


## Briefing Paper

### Written evidence to the Environment and Rural Development Committee on the implementation of the WEWS (2003) Act, Annual Report 2005

Scottish Environment LINK is the forum for Scotland's voluntary sector environment organisations. LINK Freshwater Taskforce welcomes the opportunity to submit evidence to the Environment and Rural Development Committee on progress of implementation of the Water Environment and Water Services Act (WEWS Act) in Scotland, the Act that transposed the European Water Framework Directive (WFD), the most important piece of European environmental legislation aiming to protect and enhance the water environment. 

The WEWS Act is a progressive piece of legislation and significant decisions need to be taken each year to ensure its proper implementation. LINK Freshwater Taskforce has been continuously engaged in the implementation of the WFD in Scotland and this submission seeks to highlight areas of good progress, as well as those areas of some concern. Comments are made in the following areas:

**General issues** - Policy integration; Public participation; Funding

**Specific issues**- Responsible authorities; Designating Ministerial functions; Sustainable Flood Management; Further pressures and impacts analysis; Restoration and Remedial measures; Agriculture and diffuse pollution; Scottish Water; Marine issues

#### **General issues**

**Introduction:** So far, the implementation of WFD has involved putting in place structures and policies to ensure that statutory requirements are fulfilled. For the first time, Scotland has a statutory framework in place that allows us to manage activities that could damage the water environment. Successful implementation of the WFD will continue to need to connect the management of all activities and work towards achieving a common objective. However, with all the major structures in place, it is time to start delivering on the ground. This will only be achieved by taking a more proactive approach. SEPA needs to take clear leadership, actively encourage restoration, catchment working and good water management. Proper policy integration, public participation and funding will be key to making the Act really work for a healthy and fully functioning water environment that benefits all.

**Policy integration:** The Scottish Executive has been working closely across departments and SEPA to ensure integration with key policy areas. Good progress has been made in some areas, but much better policy integration is still required in relation to some areas particularly land use and including farming, fishing, marine and forestry.

For example, the recently published consultations on Fisheries and Aquaculture Bill and the Rural Development Plan for Scotland take little account of the catchment based approach to water management that is required by the WFD. Policy integration is key in delivering WFD objectives, and integration is a statutory obligation in the Act, therefore relevant departments need to ensure this is done in the most effective way.

**Public participation:** The Scottish Executive and SEPA are committed to engaging stakeholders in key areas of WFD implementation. We are really encouraged by this commitment and the progress that has been achieved to date. Several stakeholder groups have been established, which are welcome and SEPA has been commended in Europe for its role in Scotland's WFD implementation.

However, successful implementation of the WFD will also require a wider engagement from local communities in the River Basin Management Plan process. This level of engagement may be difficult to achieve using 'traditional' approaches so will require a more 'proactive' approach. The new River Basin Management Strategy for Scotland presents clear thinking on public engagement and highlights SEPA's commitment to achieve the appropriate level of participation. It is clear the role of SEPA is changing, and while SEPA has accommodated this change to date, the organisation will need government support, adequate funding and encouragement to take its strategy forward.

**Funding:** The success of the WEWS Act implementation depends on adequate resourcing of the Competent Authority (SEPA) and others designated to have responsibility towards delivering River Basin Management Plans. During the last Spending Review allocations, SEPA faced a significant shortfall in the implementation costs, which threatened to undermine the implementation of WFD in Scotland. SEPA itself stated that "*the cuts made to the resource plan were considered by SEPA to represent an acceptable level of risk. However, it could no longer be claimed to be fully delivering WEWS/WFD requirements*" (Minutes of the Regulatory Stakeholder Group meeting, 22<sup>nd</sup> of October 2004). Whilst further funding of £2.85 million was allocated to SEPA to allow important capital and research projects to take place, this should not be repeated in future.

The Committee might seek assurances from the Minister that SEPA and others involved in WFD implementation get adequate funding to fulfil their duties. To fulfil the objectives of the Act the Scottish Executive could consider funding routes that may be available due to the integrated nature of the Act. One example might be to join up different aspects of the Climate Change, Agriculture/Diffuse Pollution and Flood Scheme budgets to fund wetlands in catchments, another to look creatively at the funding streams that are available through Rural Development Plan funding to deliver WEWS Act requirements in relation to catchment working.

## **2. Specific issues**

**Responsible authorities:** Designating responsible authorities under Section 2 of the WEWS Act is an important step in ensuring an integrated approach to water management and protection. The Scottish Executive recently issued a designation order that identifies roles of the key public bodies in delivering WFD objectives. However, what that designation will mean for them in practice is still unclear. Responsible authorities need *direction* and *guidance* from the Scottish Executive to ensure that they understand the new duties and are able to fulfil their requirements.

Guidance may be adapted using some good examples of how bodies, which are now, or largely involve, Responsible Authorities, have managed to work together to achieve an integrated approach to a catchment-based issue. *The Glasgow Strategic Drainage Scheme* brought Glasgow City Council, Scottish Water, SEPA and Scottish Enterprise Glasgow together to deal with urban flooding problems in Glasgow<sup>1</sup>. *Three Dee Vision* brought Scottish Water, SNH, SEPA, Aberdeenshire Council, Aberdeen University and MLURI together with the local community on the Tarland Burn Catchment on Deeside to address catchment diffuse pollution issues<sup>2</sup>. Both have been successful at ensuring integration. The *Tweed Forum* also provides an excellent example of partnership working directed at dealing with multiple issues within a large catchment<sup>3</sup>.

**Designating Ministerial functions:** Section 2 of the WEWS Act requires the designation of relevant SEPA and Ministerial functions. However, this requirement has not yet been fulfilled. The role and functions of Ministers and SEPA in applying the terms of the Act are not clearly set out anywhere yet, so it is not clear where their responsibilities fall and therefore who to hold accountable for ensuring the delivery of specific functions.

This is very important, since some organisations and bodies that are not agencies or departments of the Scottish Executive also have a role in delivering WFD requirements and such bodies need to be regulated through Ministerial functions. For example, the economic regulator for Scottish Water – the Water Industry Commission (WIC) has no direct duty to consider sustainability when costing Scottish Water’s investment programmes but Scottish Water does have to fulfil its legal duties on sustainability and sustainable flood management when drawing up that programme. This has impossible implications for Scottish Water, who are being instructed to consider the long term best value, while the WIC is primarily concerned with short term costs. This issue needs to be addressed by designating WIC’s functions under the Section 2 of the WEWS Act, and/or by giving the WIC guidance on to how to take consideration of SW’s sustainable duties.

**Sustainable flood management:** The Scottish Executive has made some progress in promoting and discussing the duty in Section 2 of the WEWS Act on Scottish Ministers, SEPA and responsible authorities to ‘promote sustainable flood management’. However, three years after the passing of the Act and the implementation of this statutory duty, nothing different has yet actually happened. It does not appear to have influenced the development of flood solutions nor has it influenced a change of approach to flood alleviation on the ground. Despite the clear direction from Parliament during the passage of the legislation, there is still much to be done on the implementation of this duty and any obstructions to progress need to be addressed.

The process to even define Sustainable Flood Management has been too slow. The public consultation to agree definition has not been published yet, after a two year wait, so the key principles and guidance that should aid implementation have not yet been agreed or put in place. While the process is slow, one obstruction to delivering the duty may be that the Flooding Act 1961 currently limits the scope of sustainable flood management schemes and the use of forest and agricultural land for involvement in flood processes. The Scottish Executive is still taking their directions for spending on flooding from this piece of legislation rather than the more recent Act passed by the Scottish Parliament.

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<sup>1</sup> [http://www.wapug.org.uk/past\\_papers/Autumn\\_2005/A2005fleming.pdf](http://www.wapug.org.uk/past_papers/Autumn_2005/A2005fleming.pdf)

<sup>2</sup> <http://www.3deevision.org/>

<sup>3</sup> <http://www.tweedforum.com/>

This means that Scottish Executive spending is not targeted at delivering the Sustainable Flood Management duty as set out by the Scottish Parliament in the Water Services and Water Environment Act. To deliver the duty, the Executive needs to direct resources and integrate policies on agriculture, land use planning and statutory planning systems to be in line with the principles of the WEWS Act, not the 1961 Act. It should, if necessary bring forward proposals to revise dated legislation from 1961 to be compatible with the WEWS Act passed in 2003.

In order to fully support the implementation of the duty, more research is also needed to improve understanding of the cause of floods and benefits of soft engineering techniques on flood rates and flows. Efforts so far have concentrated on inland flooding. The Scottish Executive needs to focus more on coastal areas and put in place appropriate strategies to ensure sustainable adaptation to the impacts of flooding and climate change at coasts too.

**Further Pressures and Impacts analysis:** Further characterisation is currently focusing on refining water bodies<sup>4</sup> which may have been classified as being at risk of failing to achieve WFD objectives, but where the certainty of that assessment is low. This is important in order to target improvements. However, the UK administration (including the Scottish Executive) has made a commitment in March 2005 to further assess the status of 'small water bodies', which fall below the size or importance criteria of the initial assessment<sup>5</sup>. These include some of the most important components of rivers, such as springs, headwaters, small lochs and associated wetlands. Whilst some work on small water bodies is being undertaken in England and Wales, Scotland has fallen behind this commitment. Scotland has a substantial number of small water bodies, which are of biodiversity, water resource management or other importance (such as BAP priority habitats) and the limitations of the current assessment leaves a significant number of water bodies without WFD protection.

**Restoration and remediation measure:** Catchment restoration is one of the key mechanisms for achieving good ecological status under the WFD. Whilst much of it will be delivered through RBMP and other initiatives, there will be times when SEPA will be required to take direct action. SEPA does not currently have powers that would allow it to carry out such habitat restoration. Such powers should include requiring the removal of unused dams, restoring morphological features, wetlands and natural river flows where damage to watercourses occurred in the past. The Scottish Executive stakeholder group, which concluded that no immediate steps were needed to be taken, consisted only of statutory organisations. External stakeholders and NGOs have not been given an opportunity to express their views on this matter. These regulations will take time to develop and, so far, there has been little progress to deal with this issue. Remedial and restoration powers will be important in achieving WFD objectives, and should be reconsidered as a matter of urgency.

**Agriculture and Diffuse pollution:** The Scottish Executive has recently consulted on measures to control diffuse pollution from agriculture and forestry. Diffuse pollution is a complex problem, which requires well thought out solutions. The proposed approach in Scotland does not go far enough, and offers a piecemeal solution, with no long-term thinking, effective leadership or enforcement. It heavily relies on existing measures, soft regulations and support provided through the reform of the Common Agricultural Policy (CAP), which has a limited budget.

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<sup>4</sup> Water bodies may be entire bodies of water such as loch, or parts of bodies of water such as river sections. Certain size and importance criteria have been applied to enable better management and reporting on Scotland's water environment.

<sup>5</sup> Water Framework Directive: Note from the UK administrations on the next steps of Characterisation, March 2005

This approach will not deliver changes in land use and land management that are required to achieve WFD objectives. The Scottish Executive needs to put in place more effective regulations. Farmers and other land managers need more support and advice to understand where the problem comes from and bring about improvements in water quality. For example, DEFRA in England and Wales is investing £25 million in a new initiative 'Catchment Sensitive Farming', which includes putting in place catchment officers to provide farmers with free guidance and advice on the ground to aid improvements in priority catchments. It also includes a separate budget of £5 million in grant aid on capital investments and farm improvements. Such measures should be considered in Scotland.

**Scottish Water:** Scotland has a long history of chronic under-investment in environmental improvements to water services, and an appalling rate of water leakage, which is currently estimated at over 50% and the poorest standards in some of Scotland's most disadvantaged areas, financially and geographically. The Quality and Standards III investment programme (2006 – 2014) provides an opportunity to address some of these issues and bring better protection and improvements in water quality and environment. Whilst we greatly welcomed the Q&S III public consultation process, it did not deliver proper public scrutiny. Especially with such strong public interest in this area, the consultation process should have made public engagement more accessible.

It is of serious concern that there appears to be a 'mismatch' between the roles of the Scottish Water and that of the Water Industry Commission (WIC), its economic regulator. In theory, the regulatory framework should work; but in practice Scottish Water is faced with limitations in fulfilling its legal duties on sustainability, biodiversity and sustainable flood management. The WIC estimates the cost of investment projects on the basis of economic parameters (short term, cheap solutions), and by doing so does not give SW room for sustainable development and to design projects that would solve problems over longer term, enhance biodiversity or contribute to sustainable flood management. Whilst the new regulatory framework is in its infancy, it is currently failing to enable SW to fulfil its core duties and make investment more sustainable.

**Marine issues:** The WEWS Act requires the achievement of good status out to 3 nautical miles into sea. So far, there has been little progress to meet the Scottish requirements, and no direction from the Scottish Executive as to how this will be achieved. Marine areas need to be protected against damage caused by operations such as dredging and other activities impacting on seabed and shoreline. Current control systems for engineering activities lie with the Fisheries Research Services, which has very limited remit, and does not fully meet the requirements of the WEWS Act. This needs to be addressed as a matter of urgency.

**Conclusion:** Much progress has been made on this progressive piece of legislation, but, as outlined, there are some obstacles in the way that could hinder further progress. With the WEWS Act, Scotland established itself as a leader in this area and has been commended on its leading role within Europe. It is hoped the Scottish Executive will seek to address the issues that have become apparent in implementation in order to keep up momentum, to meet obligations under Scottish and European statute and essentially to ensure that Scotland maintains a healthy water environment for all who rely upon it.

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