

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

Water UK's response to Defra's consultation paper

Introduction

Water UK welcomes the opportunity to contribute to Defra's consultation on the 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.

Water UK represents water and wastewater service providers at UK and European level. Our members provide the UK with safe, clean water and contribute to the protection and enhancement of public health and the environment.

We are pleased that Defra is developing additional mechanisms to protect water sources from diffuse pollution, in particular, as it has so far been inadequately addressed. Our expectation is that if WPZs are to be a key mechanism for addressing diffuse pollution and hydromorphology, then they must be very flexible and available to address these challenges in all catchments within all river basin districts. The current proposal appears to fall short of this aspiration.

We support the principles of sustainability and control of pollution at source to ensure better outcomes for the environment and consumers. We believe the WPZ proposals, if correctly designed and applied, have the potential to support sustainable water management.

General comments

Diffuse pollution is widespread in all catchments both in urban and rural areas, and if WPZ is to be a key mechanism then it must be flexible and easily adaptable. The current process for establishing WPZ is at risk of being a blunt and ineffective tool as it introduces another potential

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bureaucratic layer over and above the river basin management planning process.

There is real merit in designating each river basin district as a WPZ, where water resources are used for potable water supply. The EA can then use the powers provided through the WPZ to “control or manage” activities (such as diffuse pollution and hydromorphology) which cause damage to controlled waters. The information gathered as part of the river basin management plans (e.g. monitoring data, modelling and other sources of data) which are used to identify the risks, sources of pollution, and the likely impacts of measures can be used as the basis for establishing specific areas within the RBDs where these powers will be needed. The WPZ designations and related measures could be clearly reflected in the final RBMPs following the formal consultation before they are signed off by the Secretary of State and the Welsh Minister at the end of this year.

Alternatively, the Statutory Instrument amending the powers in the Water Resources Act could be made so that, as a minimum, they include proposals for use of WPZs as an integral part of the consultation for the WFD's second and third cycles.

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

We comment on the relevant sections of the consultation document as follows.

Comments on the proposed approach for WPZ designation

We think the proposed process of designation can be integrated into the river basin management planning process as outlined above, without the need for a separate consultation process for WPZs. We accept that, for the first cycle of the WFD process, separate consultations are necessary but not in the future.

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Para 2.1 requires the Agency to gather evidence it considers sufficient to justify the application of WPZ with control or management measures. Some indication of what may be deemed sufficient will be helpful as it will provide clarity to all interested stakeholders on what actions to expect. For example, we think the fact that the water industry have continued to build new water treatment process plants to remove pollutants such as nitrates, pesticides and cryptosporidium from drinking water sources means that control of these substances within the wider river basin catchments has been and is inadequate. Our expectation is that WPZs should be established in drinking water supply source catchments to manage or control those "activities that are likely to result in damage to, or pollution of, such waters".

Para 2.2 – We agree that the SoS or the Welsh Minister should make the final decision on designation of WPZ and related management and control measures. However, we think this should be included in the RBMPs which are also signed off by the SoS or the Welsh Minister.

Para 2.3 – We think the information requirements set out in this paragraph as the basis of evidence should be available from the RBMP. We support the use of "other relevant evidence supplied from other bodies" and all organisations should be encouraged to gather and provide additional information particularly on diffuse pollution.

Para 2.4 – We agree with the need for the EA to provide Impact Assessment and cost-benefit assessment as part of the consultation on WPZ. Again, we think this could be an integral part of the RBMP process.

Comments on Designation of WPZ and the service of Works Notices to protect the hydromorphology of water bodies

We support the proposal to enable the EA to use WPZ to manage and prohibit a specific set of high risk activities. In addition we think the EA should have additional powers to deal with medium and low risk activities as well, however some guidance in relation to powers and related level of risk would be helpful.

Evidence, impacts and measures relating to Hydromorphology are least

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understood to date. For example, the current draft river basin management plans contain very limited measures relating to Heavily Modified or Artificial Water Bodies, due to either lack of evidence of the risks or impact of relevant measures. It is therefore vital that clearer guidance is given to the EA on the minimum information and evidence requirements for designating WPZ and service of Works Notices.

4. Comments on priorities for identifying WPZ

It is unclear what is meant by the title "Priorities for identifying WPZ" and its relation with paragraphs 4.1 and 4.2. Do the "priorities" relate to the protected areas identified in paragraph 4.2? i.e.

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

Some clarification would be helpful.

Para 4.1 – The current draft RBMPs suggest that most water bodies will not achieve WFD objectives by 2015 and estimate various levels of compliance (ambitions) up to 2027. On the basis of current information, it can be argued that all existing regulatory and voluntary measures are insufficient to meet WFD environmental objectives. Therefore the EA should seek to designate WPZs for all RBDs now.

Para 4.3 – The two criteria identified in the two bullet points do not capture water bodies such as Drinking Water Protected Areas (DWPAs) which are not necessarily linked to "good status". We note that although paragraphs 4.4 and 4.5 make reference to DWPAs, we suggest that there should be a third bullet that sets out how the EA will use WPZs along the lines of:

-“water bodies that are at risk of not meeting WFD objectives for Protected Areas” (e.g. Drinking Water Protected Areas).

As far as we know, to date, the EA has not set any objectives for Drinking Water Protected Areas particularly for surface waters in the draft river basin management plans.

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Para 4.5 – We agree that WPZs should be used as safeguard zones at high priority sites. In addition we suggest that they should allow use of WPZs as statutory safeguard zones when existing measures and voluntary measures have “not achieved the objectives of DWPAs” as set out in Article 7.3 of the WFD.

5 Provisions for appeals

We support the need for an appeal process. It would have been helpful if further details of the appeals process and related Orders were provided as part of this consultation.

Works Notices

We think the proposal for Works Notice and a related appeal mechanism is reasonable.

6 Draft Statutory Instrument amending the Water Resources Act 1991.

Para 6.2 - We support the proposed amendment to remove Nitrates exemption from Section 93 of the Water Resources Act 1991 to allow WPZs to tackle nitrates pollution.

We think the statutory instrument should be clear about the circumstances that would warrant a ban of relevant activities. Diffuse pollution is a challenging and old problem and without clarity on sanctions, bad or poor practices would persist.

7 Draft Statutory Guidance (Annex C)

We note the introduction and background information provided in Sections 1 and 2.

We would like to draw attention to the fact that to date and within the draft river basin management plans no objectives have been set for Drinking Water Protected Areas in line with Article 7 of the WFD. We think this is a major issue which must be addressed as one of the purposes of WPZs is to manage or control diffuse pollution affecting DWPAs.

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We would suggest that the guidance should address how Safeguard Zones for all DWPAAs will interact with WPZs. For example we would expect all drinking water abstraction sources to have designated safeguard zones as a mechanism to “manage and/or control” pollution into such waters. Some of these safeguard zones will be WPZs and others will not. Clarity of these interfaces and interactions would be helpful.

WPZ Applicability

Para 3.4 – Guidance on designation of WPZ in the cross border RBD is useful. For completeness it would be helpful to note proposals for designating WPZ on the Scottish side of a cross border WPZ, if any.

Prioritisation

The text in paragraph 4.1 appears to describe when WPZs can be used. If that is the intention then we suggest that the title is changed. As it stands paragraph 4.1 does not set the “rules” for prioritisation. On the other hand, if the paragraph is intended for “prioritisation of WPZs” then the criteria need improving.

Consultation and Draft Order submission

We suggest the consultation process and related orders should be aligned and integrated with the RBMP process, especially for the second and third cycles. WPZ is a key tool and mechanism to deliver WFD objectives so it should not be a separate process.

Supporting Information

We think the EA should carry out further water quality monitoring in addition to those undertaken by water companies for Drinking Water Protected Areas. The current monitoring, whilst it can indicate the absence or presence of a pollutant, it is not sufficient to show the sources of the pollution. We suggest the information requirement should include additional catchment monitoring by the EA.

Delivering WPZ requirements

We support the need for the orders to set out the consequences of breaching the WPZ requirements. In addition we think a clear marker needs to be set to discourage poor or bad practices.