirements are leading to a reduction in water pollution?

Water quality monitoring samples taken by the Environment Agency from representative monitoring sites will be used to demonstrate any improvements in water quality.

22. How long will it take before we see any water quality improvements?

It will vary depending on the environmental characteristics of your catchment. Some catchments may see improvements in a matter of years. In others, where pollutants have filtered through to groundwater or are locked up in sediment, it may take longer.

23. Can WPZs be de-designated once the required improvements to water status are achieved?

Yes, if the Environment Agency can provide the Secretary of State or Welsh Ministers with evidence that a relaxation of WPZ requirements will not lead to deterioration in water quality.

Consultation instructions

This consultation is being carried out in accordance with the Government Code on Consultations which is available at www.cabinet-office.gov.uk/regulation/Consultation/Code.htm

Consultation responses should be returned by **31st March 2009**. We would prefer responses to this consultation to be sent by e-mail to:

WPZ.consultation@defra.gsi.gov.uk

Anyone unable to respond by e-mail should post their response to:

Consultation on Water Protection Zones

Water Quality Division, Defra

Zone A/B, 2nd Floor,

Ergon House,

Horseferry Road,

London,

SW1P 2AL

Respondents from Wales are asked to send their views to water@wales.gsi.gov.uk and to copy them to the Defra e-mail address above.

Respondents from Wales who are unable to respond by e-mail should use the following postal address (and should send a copy of their response to the Defra postal address above)

Consultation on Water Protection Zones

Water Branch

Climate Change and Water Division

Welsh Assembly Government

Second Floor

Cathays Park

Cardiff

CF10 3NQ

This consultation document is available online at:

<http://www.defra.gov.uk/corporate/consult/water-protection-zones/index.htm>

and through a link on the Welsh Assembly Government's website at www.wales.gov.uk. Paper copies can be obtained by writing to the above postal or e-mail address.