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Blueprint for Water

Response to the draft Flood and Water Management Bill

The Blueprint for Water was launched in November 2006 by a unique coalition of environmental, water efficiency, and fishing and angling organisations to call on the Government and its agencies to set out the necessary steps to achieve “sustainable water” by 2015 and to fully implement the Water Framework Directive (WFD). The Blueprint for Water is a campaign of Wildlife and Countryside Link.

Wildlife and Countryside Link (Link) brings together 38 voluntary organisations in the UK concerned with the conservation, enjoyment and protection of wildlife, countryside and the marine environment. Our members practice and advocate environmentally sensitive land management and food production practices and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together our members have the support of over 8.3 million people in the UK and manage over 690,000 hectares of land.

This response is supported by the following 18 organisations

- Angling Trust
- Association of Rivers Trusts
- Buglife – The Invertebrate Conservation Trust
- Council for British Archaeology
- Froglife
- Herpetological Conservation Trust
- Institute of Fisheries Management
- Marine Conservation Society
- The National Trust
- Pond Conservation
- Royal Society for the Protection of Birds
- Salmon & Trout Association
- Waterwise
- Wildfowl & Wetlands Trust
- The Wildlife Trusts
- Woodland Trust
- WWF-UK
- Zoological Society of London

1. OVERVIEW

The sequence of recent flooding events, environmental concerns, climate change predictions and pressures on the public purse and greater understanding have all acted to raise awareness that society needs to adapt to future flooding and water scarcity in a more sustainable way. This does not mean abandoning the traditional engineered solutions altogether, but rather on the one hand being smarter about when to invest in structural flood defence, and complementing these strategically with a range of other measures that increase the natural capacity of rivers and catchments to store and slow water through habitat enhancement, and on the other, ensuring that homes, buildings and people use water more efficiently, and waste less, rather than overly relying on supply-side measures (some of which will still be needed).

We are, therefore, highly supportive of the intention of the draft Bill to put in place a new approach to Flood Risk and Coastal Erosion Risk Management (FCERM), including greater working with natural processes. This could help deliver Water Framework Directive (WFD) objectives relating to natural river morphology, as well as delivering a wide range of additional benefits for wildlife, landscape, cultural heritage and public access.

However such links and benefits cannot be assumed and we are particularly concerned that opportunities to integrate flood management, WFD and other sustainable development objectives are being missed; an approach that will be inefficient, costly and risk infraction under the EU Floods Directive.

We are also concerned that the entirely reasonable desire to improve reservoir safety and increase riparian landowner awareness of responsibility could have unintended consequences for biodiversity.

We welcome the water efficiency measure featured in the draft Bill; to update the decades-old hosepipe ban restrictions to cover more water uses and technologies, but would like to see further water efficiency measures, not least to reflect recommendations from the Cave and Walker reports to ensure the more sustainable use of water.

2. ISSUES COVERED BY DRAFT BILL PROVISIONS

2.1 New approaches to Flood Risk Management

The Blueprint for Water coalition (the Blueprint) advocates a move away from flood defence, coastal erosion control and land drainage that is aimed solely at achieving the greatest cost/benefit in terms of risk reduction even where adverse environmental impacts are mitigated. We believe the focus should be on flood and coastal management that delivers clear environmental, economic and social objectives through a range of integrated, cost-effective solutions.

Government policy has taken considerable steps towards this in the Vision and Aims set out in 'Making Space for Water', the setting of environmental, social and economic targets in the current set of 'Outcome Measures' and reinforced by the Vision set out in 'Future Water'. Nevertheless, most FCERM schemes can still be characterised as business-as-usual with environmental targets being met off-site from the 'real business' of building flood defences.

Research suggests that culture and legislation are the key barriers as to why so little has changed. Regarding legislative barriers, this draft Bill goes a long way in enabling a wider portfolio of measures to be used to tackle flood risk as envisaged by 'Making Space for Water'. However, by establishing General Duties that specifically relate to risk management, rather

than river and coastal erosion management we believe the draft Bill has missed an opportunity to fully integrate the management of flooding and coastal erosion into the delivery of wider sustainable development objectives.

We believe a more coherent and robust approach would be to give the Environment Agency (the Agency) and Lead Local Authorities a General Duty of Flood and Coastal Management with specific reference made to managing risk to people and property and furthering sustainable development objectives along the lines set out in 'Making Space for Water'. This would embed sustainability and environmental delivery into the concept of what flood and coastal erosion management authorities are tasked to do by Government rather than perpetuate the split between risk-management and environmental delivery.

2.2 Future roles and responsibilities

We believe the Agency's national strategic overview should reflect the Government's broader suite of sustainable development objectives.

The key tool for exercising that overview is the national strategy, and it is clear from the structure of the Bill that this document will be hugely influential in shaping the delivery of Flood and Coastal Management across all levels of operating authorities.

We therefore recommend recasting the General Duty of operating authorities as Flood and Coastal Erosion Management, with reference to risk management and wider sustainability, to directly reflect the objectives of 'Making Space for Water'. Under our proposals we would expect the flood management strategy to include numerical targets/descriptions of the positive contribution the Agency and other operating authorities will make to WFD objectives and UK Biodiversity Action Plan (BAP) targets as well as risk reduction and social targets.

We also recommend that Natural England are removed from the list of bodies that have to have regard to the Agency's National Strategy on Guidance. Natural England plays a vital role in providing advice to Government and its Agencies, as well as regulating activities that have the potential to impact designated sites and we are concerned that requiring Natural England to have regard to this strategy will undermine its independence.

Given the huge influence of the National FCERM Strategy we believe it is vital that the public are not only consulted but also involved in its preparation. This reflects good practice and would help deliver the public engagement requirements of the EU Floods Directive.

We also recommend that the power to carry out FCERM works should be expanded to allow the Secretary of State to direct the Agency to deliver environmental works where operating authorities are failing to meet their obligations.

2.3 Local Flood Risk Management

The Blueprint supports the principal of having a strong local strategy that gives direction to the way in which Local Authorities and Internal Drainage Boards (IDBs) manage flooding. However we have grave reservations about giving County and Unitary Authorities the leadership role envisaged in the draft Bill. We do not believe they have the expertise or resources to take on the role and would have difficulty in providing effective leadership to IDBs who have a much greater knowledge of their districts.

There is also a fundamental question as to whether the proposals to reinforce the split in responsibility between main and non-main river, surface runoff and sewer surcharge are relevant to a householder attempting to understand who to contact about flooding which may come from any number of sources defined in the draft Bill as local and national.

In light of these concerns, we believe the Agency should take on responsibility for developing local strategies along catchment boundaries with Local Authorities given a statutory role in their development. This approach would give absolute clarity of responsibility to the public; allowing the plethora of plans and strategies to be developed along consistent hydrological sub-units while retaining a clear and legally defined role for Local Authorities.

This would ensure that the public have one point of contact for flooding and offer an opportunity to create a much clearer link between local and national strategies as well as Flood Management Plans prepared under the EU Floods Directive. However, we also believe the General Duty for local strategies should be recast to reflect wider sustainability objectives with the content defined on the face of the Bill in the same way as the national strategy.

We also recommend the Agency should be given powers to regulate coastal flooding and erosion works, to ensure compliance with the aims and objectives of the EU WFD.

2.4 Duty to cooperate and share information

We welcome the proposal to give all operating authorities a legal duty to share information and cooperate. However, we believe this should extend to the discharge of all of the operating authorities functions including reporting of environmental improvements and damage that are currently collated as part of the Agency's General Supervisory Duty. To date, the quality and coverage of reporting has been extremely variable making it difficult to assess what progress is being made.

Ideally, this broadening of reporting requirements would stem from a re-casting of the proposed General Duty and subsequent amendments that reflect wider sustainable development duties in managing flooding rather than just managing risk.

Alternatively, the wording of clause 25 could be amended to make specific reference to environmental works undertaken by operating authorities not linked to risk management.

2.5 Sustainable Drainage Systems (SUDS)

The Blueprint welcomes proposals to formalise the process of SUDS design, adoption and funding. This is a long overdue development.

However, we have concerns that tying the definition of Sustainable Drainage to the management of rain-water (clause 219) could create legal ambiguity because, inevitably, these systems will deal with run-off from roads, car-parks and pavements which could be contaminated with any number of pollutants. This should be addressed in the final Bill.

We believe a well-designed SUDS system offers opportunities to:

- Improve the protection of people and property from flooding in the face of a changing climate.
- Restore and mimic natural hydrological processes, slowing down the movement of water to rivers and enhance groundwater recharge.
- Enhancing biodiversity in the urban environment and giving people the opportunities to enjoy wildlife on their doorstep.
- Improve water quality in the rivers, lakes and groundwaters that receive runoff

However, these benefits cannot be assumed and previously poor design has prevented these opportunities from being achieved. To address this we recommend the proposed standards set out a design hierarchy that requires developers and planners to consider these options and only discount them where genuine site constraints exist. For example, it is vital that the standards do not let developers simply discount high-quality multi-purpose surface SUDS

features on the grounds of limited space or ground conditions unless this can be proven to be a genuine constraint.

It is also vital that the design and approval process considers the water quality objectives of the receiving watercourse with reference to objectives set out by the WFD and SSSI favourable conservation status.

2.6 The Automatic Right to connect to sewers

The proposals set out in the consultation go some way to address the Blueprint's call to remove the automatic right to connect to sewers. However, we are concerned that, by giving planning authorities the ultimate decision on connection, the Government is placing too much faith in the ability of companies, the industry regulator, and the Periodic Review process, to influence and keep up with development pressures.

We believe giving water companies the ultimate say about the right to connect is the only way to guarantee people and property are protected. We also believe that simply having the threat of refusal would be a strong driver for cooperation. This power could be balanced with an appeals and "call in" procedure where decisions are contested.

2.7 Regional Flood Defence Committees (RFDCs)

The restructuring of RFDCs provides an opportunity to align their existing functions with the needs of the EU Floods Directive. For example new Regional Flood and Coastal Committees (RFCCs) could provide a strategic overview of the key steps in the development of Flood Risk Management Plans and work with River Basin Liaison Panels to help identify synergies between WFD and EU Flood Directive measures and objectives.

In order to capitalise on this opportunity RFCCs would have to be restructured along River Basin District boundaries. While these boundaries allow for a strategic overview, experience from WFD implementation suggests they are not appropriate for wider public engagement or the detailed planning of measures; these activities should be conducted at a catchment level.

We recommend that RFCCs should be given a formalised role in the implementation of the Floods Directive and the boundaries of RFCCs should be amended to match those of River Basin Management Plan Districts.

2.8 EU Floods Directive

The Blueprint has concerns about the scope and workability of the proposals set out in the draft consultation. We believe the draft Bill falls short of legal compliance with the EU Floods Directive requirements and would fail to provide a useful planning tool to deliver domestic FCERM priorities. We have particular concerns on the following points:

- Clause 52 does not refer to an assessment of floodplains as natural retention areas as required under Article 4.2(d).
- Clause 61 does not detail the elements the Flood Risk Management Plans should consider under Article 7.3 or non-statutory elements set out in Article 7.4.
- The draft Bill fails to set out measures to ensure the active involvement of interested parties, as required under Article 10.2 of the Directive.
- The draft Bill also entirely fails to set out any requirements to coordinate with the WFD or encourage public participation as required under Article 9 of the EU Floods Directive.

We have further concerns that the mix of responsibilities set out in the draft Bill also creates confusion between the Agency, Lead Local Authorities and other operating authorities. This will be complicated further by the practical problem of incorporating local risk assessment,

strategies and maps that have been developed along political boundaries into catchments or river basins, the basic reporting unit of the EU Floods Directive.

We also believe that local authorities are ill placed to make strategic decisions of significant risk at a catchment, river basin or national scale given their local political priorities. This has been amply demonstrated in the delays experienced in signing off Catchment Flood Management Plans (CFMPs) and Shoreline Management Plans (SMPs). As a result we recommend the Agency determines significance in light of information provided by Local Authorities.

To overcome concerns we suggest the Agency is made sole competent authority for implementation of the EU Floods Directive but that Local Authorities are given a statutory role in implementation.

As the Directive clearly requires Member States to encourage the active involvement of interested parties in the production, review and updating of Flood Risk Management Plans (Article 10.2). This active involvement will be vital in both developing and testing assumptions and outcomes of risk assessments as well as ensuring public confidence in the results.

2.9 Water Framework Directive

The Blueprint strongly supports the stated intention to ensure that all FCERM operational and consenting activities are consistent with the requirements of the WFD.

However, we do not believe clause 15 of the draft Bill delivers that intention. In particular we are concerned the proposed caveat “have regard to the desirability of” minimising detrimental effects makes it so weak as to be almost impossible to enforce, particularly when translated from national to local strategies.

We are also concerned that the phrase “minimising detrimental effects” implies that damage to the water environment is acceptable. This does not reflect the legal obligations of the WFD, which establish stringent criteria that must be met before deterioration in status is permissible.

The wording also suggests that damage is inevitable and so overlooks the potential for FCERM operating authorities to deliver improvements while exercising their FCERM function. As a result, the drafting misses an opportunity to identify synergies between Flood Risk Management and WFD, a key requirement of the EU Floods Directive (Article 10).

2.10 Consenting and Enforcement

We believe it should be possible to make consents subject to reasonable conditions; however we are concerned that a combination of weak duties with relation to the WFD (see section 2.9) and lack of conservation skills could undermine the ability of Local Authorities / IDBs to properly consider environmental impacts in their consenting regime.

2.11 Reservoir Safety

Our collective experience of the current regulatory system suggests that uncertainty and discrepancies in interpretation have created inconsistencies in the costs and administrative burden faced by nature reserve and fisheries managers. Key problems surround interpretation of what constitutes “above ground level storage” and whether compartmentalising the water body reduces the volume assessed.

As a result, we would welcome this opportunity to clarify classification both on the face of the Bill and through guidance. However, we are extremely concerned that the changes could have perverse outcomes for biodiversity. For example the threat of regulation could lead to the pre-

emptive draining of water bodies with a high biodiversity conservation value as happened following the introduction of the 1975 Act.

In addition, the cost burden of meeting design and monitoring requirements may limit the ability of organisations to create wetland habitats even where the risks posed to people and property are marginal. There are also practical considerations. Simply establishing the volume of some of the low-level bunded structures on our wetland reserves is a real technical challenge given the difficulty in ascertaining what constitutes “ground level”. As a result it has been impossible for us to accurately estimate how many new fishing or conservation impoundments would be designated as Large Raised Reservoirs (LRRs) at a threshold of 10,000 or 5,000m³.

We therefore recommend 10,000 cubic metres as the default with an absolute exemption for structures within the footprint of larger LRRs, for example, permanent or ephemeral pools within a Flood Risk Management washland.

We also recommend a clear role for the Agency in administering a flexible exemption process for structures over 10,000m³ on the basis of an evaluation of risk factors that include:

- Height of bund above ground
- Topography
- Construction and maintenance programme
- Filling method (pumped are less likely to be overwhelmed by rainfall)
- Third party assets at risk

Where a reservoir is classified as a LRR there is a danger that a one-size-fits-all approach to registration could place undue burden on managers of low-risk LRRs. In particular, the requirement to develop inundation maps could be extremely costly if the same level of detail is required for all LRRs irrespective of location and risk. We therefore recommend the Bill introduces a staged, risk-based approach to registration, allowing the Agency to appraise the level of detail required, particularly in preparation of inundation maps.

3. FCERM ISSUES NOT COVERED BY DRAFT BILL PROVISIONS

3.1 Possible reform to the role of governance of IDBs

The Blueprint believes IDB reform is long overdue, we therefore welcome the consultation. We recommend that the Secretary of State is given powers to publish statutory guidance on how IDBs should reform, setting out boundaries and a timescale for voluntary amalgamation after which compulsion will be used. We acknowledge the loss of small IDBs with progressive conservation policy presents local conservation risk (most notably on the Nene Washes). However, taken as a whole, we believe the benefits of amalgamation (greater accountability and use of professional biodiversity staff) outweighs the risk.

We therefore support giving the Secretary of State the ultimate sanction of compelling IDBs to amalgamate. This will create a real incentive to IDBs to reorganise voluntarily.

We believe that the current Special Levy raising powers of IDBs is out of date and fundamentally flawed. The lack of transparency about how rates are set and what the money is spent on means there is a risk that Local Authority funds are used to cross-subsidise agricultural works. Also, the amount of Revenue Support Grant allocated to support Local Authority Special Levy is based on historic spend rather than an objective risk based assessment of need. As such, there is no guarantee that central Government money from the Communities and Local Government (CLG) is being spent to maximum benefit.

We therefore recommend that Local Authority funding for Flood Risk Management through revenue support be phased out and replaced by competitive bids to the central pot administered by the Agency. This would ensure a consistent, equitable and risk based approach to the way central Government money is allocated to all Flood Risk Management operating authorities while leaving the option open for Local Authorities to 'top-up' funds where local priorities are identified.

We also support the proposal of re-naming IDBs as Flood Risk Management Boards to better reflect the shift from defence and drainage to risk management.

3.2 Reducing property owners' and occupiers' impact on local flood risk

We are concerned that an emphasis on "maintenance" alongside a threat of enhanced legal sanctions could lead to over-zealous channel maintenance and 'gardening' with devastating impacts on threatened and protected species such as the water vole as well as biodiversity more generally, and could help increase the spread of invasive species, often with little or no real drainage benefit. Therefore, it is vital that any move to increase awareness of riparian responsibilities includes information on statutory responsibilities and sensitive channel management.

The Blueprint are also concerned that the threat of tougher legal sanction (Land Drainage Act 1991) could lead to widespread environmental damage. In particular, natural barriers to flow, such as woody debris create niche habitats for rare invertebrate species and can play a vital role in enhancing the physical and biological diversity of watercourses.

4. WATER: ISSUES COVERED BY DRAFT BILL PROVISIONS

4.1 Hosepipe bans

The Blueprint supports the Bill's wording on non-essential bans, as it is essential that water managers are given the flexibility to respond to a variety of water uses into the future as we are unlikely to fully understand what future uses of water may be. We would certainly expect such a ban to apply to all use of hosepipes, sprinklers, pressure washers, in all domestic and commercial settings. However, in addition to enabling a wider range of discretionary uses, we would like these provisions to enable the use of time-limited restrictions (which have worked well in other countries such as the USA and Australia), as this would maximise the sustainability of water usage.

5. WATER: ISSUES NOT COVERED BY DRAFT BILL PROVISIONS

5.1 Time limiting of licences

Currently only 28% of abstraction licences are time-limited, 16,000 have no time limit and only 48% of the licensed volume from these sources is actually used, providing a large block to the fair distribution and sustainable use of water, and to the introduction of market mechanisms and competition. The Blueprint has been advocating a change to 12 year time-limited licences for many years and fully supports the consultation's proposals. We hope that the consultation responses are processed quickly and that action can be taken promptly to incorporate these time-limiting measures into the Bill.

5.2 Competition and water pricing

Cave reported, at the end of April, that there was clear economic benefit to introducing competition to the non-household market and in 'unbundling' water company licences to create

a 'network' licence and a 'retail licence'. In future, once the abstraction management system is placed on a sustainable footing, then there could be 'upstream' competition with licences given to new water suppliers to enter the market. The Blueprint is broadly supportive of the Cave Review's findings and would not object to clauses being added to the Bill to facilitate its recommendations.

Anna Walker is leading an independent review of charging and metering for water and sewerage services which has recently presented an interim report to Defra. This report supported full metering of all domestic consumers in England and Wales with help provided to vulnerable consumers who could be adversely affected. Blueprint fully supports metering, as a cornerstone of effective action on water and energy efficiency in the home. We would support the inclusion of facilitative clauses in a later version of the Bill.

We would like to see the Bill reflect the following recommendations, set out in the final report of the Cave Review and the interim Report of the Walker Review:

- Legislation should enable compulsory metering, including beyond water-stressed areas
- There should be a ban on non-water efficient products being sold on the UK market
- The regulatory and pricing systems for water should reflect the true value of water
- Legislation should allow for the later introduction of a statutory scheme for water efficiency retrofits

The Blueprint for Water
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