

Response to Implementing the Water Environment and Water Services (Scotland) Act 2003: Promoting an Integrated Approach

The paper states it had two purposes: to raise the profile of the general duty on Scottish Ministers, SEPA and public bodies to protect the water environment whilst carrying out their functions and to discuss WEWS relevant enactment proposals.

Given the first purpose, it is strange that most of the paper focuses on duties only for Scottish Ministers and SEPA. This is despite noting on p 2 that WFD principles must be embedded in other relevant areas e.g. energy, public water supply etc. The following areas could be usefully added to this list of policy and regulatory areas: flood protection, aquaculture; quarrying and mining; manufacturing; forestry and community planning (human service delivery).

It may be due to the way the WEWS Act specifies enactments (only relevant to Scottish Ministers and SEPA where their functions are relevant to the water environment). Does this effectively mean *no other public bodies* (including other WEWS responsible authorities) have to have regard to social and economic impacts; to promote sustainable flood management and sustainable development and adopt an integrated approach? For example, SNH and FCS are likely to have important contributions to make to the delivery of the WFD and their activities will also need integration.

There are also important unanswered questions about how to achieve integration of public and private activities. Whilst the RBMP AAGs and NAG is a useful forum, these forums will not in themselves achieve integration on the ground. Rather, these processes are highlighting current and potential areas of conflict that need to be resolved through a combination of clarifying responsibilities, providing incentives, creating and/or enforcing regulatory powers.

Therefore, the focus on enactments and on Scottish Ministers and SEPA means the paper does not really do justice to its first aim. It also gives the impression that the main instrument for integration will be through the WEWS relevant enactments. Certainly, this legislative tool is necessary but it is not sufficient to achieve integration and the conflict resolution that any integration will have to deal with. Integration and collaboration is encouraged by legislation, although incentives and other sanctions are also important. However, achieving integration and collaboration is enabled or blocked through operational concerns of organisational culture, individual skills and capacities; how things are prioritised according to roles, remits and responsibilities, and the availability of resources to allow a change in behaviour and practices.

Whilst CAR are a useful regulatory tool that certainly addresses the piecemeal nature of regulations that preceded them, it is perhaps overstating the case that they provide a collaborative and integrated approach to managing the water environment. There are still

many unanswered questions about how the different CAR regimes intersect with one another. It is unclear how CAR are collaborative as the process of licence review involves the regulator in dialogue with the operator, with the possibility for third party comments during the advertisement period.

It would be nice to see **how** the aim in bold on p 3 regarding embedding aims and objectives into all new legislation will be achieved, given that the enactment mechanism is limited in the degree to which it can be used. Likewise, it is not clear how the approaches outlined in the box on p15 will be achieved.

The paper also suggests that the aims and objectives of the WFD are unambiguous and clearly defined. However, published assessments argue that like most policies, there are a number of tensions and ambiguities at the heart of the Directive (e.g. the mismatch between the procedural and substantive aspects of the Directive), and, we would argue, transposed within the WEWS Act. For example, balancing the duty to have regard to social and economic impact; promote SFM, act to achieve SD and adopt integrated approaches will not be easy (see also section 5.1 p4). Decades of material on impact assessment and sustainable development planning highlight that the ‘devil is in the detail’ – such aims are laudable and indeed we praise the Scottish Government for explicitly stating these ambitions – but the main sticky points will be in their implementation. This paper does not really tackle how such trade offs will be achieved, judged and monitored.

How are the Scottish Government’s RBMP Network communicating with the RBMP advisory groups? We had understood that a working group linking land use planning and RBMP was to be set up, but this has not yet happened and is not mentioned in this paper. Is this group no longer required? What mechanism is taking its place?

Comments on section 7:

- We assume that the future Flooding Bill will be designated.
- Why are you not designating the unnamed legislation covering SUDS p8 – this is already designated? (it is not clear from the text, but this is my understanding).
- Why are you not designating the Private Water Supplies Regulations – because it is a function of neither SEPA nor Scottish Ministers?
- Why are you not designating the Planning etc Act 2006 as well as the 1997 Act?

Comments on Section 8:

It seems sensible to take a belt and braces approach and designate all relevant legislation rather than assume that amendments to individual Acts will ensure integration, given that all legislation is subject to interpretation. Equally, even if it is likely or seems obvious that Habitats Directive will specify a more stringent standard, for the avoidance of doubt, it would make sense to designate it.

WE would disagree that LMC regulations are not appropriate for designation – these are a very important measure to deliver diffuse pollution control as well as mitigating other pressures. The funding may not only focus on protecting the water environment, but this is clearly one of its aims so according to your definition on p2, the regulations could be

designated. This argument also holds for the Scottish Rural Development Regulations, which should also be designated to strengthen the opportunity to help the regional development contracts deliver WFD objectives.