



Llywodraeth Cymru
Welsh Government

From: [Redacted – WG Officer 1]
Water, Flood & Coal Tip Safety
[Redacted]

Cleared by: Andy Fraser, Deputy Director
Water, Flood & Coal Tip Safety

Date: 17 May 2022

MINISTERIAL ADVICE

For decision by: Julie James MS, Minister for Climate Change

Subject	River Basin Management Plans – Submission by Natural Resources Wales
100 word summary	<p>The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 place a duty on Natural Resources Wales (NRW) to prepare and submit River Basin Management Plans (RBMP), which are developed on a six-year cycle, for Ministerial approval.</p> <p>NRW submitted the plans for the river Dee and Western Wales River Basin Districts for Cycle 3 on 10 May and are attached for the Minister's consideration, together with supporting documentation.</p> <p>The Minister is invited to approve the plans.</p>
Timing	Routine. A decision is required by 17 June to allow NRW time to arrange the translation and publication of the final plans on 18 July, which will coincide with the start of the Royal Welsh Show. NRW's selected theme for this year's show is 'water'.
Recommendation	<p>The Minister is asked to:</p> <ul style="list-style-type: none"> i) Note the advice; ii) Consider NRW's submission and the draft RBMPs; and iii) Approve the submitted plans.
Decision Report	This decision does require a Decision Report.

ADVICE

Background

1. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (the 2017 Regulations) transposed the EU Water Framework Directive (WFD) requirements in Wales. The WFD and the 2017 Regulations promote a holistic approach to managing water bodies and aim to reduce pollution, improve the condition of aquatic ecosystems, support the sustainable use of water and reduce the effects of floods and droughts.
2. The Regulations are largely implemented via River Basin Management Plans (RBMP), which set the environmental objectives for all water bodies within each river basin district (RBD). RBDs are divided into smaller management catchments which enable localised decision-making, leading to more effective and tailored measures in each RBMP.
3. There are three river basins in Wales: Western Wales which lies wholly in Wales, and the River Dee and the River Severn which are cross border basins with England. NRW is responsible for the development of the RBMP for Western Wales and the Dee. The RBMP for the Severn falls under the responsibility of the Environment Agency (EA).
4. The Welsh Ministers are responsible for approving and publishing the Western Wales plan, whilst the Welsh Ministers and the Secretary of State have joint responsibility for approving and publishing the Dee and Severn plans.
5. RBMPs are updated on a six-year cycle. We are currently in Cycle 3. Cycle 1 ran from 2009 to 2015 and Cycle 2 from 2015 to 2021. The statutory deadline for the publication of the third cycle of RBMP is specified by the 2017 Regulations as 22 December 2021. Due to COVID restrictions which caused difficulties with sampling and lab capacity, there has been a delay in developing the plans. You were informed of the delay by email briefing on 30 June 2021 (please see attached).
6. NRW have prepared the draft RBMPs for the Dee and Western Wales which are attached for your consideration (Doc 2 and Doc 3). Defra has informed water policy officials that the EA is also experiencing delays and are not expecting to submit the draft River Severn RBMP for Ministerial approval until December 2022.
7. Stakeholders have been informed of the delay, including via the Wales Water Management Forum. There is a legal risk associated with the delay which was covered in the previous advice.
8. RBMPs are regarded as the main mechanism for improving water quality in Wales. The implementation of the plans is based on catchment partnerships and cross-sectoral cooperation between a wide variety of stakeholders. Local Authorities, NGOs, the farming sector, angling bodies, universities, energy companies, utility companies and local action groups are amongst those involved in delivering the RBMPs. The integrated catchment-based methodology has shown positive results and a gradual improvement in water quality, evidenced by the latest classification results.

9. The implementation of the WFD Regulations underpins the work needed for the delivery of the Programme for Government commitment of designating inland waters for recreational activities which is mainly driven by the objective to improve environmental water quality in Wales. The commitment also supports the development of tourism opportunities whilst aiming to offer water based recreation to local communities.
10. The proposed measures within the RBMPs are designed to address the key challenges facing water quality in the Dee and Western Wales RBDs, such as the phosphorus failures in Special Areas of Conservation Rivers and contamination by abandoned mines and legacy chemicals.

Classification for Cycle 3

11. Under the 2017 Regulations, NRW is required to monitor surface and ground water quality and collect chemical, physical and biological data in order to classify waterbodies into high, good, moderate, poor or bad.
12. Ahead of the publication of RBMPs, NRW published the classification of Wales' waterbodies on 22 December 2021. You were informed of the results by email briefing, please see attached.
13. A total of 933 surface and ground waterbodies have been classified to set the baseline for Cycle 3. At overall status (ecological and chemical status combined) across geographic Wales, 40% are at good or better status. This represents an improvement of 3% from 2015. At present, 44% of Wales' rivers are achieving a good status.
14. The 2021 data shows 8% improvement in water quality since the first classification released in 2009.
15. There are complex reasons why good status is not achieved under the classification requirements. Annex 2 contains a table which provides more detail regarding the reasons for waterbodies not achieving a good status divided into applicable sectors. Agriculture, urban and transport, water industry and mining and quarrying are identified as sectors causing a large proportion of failures.
16. The main environmental objectives of the WFD and the 2017 Regulations are specified as the prevention of deterioration, and the protection, enhancement and restoration, of water bodies with the aim of achieving good ecological status and good chemical status by 2027. Based on current data and trend analysis, meeting the 2027 deadline is not achievable.
17. Consideration will need to be given to setting targets beyond 2027 which will require the review and potential amendment of the 2017 Regulations.

Approach in Cycle 3 – Opportunity Catchments

18. Many lessons have been learnt in the planning and delivery of RBMPs since the requirements of the WFD were first introduced in Wales, such as the necessity of early engagement with partners. The delivery of RBMPs showed that environmental improvements take time and may not be noticeable in the classification within a cycle, which means that improvement may appear slow and gradual.
19. Regarding the Dee, 28% of water bodies achieved good or better overall status in 2015. The most recent classification shows that this has improved to 38%. Regarding Western Wales, 40% of water bodies achieved good or better overall status in 2015. The most recent classification shows that this has improved to 42%. Please note that the Dee has a much smaller number of water bodies than Western Wales. Improvement in just a few water bodies in the Dee will therefore show as a large percentage improvement in good overall status compared to water bodies in Western Wales.
20. Since the first cycle, NRW's understanding of good status/potential requirements has evolved, and improved monitoring techniques and standards have been reflected in the latest classification. The Well-being of Future Generations (Wales) Act 2015 and Environment (Wales) Act 2016 provide the strategic framework for the RBMPs and the development of a place-based approach which will be introduced in Cycle 3.
21. Opportunity Catchments is a place-based approach to catchment prioritisation. NRW identified ten catchments that represent the best suite of opportunities to deliver sustainable management for water and contribute to the well-being goals. These are:
 - Dee (Wales only)
 - Clwyd
 - Conwy
 - Anglesey
 - Teifi
 - Taff/Ely
 - Cleddau/Milford Haven
 - Swansea Bay
 - Central Monmouthshire
 - Ithon
22. Opportunity Catchments focus staff resource across NRW to support partners to deliver integrated catchment management solutions within these areas. Nevertheless, NRW will continue to work with partners in other catchments that are not selected as Opportunity Catchments, focussing on addressing physical modifications, fisheries restoration plans, metal mine remediation and pollution from wastewater, and rural and urban areas.

Cross Border Waterbodies

23. The cross-border nature of two of the RBDs has presented a challenge of synchronising the development and finalisation of the plans for the Dee (with NRW lead) and the Severn (EA lead). This means that RBMPs for Wales will be published at different times, i.e. the Dee and Western Wales in July 2022,

and the Severn in December 2022. This is despite NRW working closely with the EA and Welsh Government officials with Defra colleagues.

24. This situation is not unprecedented. As a consequence of the flooding crisis in Cumbria in 2015, it was not possible to sign-off England and Wales' RBMPs by the statutory deadline.
25. There is already a level of divergence in the way RBMPs are developed in England and Wales, highlighted by the different strategic and wider legislative drivers which apply in Wales, including the Well-Being of Future Generations Act 2015 and the Environment (Wales) Act 2016. It is possible that divergence will further increase as a consequence of EU-Exit in the future. This will need to be taken into consideration during the review of the 2017 Regulations.

Habitats Regulations Assessment

26. As a routine part of the development of RBMPs and statutory requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, NRW has undertaken a Habitats Regulation Assessment (HRA) of the Dee and Western Wales. Following good practice, NRW consulted with the general public on the draft HRA.
27. Due to the EA working on a different timescale, the EA identified 80 national measures for England after the end of NRW's consultation period. 74 of these measures, described as "planned measures where funding has been committed or there is an established funding mechanism, but where there is currently uncertainty about the specific locations that will benefit from the measures", were not included in NRW's HRA.
28. To address the lack of HRA for these measures, NRW will build in a second step once the Dee RBMP has been published to ensure the final plan will not adversely affect the integrity of any designated European site. This will ensure that there is no delay with the publication of the Dee RBMP until December 2022 when the EA is expected to finalise their RBMPs.
29. Following the consideration of the EA national measures that are spatially linked to the Dee RBMP, NRW will update the HRA with an addendum once the consultation process in England is concluded. This will include the assessment of effects of any added measures. Only measures that pass the HRA would be added to the Dee RBMP programme of measures.

Advice

30. You are advised to consider NRW's submission of the draft RBMPs which are presented for your approval. NRW's submission was accompanied by a letter to the Head of Water, Flood and Coal Tips Safety Division signed by the NRW Executive Director of Operations. The letter is attached at Doc 1 (in English and Welsh) for your information.
31. The full NRW submission includes the following bilingual documents:

- Summary of the Western Wales RBMP – Doc 2
- Summary of the River Dee RBMP – Doc 3
- RBMP overview – Doc 4
- RBMP Habitats Regulations Assessment – Doc 5

32. The submitted RBMP summaries (Docs 2 and 3) contain:

- Description of the relevant river basins
- The baseline status of each water body (classification).
- Summary of Programme of Measures to achieve statutory objectives, including those for Protected Areas.
- Objectives set for each quality element in all water bodies, including an objective for the water body as a whole.

33. Under Regulation 31 of the 2017 Regulations, you have the following options regarding the plans:

- a) approve them, in whole or in part, in the form submitted,
- b) approve them, in whole or in part, either with modifications or subject to such modifications as you may direct NRW to make, or
- c) reject it.

34. The draft RBMP for the river Dee is being submitted for approval by Defra to Rebecca Pow, Under Secretary of State.

Recommendation

35. It is recommended that you approve the submitted draft RBMPs for the Dee and Western Wales. The proposed publication date for the final plans is 18 July 2022.

Legal issues, powers & statutory duties

[Redacted legal advice]

Programme for Government

- 36. The publication of updated RBMPs is a statutory duty placed on the Welsh Ministers under the 2017 Regulations. It is linked to policy objective to improve water quality across Wales, as well as statutory commitments under retained EU law.
- 37. The Programme for Government commitment of beginning to designate inland waters for recreation is driven by the objective of water quality improvement. RBMPs apply a holistic approach to water management and are seen as a key mechanism for improving water quality.

Financial implications

38. There are no additional financial costs for the Welsh Government arising from the recommended action.

Communications

39. Officials will work closely with colleagues in NRW to develop a communication plan and lines to take following the publication of the RBMP for the Dee and Western Wales.
40. The plans will be published bilingually on NRW's website on 18 July 2022. The date coincides with the start of the Royal Welsh Show which NRW customarily attends. NRW's theme for this years' show is 'water'.

Clearances

41. Legal Services have considered and cleared this advice.

Annex 1: ASSURANCE AND COPY RECIPIENTS**CLEARANCE TRACKING**

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Group Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CCRA/025/22
	Cleared by Strategic Budgeting?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Legal	Legal issues?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by relevant lawyers?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Governance	Novel and contentious issues?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Corporate Governance Centre of Excellence?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, Andy Fraser, Deputy Director of Water, Flood and Coal Tip Safety have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made.

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account and that the actions and decisions take account of regularity, propriety and value for money.

COPY LIST

All mandatory copy recipients (as indicated in the guidance). Additional copy recipients specifically interested in this advice:

- PS Minister for Rural Affairs, and North Wales, and Trefnydd
- PS Deputy Minister for Climate Change
- Gian Marco Currado
- Tracey Burke
- [Redacted 12 WG officials]
- Flood and Water Mailbox
- CCRA Finance
- ESNR Comms
- Rural Affairs and North Wales Communications
- CCRA Governance and Compliance