

## **Annex B – Consultation Response Form**

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The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. The organisation attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors. UKELA prepares advice to UK Governments with the help of its specialist working parties, covering a range of environmental law topics.

### **Consultation Questions**

Please respond to all those questions that relate to your areas of interest. Any supporting evidence will assist in the analysis of responses.

#### **Water for Nature, People and Business**

1. In looking at implementing legislation, are there any specific areas that you would like us to focus on?

It is suggested that the Welsh Government could consider using its powers under the Regulatory Enforcement and Sanctions Act 2008 to introduce further civil sanctions for offences under environmental legislation as these can be more effective than the payment of fines and lead to better community and environmental benefits.

It would be helpful to have a more informed understanding of how the proposed area based approach under the Environment Bill will work in practice to improve water management.

2. Do you have any suggestions for improving and extending community involvement in integrated catchment management?

We welcome the flexible approach to community involvement at catchment and local area levels. It will be important to consider a variety of means for and the scale of community involvement in order to achieve desired outcomes. In view of the current restraints on public expenditure and the limitations this imposes, consideration should be given to ensuring that the Third Sector in Wales plays a key role in community engagement for the delivery of catchment and local area management plans.

3. We have highlighted the close link between land management and the water environment. Are you aware of examples of good practice which could be reproduced elsewhere?

No.

- 4: What opportunities do you see for developing PES schemes in relation to water management in Wales? What should be the role of Government in developing these schemes?

As illustrated in the consultation document there are opportunities for further development of PES schemes for water management. However, care must be taken to ensure that they do not undermine “the polluter pays” principle. It would be helpful to know of the outcomes of the study into the eco-systems market, before forming a definitive view.

In terms of the role of Government in relation to PES schemes, this clearly relates to providing the legislative framework,

developing policy and guidance, and overseeing delivery arrangements, whilst ensuring an effectively functioning market.

**5. What more could we do to make the most of our water, particularly in terms of supporting our agenda for Green Growth?**

As noted, the use of water for sport, leisure and recreational opportunities has the potential to create jobs in the tourism and hospitality sectors. Water can also be used for educational purposes within and outside Wales, and there are opportunities to capitalise on our water resources for renewable energy purposes, as also noted in the paper. Water intensive industries could also be attracted to Wales through the availability of relatively consistent water supplies.

**Taking Action to Reduce Pollution**

**6. Do you agree with our focus on diffuse pollution? If not, please explain why.**

The case for tackling diffuse pollution appears to have been justified and we welcome the intention to focus on this issue. Nevertheless, we understand that sometimes pollution from point sources, typically found on farms, is incorrectly determined as diffuse pollution. In view of the shortages of staff resources within NRW to deal routinely with such incidents, consideration needs to be given to other mechanisms for ensuring compliance with the Water Framework Directive.

Although the opening paragraph of this section makes the point that everyone can play a part in tackling the problem, there is an absence of specific actions for publicity and encouraging the wider public and others to address the root causes of diffuse pollution. Perhaps the proposed review of existing Government initiatives and funding can consider this point.

7. Are there any additional pollution problems which you believe we should identify? If so, what actions do you believe are required?

Currently, we are not aware of any particular pollution problems that have not been identified. However, it has been pointed out by one of our members that there is a need to reduce the impact of sewer misconnections and that this could be achieved through legislative change to provide sewerage undertakers with enabling powers to address unlawful connections with the public sewer, similar to those currently granted to local authorities.

8. Do you agree with the scope of activity for General Binding Rules, as specified?

In responding to the consultation on the Environment Bill, UKELA commented on the use of General Binding Rules (GBR) recognising that they have the advantages of regulatory transparency, administrative efficiency and consistency/comparability within a sector. However, UKELA cautioned that achieving such outcomes is dependent on the size and type of sector in which they are to be used and the extent to which conditions can be applied in a standardised, rather than bespoke manner. UKELA further commented that in Wales, the relatively small size of certain regulated sectors could mean that there are fewer gains from the use of GBRs and that any efficiency is off-set by the need to keep such rules constantly up to date. The composition of such rules requires careful handling to ensure compliance with Human Rights legislation and to avoid claims of interference with property rights.

It is assumed that NRW will be imposing civil sanctions, rather than criminal sanctions. This needs to be clarified.

9. Do you agree that variable monetary penalties are the appropriate mechanism for Natural Resources Wales to enforce general binding rules?

Yes, subject to them being proportionate to the impact on pollution.

### **Improving the way we plan and manage our water services**

10. Do you agree with the principle behind aligning the Water Resource Management Plan and Drought Plan with the Asset Management Planning Cycle?

In view of the linkages between the three plans, it makes sense to bring together the five year cycles for their production. The proposal for requiring voluntary waste water and sewerage management plans would also be beneficial and, if introduced, these plans should also align with the five year cycle for the other plans. The intention to align drought plans with the area based approach is noted and it is assumed that the Water Resource Plans will be similarly aligned, whilst, as proposed, the waste water and sewerage plans will be linked to LA development plans. Obviously, all three plans will have clear linkages to the Asset Management Plan, so theoretically an integrated five year planning document could be produced, which may be welcomed by the water companies.

11. Do you agree that there is a need to improve our long term planning for waste water and sewerage management?

Yes. Please see comments above.

12. How can we ensure that Water Companies plans link with wider natural resource management plans? Do you have views about how this should be implemented?

Before addressing this question, it is important to take account of the views of Water Companies on the implications of the proposal for their planning processes. Government should be supporting

the efficient and effective running of these companies and not imposing unnecessary burdens on them or requiring a planning process that may not be compatible with business requirements.

**13.** Do you agree with the proposals to encourage more efficient water use? Are there are further actions that can be taken?

As regards the proposed actions to encourage more efficient use of water, UKELA welcomes the Welsh Government's intentions to work closely with Water Companies and others on understanding public attitudes; options for metering water supplies; and greater public engagement on water usage and efficiency. However, in such a difficult policy area it would be useful to have a clear understanding of the challenges that Government faces in shaping public choices in order to achieve environmentally beneficial outcomes for communities and businesses alike.

The provision of water efficiency advice to businesses, communities, householders and the public sector is welcomed.

**14.** Do you agree with our approach to metering? What other factors do we need to consider?

Integration appears to be a commitment within the strategy, so this needs to be applied to all its constituent parts, particularly in view of climate change threats. Members of the public and businesses need to be aware of the importance of conserving our water resources through efficient, sustainable use and management. A commitment to water metering could support the aims of water conservation, but there are a number of implications to be considered in relation to the introduction of water metering for all households and business. It is suggested that the Welsh Government needs to be clear on its strategic priorities in this respect for businesses, households, and the Water Companies themselves. It should, however, be noted that generally issues of fairness arise also in relation to inequitable

burden sharing between metered and unmetered households  
Whilst, it is recognised that metering can lead to a more conscious approach to water usage leading to efficiencies, this needs to be balanced with the cost implications for businesses and poorer households, of which Welsh Water has a relatively high proportion. There are also the cost implications for Water companies themselves in implementing and managing metered water supplies. It is understood that the costs of compulsory metering are high when measured against the benefits and that alternative measures could offer better value for money.

**15.** Do you agree with this approach to managing leakage? Are there are ways we can ensure leakage is sustainably reduced?

The section on leakage contains a number of expectations on Water Companies for managing and improving performance in relation to leaks, and concludes with a statement expecting Ofwat to drive through improvements. Whilst, the quest for improved performance in the management of leaks is commended, there needs to be a balance of benefits against costs in order that water bills remain affordable for the majority of people and businesses.

### **Water affordability and delivering excellent services to customers**

**16.** How can we ensure best practice is shared across the water industry, to ensure that innovative solutions to address water poverty issues are shared with others?

There are number of organisations that can be used to identify and disseminate best practice in dealing with water poverty issues across the water industry, drawing on cases throughout the UK, Europe and more globally. These include academia, Ofwat, Water Companies themselves, the Consumer Council for Water, the Registered Social Landlord sector and trade bodies.

However, the Welsh Government needs to be clear on its specific strategic objectives for tackling water poverty in line with the Tackling Poverty Action Plan; have an understanding of where the research gaps exist; and access to the resources needed to take forward any identified actions.

**17. Have we identified the key issues and actions in relation to water affordability issues?**

The section lists a number of actions and expectations, refers to actions that have already been taken and work that is underway. For example, guidance on social tariffs and its proposed review, and plans to undertake research into water bill debts. At this stage, the outcomes of the reviews and research exercises into water bill debts and the needs of businesses need to be considered before a comprehensive response can be provided to this question.

**18. Are there any other approaches we could adopt to support the needs of both domestic and business customers?**

The research exercises underway should help inform future approaches.

### **Protecting and Improving Drinking Water Quality**

**19. Are there any additional drinking water quality matters that we should consider? Do you agree with our proposal to investigate the transfer of water supply pipes to the water companies?**

Whilst it is probably worthwhile to investigate the possibility of transferring privately owned water supply pipes to Water Companies, this will clearly increase the price consumers and possibly, businesses pay for water and sewerage services. Finding a reasonable and equitable way of paying for this additional work will be a challenge. The benefits in terms of management of leakages and ensuring water quality are, nevertheless, evident. However, it will be important to thoroughly investigate and assess the implications of these proposals, in particular the practicalities

and costs that will inevitably lead to an increase in consumers' bills.

- 20.** Should we develop and consult on a long term strategy to remove the health risks associated with the historic use of lead in plumbing?

UKELA agrees that a strategic approach should be taken to removing the health risks associated with the use of lead in plumbing. This should involve partnerships with retailers, trade people and householders. There are numerous strategies and plans already in existence so it is suggested that consideration should be given to tackling this issue as part of other strategies or plans relating to the Water industry rather than a separate strategy to address the issue.

### **A New Approach for Drainage**

- 21.** Do you agree with our priorities for drainage matters?

Partnership work to encourage greater take up of SuDS and proposals for the setting of standards is welcomed together with the plans for considering how the Water Sensitive Urban Design (WSUD) concept can be adopted in Wales. UKELA is also pleased to note proposals to review the complex legislation relating to drainage with the aim of improving water quality and flood risk management.

- 22.** This section has focused on built infrastructure, which mostly serves developed areas. Is there anything more we should consider for rural areas?

UKELA has noted concerns about the operation of private sewers in rural areas and the proposed actions, which will need careful monitoring to ensure outcomes are acceptable in terms of protecting public and environmental health. It is pleased to see that there are intentions to review and update the statutory

guidance under Section 101A of the Water Industry Act 1991 with the aim of simplification, giving clear guidance and speeding up the process of drainage applications, and possibly amending the legislation.

**23.** Are there any other significant issues which you believe we should have included?

None

### **Supporting Delivery**

**24.** Do you agree with our approach to ensuring that regulation is focussed on the Welsh Government's priorities? Do you have any other views or suggestions regarding the regulatory framework and whether it is fit for purpose?

The proposal to replace the Social and Economic Guidance for Ofwat with a statutory Strategic Policy Statement is noted. UKELA would like to stress that this Statement will need to closely reflect the contents of the Water Strategy, amongst other, relevant Welsh Government strategies and priorities.

It is pleasing to note that the Welsh Government intends to address the constitutional inconsistencies in relation to water and sewerage matters in Wales by pressing for the realignment of regulatory boundaries between England and Wales, and a new devolution settlement that will give the National Assembly for Wales full water and sewerage policy responsibilities, including economic regulation of the sector.

**25.** Are there other actions that we should undertake to support innovation across the water sector as a whole?

The actions proposed relate to the role of Ofwat and opportunities under the Welsh Government's Science and Innovation strategies, which should enable involvement of the academic sector in researching key issues.

**26. What more could the Welsh Government do to effectively support businesses in the water sector to grow and prosper?**

The water industry in Wales provides opportunities for the development of existing and new companies. It also provides opportunities to attract inward investment companies which are either intensive users of water or linked to the provision of equipment or services to the water sector. Actions are listed to address these issues and it is suggested that their effectiveness should be kept under continual review.

**27. Are there other actions that the Welsh Government needs to undertake to support the delivery of this Strategy?**

**28. What information would you find useful to assess how the Welsh Government has progressed against key outcomes and actions in the Strategy?**

One of the problems with the current draft strategy is the absence of an overall vision, strategic aims and objectives to which the many actions can be linked. It is also of concern that the principal actions listed do not entirely reflect all the aspirations, expectations and actions mentioned in the body of the report. The final strategy will need to cover these points in order to inform the basis for development of an effective evidence based evaluation framework.

**29:** We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: