

Department for Environment, Food and Rural Affairs and Welsh Assembly Government

Government response on way forward following consultation on a Draft Statutory Instrument to amend provisions of the Water Resources Act 1991 for establishing Water Protection Zones and service of Works notices; and related Draft Statutory Guidance for the Environment Agency (22nd December 2008-31st March 2009).

September 2009

This Government response from Defra and the Welsh Assembly Government sets out how we propose to carry forward changes to legislation following the recent consultation on proposals to update existing provisions in the Water Resources Act 1991 for the establishment of Water Protection Zones and the service of Works Notices. Separate guidance, also subject to the consultation, will be issued in England by Defra and in Wales by the Welsh Assembly Government.

Background

The 2008-09 consultation, which closed on 31 March 2009, sought views on proposed changes to update existing legislation and new Statutory Guidance to make the use of Water Protection Zones (WPZs) and Works Notices more practical within the context of the Water Framework Directive.

The Water Framework Directive (WFD) requires measures to be put in place to tackle diffuse water pollution from agriculture and other sources and to protect the physical characteristics of surface water bodies where this is necessary to achieve good ecological status (or an alternative objective). Such pressures on the ecological quality of water bodies must be addressed in Programmes of Measures set out in River Basin Management Plans.

In 2007 Defra invited views on three policy packages to address diffuse agricultural pollution, and selected a balanced package comprising assistance through existing agri-environment Schemes, advice through an extension to the England Catchment Sensitive Farming Delivery Initiative, and Water Protection Zones (WPZs). The Welsh Assembly Government consulted on the design of its new agri-environment programmes at the end of 2008 in the consultation document "A review of land management actions under Axis 2 of the Rural Development Plan for Wales 2007-2013." Defra also promised a further consultation in 2008-09 on draft amendments to the WPZ legislation and Statutory Guidance to the Environment Agency.

WPZs would be designated on the basis of existing powers in Section 93 of the Water Resources Act 1991. They can be used on a large or small scale to control land management activities in order to protect the water environment from pollution. However, Statutory Guidance to the Environment Agency would be a new feature. We intend to have the legislation in Parliament in the Autumn to take effect from the end of 2009, so as to support the first round of WPZ nominations in the first River Basin Management Plans which are due to be published in December 2009.

Statutory Guidance, separately for England and Wales, should be in place to support the first round of applications for WPZs which are not expected to take place until at least 2010-11.

Also in 2007, Defra issued a Consultation on Mechanisms to Deliver Water Framework Directive Requirements on Hydromorphology and signalled that there would be further consultation on any new measures required. This consultation revealed a number of gaps in the existing environmental protection regime which, for the water environment, was generally limited to dealing with pollution and polluting activities, having been created before the importance of the physical condition of water bodies in achieving a sustainable ecology was fully appreciated.

The 2009 consultation asked stakeholders to comment on:

- the proposed approach for WPZ designations, the priorities for identifying WPZs and the provisions for appeals.
- Further extending the scope of WPZ so that they can be used to protect the hydromorphology of water bodies, and 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 and the service of Works Notices.
- Draft Statutory Guidance for the Environment Agency on the exercise of these powers.

As a result of legal opinion, stakeholder contributions and consultation responses, Defra and the Welsh Assembly Government have decided to make the following changes:

- The Statutory Instrument amending Section 93 of the Water Resources Act 1991 will be redrafted to take account of certain recommendations and changes suggested in the consultation.
- The final Statutory Instrument will be a composite order made by both the Secretary of State and the Welsh Ministers and the draft will be amended to reflect this.
- The Statutory Instrument will include the earlier proposals to amend Sections 161 and Sections 161A of the Water Resources Act concerning Works Notices. Provisions in this consultation relating to hydromorphology will be carried forward, and a power for the Environment Agency to carry out improvements to hydromorphology of water bodies, which was subject to consultation with the Floods and Water Management Bill, may also be included in the SI.

For the statutory guidance in England:

- The general approach will be retained, but more clarity and detail will be added in some areas of the Guidance.
- The Statutory Guidance to the Environment Agency will be redrafted in consultation with legal advisors and the Environment Agency, taking account of the consultation recommendations and stakeholder contributions. The final package is expected to be stronger on the details of requirements for evidence, will go into more detail on the requirements for local consultation and objection procedures, and will be more strongly defined in terms of the changes to allow WPZs to be used in controlling damage, as well as pollution.

The Welsh Assembly Government will be consulting separately on statutory guidance for Wales.

Guidance on applications:

- Defra will also be looking to draft internal Guidance to administer applications to the Secretary of State for a WPZ designation, and will be seeking the assistance of stakeholders in the near future in the development of this Guidance.
- Similar guidance will be developed by the Welsh Assembly Government and the Assembly Government will look to develop a common approach where appropriate to simplify the process for those involved.
- This will enable the approval of WPZ applications to be governed by a transparent process. This guidance should be available by 2010 in order to deal with the earliest predicted date for the first WPZs proposed through the RBMP cycle.

Defra and the Welsh Assembly Government look forward to working in partnership with stakeholders and the Environment Agency to bring forward the required legislative changes to enable the easier use of WPZs, and to develop Guidance to both enable the EA to manage the WPZ application process, and to enable Defra and the Welsh Assembly Government to process the applications in a fair and prompt manner.

Defra and the EA will establish a working group with representatives from key sectors to help take forward WPZs in England; appropriate arrangements will also be put in place for Wales.