

Scottish Executive Environment Group

**Implementing the Water Environment and  
Water Services (Scotland) Act 2003:  
The Designation of Responsible Authorities**

**A discussion paper**

July 2005

<b>CONTENTS</b>	<b>PAGE</b>
<b>INTRODUCTION</b>	<b>2</b>
<b>BACKGROUND</b>	<b>3</b>
<b>DESIGNATION OF RESPONSIBLE AUTHORITIES</b>	<b>4</b>
<b>SECTION 1: REQUIREMENTS</b>	<b>6</b>
<b>SECTION 2: BODIES CONSIDERED FOR DESIGNATION</b>	<b>16</b>
<b>SECTION 3: PROPOSED FUNCTIONS</b>	<b>19</b>
<b>SECTION 4: ISSUES FOR RESPONSIBLE AUTHORITIES</b>	<b>21</b>
<b>SECTION 5: NEXT STEPS &amp; ADDITIONAL INFORMATION</b>	<b>22</b>
<b>ANNEX A</b>	<b>23</b>

## **INTRODUCTION**

This discussion paper sets out one aspect of our proposals for the implementation of the requirements of the Water Environment and Water Services (Scotland) Act 2003.

The Act established a broad framework for the future management of our rivers, lochs and coasts. Under the Act we are required to introduce secondary legislation on a range of issues, and we are consulting on and discussing those issues during the course of 2005.

This discussion paper focuses on one aspect of implementation of the Water Environment and Water Services (Scotland) Act 2003:

### **The designation of Responsible Authorities**

This paper sets out how we envisage the role of Responsible Authorities and once comments have been received it will form the basis of a policy note for designation.

Comments on the proposals should reach us at the address below by 24 October 2005. Thereafter we hope to lay the Designation Order in the Scottish Parliament later in 2005.

## **RESPONSE ARRANGEMENTS**

Please send your views and comments on the proposals in this discussion paper to:

Water Division  
Scottish Executive  
Area 1-H, Victoria Quay  
EDINBURGH EH6 6QQ

Tel: 0131 244 0386  
Fax: 0131 244 0245  
E-mail [waterdivision@scotland.gsi.gov.uk](mailto:waterdivision@scotland.gsi.gov.uk)

Responses should reach us by 24 October. Earlier responses would be welcome.

## **BACKGROUND**

The Water Environment and Water Services (Scotland) Act 2003, (“the Act” or “WEWS”) transposed the EC Water Framework Directive (“the Directive” or “WFD”) into Scots Law. The aim of the Act is to protect and restore where possible the ecological status of the water environment. Over the past few months we have been working to develop the secondary legislation required under the Act. This will ensure that Scotland’s water environment, which is an extremely valuable resource, is protected as comprehensively as possible.

One element of secondary legislation is the designation of responsible authorities. The power to designate responsible authorities is to be found under Section 2 of the Act. The aim of designating responsible authorities is to ensure that public bodies whose plans and activities impact on the water environment carry out their activities in a way that secures compliance with WFD objectives. In doing so, these responsible authorities will act to support SEPA in its lead role as competent authority in Scotland.

Two previous consultation papers, “Rivers, Lochs, Coasts: The Future for Scotland’s Waters” and “The Future for Scotland’s Waters – Proposals for Legislation” sought feedback on the implementation of WEWS. We said in our first consultation paper that river basin management planning would need to be integrated with a wide range of public bodies’ functions, policies and planning regimes. Examples include national parks planning, coastal zone management, local biodiversity action plans, and salmon and freshwater fishery plans. The rationale is that river basin management plans (RBMPs), although focussed on water issues, will have implications for a whole range of policy areas. River basin management planning would be the primary means by which water environment objectives are achieved. It would be much easier to implement RBMPs however, if WFD objectives and priorities were considered by public bodies at an early stage in their decision making process.

Most of the respondents to our earlier consultation papers agreed with our proposition that the Act should require public bodies to play a role in ensuring effective WFD implementation in Scotland. It was felt that this would be the best way of achieving the necessary interaction between river basin management planning and the other relevant functions, policies and planning regimes of bodies which have an impact on the water environment.

## DESIGNATION OF RESPONSIBLE AUTHORITIES

WEWS gives Ministers the powers to designate public bodies as “responsible authorities” in relation to their statutory functions that have an impact on the water environment. The purpose of such a designation is to ensure that those public bodies carry out their functions in a way that is not contrary to achieving the objectives of the Directive and promotes a sustainable approach to managing our water environment. Most importantly, we wish to ensure that public bodies take consideration of the objectives of WFD at an early stage in their work.

The key requirements of responsible authorities, as set out in Section 2 of WEWS, are as follows:

- to ensure compliance with the Directive when carrying out their designated functions.
- to have regard to the social and economic impact that may result from carrying out those functions.
- Where it is consistent with the purpose of a function;
  - (a) promote sustainable flood management
  - (b) act in the way best calculated to contribute to the achievement of sustainable development.
  - (c) adopt (if practicable) an integrated approach by co-operating with other responsible authorities with a view to co-ordinating the exercise of their respective functions.

SEPA and Scottish Ministers are also required to fulfil these duties when exercising their functions under relevant enactments. We will in due course be designating relevant enactments of Scottish Ministers and SEPA as a separate exercise.

Section 11 of the Act also makes provision for the following, as regards river basin management planning:

- SEPA must consult every responsible authority which has functions exercisable in or in relation to a river basin district on the relevant river basin management plan or sub-basin plan and take account of any views expressed.
- A responsible authority may, if it thinks fit, prepare a plan in relation to a particular aspect of water management within the district, as part of a sub-basin plan (section 15 of the Act).
- Responsible authorities must, on being requested so by SEPA, provide SEPA with information in their control and such assistance as SEPA may reasonably seek in connection with the exercise of their functions under river basin management plans. If SEPA and the responsible authority cannot reach agreement as to whether information is reasonably sought or required they can refer the matter to the Scottish Ministers, whose decision is final.

The aims and objectives of the Directive are as follows:

- An integrated approach to water management
- To protect and promote the ecological health of the water environment across Europe
- The identification of River Basin Districts – a source to sea approach
- Participation
- Good ecological status for all water where possible

The advantages of designating responsible authorities include:

- Advance preparation;
- A Balanced Approach;
- Sustainable Flood Management;
- Sustainable Development; &
- Coordination.

These advantages will be explored further in the detailed examinations of the requirements that follow in Section 1.

This paper sets out our draft policy for designation of responsible authorities. We hope it will help to inform public bodies who have been proposed about the role of responsible authorities. The discussion paper does not however constitute the Executive's finalised policy on this area and any comments you may have on its contents will inform the policy statement we plan to publish prior to designation of responsible authorities.

*Your comments on any aspect of this paper are welcome and particularly so in places highlighted.*

## **SECTION 1: REQUIREMENTS: Interpretation, Key Actions, Benefits & Examples.**

### **Requirement:**

**“THE RESPONSIBLE AUTHORITIES MUST EXERCISE THEIR DESIGNATED FUNCTIONS SO AS TO SECURE COMPLIANCE WITH THE REQUIREMENTS OF THE DIRECTIVE”**

### **Interpretation:**

This requirement is key to ensuring that there is an awareness of WFD objectives amongst public bodies with functions that may impact on the water environment. Like any other statutory duty to comply with a piece of legislation, it is devised to ensure that when a public body plans to carry out a function that may impact directly or indirectly on the water environment they act with the objectives of WFD in mind.

We propose that this should be a simple and straight forward mechanism. The majority of public bodies are already under a duty to consider the environmental impact of their actions and this is designed to put an extra emphasis on consideration of WFD and the water environment.

### **Key Actions:**

We would envisage that responsible authorities would be required;

- to seek advice from SEPA where there may be potential implications for the water environment,
- avoid carrying out their functions in a way that is contrary to the aims and objectives of WFD, and
- to have regard to the River Basin Management Plan (this is required of all public bodies whether designated responsible authorities or not)

### **Benefit: More Effective Consideration of WFD Objectives**

One of the greatest benefits to be gained from designating responsible authorities is the opportunity for more effective consideration of WFD objective within the internal workings of the public body.

Ideally, designation as a responsible authority would ensure;

- earlier consideration of the implications of WFD,
- earlier consultation and discussion with SEPA,
- earlier coordination with other responsible authorities.

Thereby ensuring;

- greater likelihood of meeting WFD objectives,
- effective use of time and resources.
- no unexpected surprises for operators later in the process, and
- a lessened likelihood of dispute

**Example 1:****Local Authorities and Planning Functions**

Under Section 11 of the Town and Country Planning (Scotland) Act 1997 every local authority is obliged to prepare local plans for all parts of their district. These plans include the authority's proposals for the development and other use of land in that part of their district or descriptions of development or other use of such land. In either case the plans include such measures as the planning authority think fit for the conservation of the natural beauty and amenity of the land, the improvement of the physical environment and the management of traffic. (Planning legislation is likely to change shortly as a result of the forthcoming planning Bill and this area will therefore have to be monitored to ensure any Responsible Authorities Orders are up to date.)

**Without designation as a responsible authority**

In a situation where a proposal for development is likely to have an impact on the water environment the planning authority would not necessarily consider the implications for WFD and the possible interaction with the River Basin Management plan until plans for a development are in their final stages and developers are beginning to think about construction. Prospective developers may have made agreements and investment decisions on the basis of development plans from the local authority. This could lead to a number of problems where a proposal could be contrary to the objectives of WFD.

**With designation as a responsible authority**

Designating planning authorities as responsible authorities in respect of duties outlined in Section 11 of the Town and Country Planning Act would ensure that WFD requirements were considered at the outset in structure and local plans that will then be coordinated with river basin management plans. We can best protect the water environment using plans that support each other's objectives by developing complementary rather than conflicting plans.

There may be instances where such strategic co-ordination is not possible but it is expected to be the exception rather than the norm.

This example could also apply to **National Parks Authorities** in respect of their role in handling planning applications within National Parks.

*We would particularly welcome other examples of how your organisations would be affected by designation as a responsible authority.*

**Requirement:**

**“IN SECURING COMPLIANCE WITH THE REQUIREMENTS OF WFD RESPONSIBLE AUTHORITIES MUST HAVE REGARD TO THE SOCIAL AND ECONOMIC IMPACT OF EXERCISING THEIR FUNCTIONS”**

**Interpretation:**

This requirement recognises the complex nature of decision making by public bodies. The Water Framework Directive focuses upon protection of the water environment but we expect responsible authorities to also consider the social and economic value of an activity to ensure the correct balance is achieved. This is vital to the success of the Directive and integrated management of the water environment.

**Key Actions:**

When carrying out those actions that will secure compliance with WFD, such as having regard to RBMP or going to SEPA for advice, a responsible authority would have to;

- Recognise that ‘less stringent objectives’ can be set under WFD and these will be set down in the River Basin Management Plan and signed off by Scottish Ministers.
- Ensure that they have regard to the social and economic impact of exercising their own functions.
- Aim to achieve the most appropriate balance between protection of the water environment and social and economic impacts when exercising a function that may impact on the water environment

**Benefit: A Balanced Approach**

The rationale for requiring responsible authorities to consider the social and economic value of an action is to ensure that in implementing WFD, economic and social considerations are taken into account in the protection of the water environment.

For example, when a public body is exercising a function such as the approval of an activity, the approval or otherwise of that activity should involve careful consideration of social and economic outputs alongside environmental protection. A balanced and measured approach allows for complexities and provides flexibility without endangering the environment.

**Example:**

**District Salmon Fishery Boards**

**Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003**

District Salmon Fishery Boards have a responsibility to protect and improve salmon stocks under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. This includes stock protection, habitat enhancement works and hatching operations that may involve installing a structure within the water body. When making decisions regarding the protection of fish stocks they would have to consider both the social and economic outcome of carrying out the works and how those works might effect the water environment.

A result of weighing up both sets of outputs should result in;

- sensible stock protection by trained bailiffs,
- sensitive habitat enhancement works along riparian zones and
- well considered hatching operations, delivering restocking programmes.

This will ensure the protection of fish stocks at the same time as using the most appropriate techniques to protect the water environment.

*We would particularly welcome other examples of how your organisations would be affected by designation as a responsible authority.*

**Requirement:**

**“IN SECURING COMPLIANCE WITH WFD AND AS FAR AS IS CONSISTENT WITH THEIR DESIGNATED FUNCTIONS RESPONSIBLE AUTHORITIES MUST PROMOTE SUSTAINABLE FLOOD MANAGEMENT”**

**Interpretation:**

When carrying out any designated function that has an impact on flooding, responsible authorities will need to ensure that they promote sustainable flood management. The National Technical Advisory Group on Flooding Issues (NTAG) has helped to develop proposals for how responsible authorities might carry out the requirement of promoting sustainable flood management. The group has produced a definition, a set of objectives and a set of principles for sustainable flood management and work has started on developing measurable indicators. The Executive plans to consult widely on this work in 2005.

Summary of National Technical Advisory Group’s findings on sustainable flood management

The National Technical Advisory Group was set up in November 2003 to offer advice to the Scottish Executive on flooding issues. It was given a one year lifespan. The group was asked to consider the meaning of sustainable flood management and proposes the following draft definition:

*“Sustainable flood management provides the maximum possible social and economic resilience\* against flooding, by protecting and working with the environment, in a way which is fair and affordable both now and in the future.”*

\* 'resilience' means: 'able to recover quickly and easily'. The Executive uses it to deliver the 'four As' of sustainable flood management: Awareness + Avoidance + Alleviation + Assistance.

The National Technical Advisory Group proposes that sustainable flood management should be an overall objective to **meet needs for resilience against flooding** and this should be balanced by four underlying principles covering social, economic, environmental and future generation needs. Twelve draft principles setting out how objectives might be delivered, have also been developed.

The Executive is currently considering how these objectives and principles might be measured to assess adherence to sustainable flood management and what results it is achieving.

**Key Action:**

We envisage that responsible authorities, in relation to their designated functions, would be required to comply with advice issued on sustainable flood management when making any decisions regarding flood risk management.

The work started by the National Technical Advisory Group on how responsible authorities might take forward their duty to promote sustainable flood management will be developed in 2005 by the newly formed Flooding Issues Advisory Group.

### **Benefit: Sustainable Flood Management**

There is general agreement that a requirement to promote sustainable flood management is long overdue. For example, this requirement will ensure that any flood prevention measures taken in the future work as closely with the natural environment as possible, ensuring its protection for future generations.

#### **Example:**

##### **Local Authorities and Flood Management**

The 1961 Flood Prevention Act provides Local Authorities with powers to prevent and alleviate flooding on non-agricultural land. When carrying out their functions under the 1961 Act they will have to do so in a way that will promote sustainable flood management and comply with the requirements of the WFD.

##### **Without designation as a responsible authority**

Many engineering works contained within flood prevention schemes will require registration or licences under the Controlled Activities Regulations which come into force fully in April 2006. Not all flood prevention schemes will be covered however and Local Authorities would have no duty to consider sustainability if they were not designated as responsible authorities. This would mean they could advocate flood prevention schemes that are contrary to the principles of WFD.

##### **With designation as a responsible authority**

Designating Local Authorities as responsible authorities and expecting them to follow guidelines on taking a sustainable flood management approach to developing flood prevention schemes would help ensure consistency of approach for all schemes. It would also serve to endorse the WFD principle of integrated management for all water bodies.

Examples of activities Local Authorities could encourage would include promoting barriers that can be extended in the future should they need to be raised, rather than rebuilding new barriers, and considering schemes to store water on land.

*We would particularly welcome other examples of how your organisations would be affected by designation as a responsible authority.*

**Requirement:**

**“IN SECURING COMPLIANCE WITH WFD AND SO FAR AS IT IS CONSISTENT WITH THEIR DESIGNATED FUNCTIONS, RESPONSIBLE AUTHORITIES MUST ACT IN THE BEST WAY CALCULATED TO CONTRIBUTE TO THE ACHIEVEMENT OF SUSTAINABLE DEVELOPMENT”**

**Interpretation:**

When carrying out their designated functions, responsible authorities will have to ensure that they are contributing to the achievement of sustainable development.

Although the concept of sustainable development is not new, views vary over its definition and requirements and the focus of an individual body tends to determine how they perceive sustainability. However, there are some accepted core principles that should be an integral part of contributing to sustainable development.

The Scottish Executive defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. We have seen how actions in the past have made life more difficult for us today. Developing sustainably means ensuring that our actions today do not limit our quality of life in the future. So the Scottish Executive’s vision is based on the principles that we should:

- have regard for others who do not have access to the same level of resources, and the wealth generated
- minimise the impact of our actions on future generations by radically reducing our use of resources and by minimising environmental impacts
- live within the capacity of the planet to sustain our activities and to replenish resources which we use.

Several proposed bodies, including Scottish Natural Heritage, already have a duty to promote sustainability when exercising their functions.

**Key Actions:**

A number of the bodies proposed for designation are already subject to a requirement to promote sustainable development and have their own guidance to ensure that the requirement is carried out in the exercise of all their functions. For example; Scottish Water were issued guidance from Scottish Ministers to carry out the requirement to promote sustainable development under the Water Industry (Scotland) Act 2002.

We want a Scotland that delivers sustainable development; that puts environmental concerns at the heart of public policy and secures environmental justice for all of Scotland’s communities. It is a duty of Public Bodies in Scotland to lead by example and support the Scottish Executive’s vision to promote sustainability in all walks of life. Public bodies are expected to follow best practice and ensure that they are working to improve their environmental performance, adopting suitable environmental management policies and setting appropriate targets or objectives.

## **Benefit: Sustainable Development**

Sustainability is a core principle of the WFD and this duty allows it to be integrated into the decision making process of all public bodies that impact on the water environment.

### **Example 2:**

#### **British Waterways and Engineering Works**

British Waterways have the power to undertake engineering works in and around canals. It is inevitable that changes to structures in the vicinity of the water environment have an impact on the water. From 1 April 2006, many of these engineering works will fall within the scope of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“CAR”).

#### **Without designation as a responsible authority**

Under CAR, British Waterways have a duty to use water efficiently and SEPA may licence the engineering works they undertake. Any licences issued would take account of the WFD principle of sustainable water use. However, not all of British Waterways’ engineering works will require licences (particularly minor works). In addition, there is no broader duty to contribute to sustainable development in the Directive or the Regulations and British Waterways are therefore not bound to consider the broad principle.

#### **With designation as a responsible authority**

British Waterways will have a duty to comply with WFD and therefore ensure sustainable water use but also broader sustainability when carrying out all the engineering works. This may mean staggering minor works over a period of time or consulting SEPA for advice on how far apart the works should take place in order to minimise the impact on the water environment. By avoiding deterioration in water quality the canals will remain attractive to visitors as well as improving the environment.

*We would particularly welcome other examples of how your organisations would be affected by designation as a responsible authority.*

**Requirement:**

**“IN SECURING COMPLIANCE WITH THE DIRECTIVE AND SO FAR AS IS PRACTICABLE, RESPONSIBLE AUTHORITIES MUST ADOPT AN INTEGRATED APPROACH BY CO-OPERATING WITH EACH OTHER WITH A VIEW TO COORDINATING THE EXERCISE OF THEIR RESPECTIVE FUNCTIONS”**

**Interpretation:**

Where it is possible, responsible authorities will be required to carry out their designated functions in co-ordination with other responsible authorities. Evidence suggests that this is currently common place amongst some of the proposed bodies.

For example;

- Local planning authorities work with Scottish Water on flood management proposals, along with any other interested parties.

We propose that memoranda of agreement are set up between public bodies where this would achieve effective joined-up working on relevant areas. This will be facilitated by the Scottish Executive.

**Key Actions:**

In situations where the actions of a responsible authority are likely to impact on the water environment and other responsible authorities may be involved, those responsible authorities should;

- Contact each other at an early stage in the process
- Keep each other updated on plans/work and highlight any possibility of conflict or duplication
- Work together where necessary
- Abide by any memoranda of understanding

**Benefit: Co-ordination**

As discussed earlier in this paper, it will be vital for responsible authorities to make early contact with SEPA and refer to them any queries regarding proposals that may affect the water environment. However, it will also be important for responsible authorities to co-ordinate work with one another. This will ensure conflicting decisions are not taken and work is not duplicated. In addition, working in such a way will be beneficial when responsible authorities come to contribute to River Basin Management Plans in the future as consultation of other responsible authorities is required for this process. (see Section 3 on Issues for Responsible Authorities for further information.)

**Example:****National Parks Authority, the Forestry Commission and Scottish Natural Heritage**

The Forestry Commission and Scottish Natural Heritage already work closely with the National Parks Authorities in Scotland; for example, the Forestry Commission Scotland Visitor Centre is situated within Scotland's first National Park - Loch Lomond and Trossachs. Scottish Natural Heritage have a policy statement that includes the pledge to promote the sustainable use of natural heritage in Scotland's national parks.

**Without designation as responsible authorities**

National Parks Authorities are charged with preparing National Park Plans. These include proposals relating to watercourses and forests within those Parks. Without co-ordinating their functions with the Forestry Commission and Scottish Natural Heritage over WFD objectives the authorities risk producing conflicting policy or duplicating work. Likewise, Scottish Natural Heritage can provide advice on how rivers, lochs and other water bodies are best managed in order to preserve their natural heritage and without consideration of Forestry Commission and National Park Authority views, this advice may not be as comprehensive as it could be.

**With designation as responsible authorities**

With the National Parks Authorities, Scottish Natural Heritage and the Forestry Commission designated as responsible authorities, National Park Plans will be consistent with guidelines prepared by the Forestry Commission on forestry operations affecting the water environment and Scottish Natural Heritage advice will take account of all viewpoints. This duty to make early contact and communicate and co-operate effectively will minimise conflict and duplication of work and ensure a co-ordinated approach.

*We would particularly welcome other examples of how your organisations would be affected by designation as a responsible authority.*

*Thoughts on the practicalities of designation as a responsible authority are also particularly welcome.*

## **SECTION 2: BODIES CONSIDERED FOR DESIGNATION**

### **Introduction**

Over the past 2 years the Executive has considered a variety of bodies for designation as responsible authorities, and explored the arguments for and against. This section outlines the results of our considerations so far and explains the draft proposals for each public body.

### **1. Proposed Bodies**

We propose to designate the following bodies as responsible authorities in 2005; explanations are included below. *We would welcome your comments.*

#### **LOCAL AUTHORITIES**

Local Authorities carry out a range of functions that could impact on the water environment. Along with their planning functions, they have responsibilities in relation to reservoirs and flood management. Local authorities will need to co-ordinate the granting of planning permission with SEPA and consider WFD when dealing with urban design and construction standards.

Under the Reservoirs Act 1975 local authorities inspect reservoirs and as responsible authorities they would consider the environmental impact of the safety inspections and any work undertaken as a result.

Sustainable Flood Management is a key duty for responsible authorities and local authorities have powers to control flooding under the Flood Prevention (Scotland) Act 1961.

Other relevant local authority legislation can be found in the table in Part 3 of this paper.

#### **SCOTTISH WATER**

Scottish Water, in the exercise of its functions, has a major impact on the water environment. As the provider of the public water supply and sewerage system it will play a key role in ensuring that Scotland complies with the requirements of the Water Framework Directive.

Scottish Water already has a duty to promote sustainable development. They also already cooperate with other public bodies for many of their operations. Designation as a responsible authority will formalise this co-ordinated approach to work.

Under the Sewerage (Scotland) Act 1968, Scottish Water has responsibility in relation to regulation of the public sewers, e.g. it grants authorisations so as to enable discharge into sewers. In carrying out these duties as a responsible authority, Scottish Water will consider the potential environmental impacts and other WFD principles.

Scottish Water should also consider the WFD when carrying out its functions under the Water (Scotland) Act 1980, and its functions it under the Water Industry (Scotland) Act 2002.

## **SCOTTISH NATURAL HERITAGE**

As a nature conservation body Scottish Natural Heritage carries out a number of functions in the realms of biodiversity which could impact upon the water environment. Under the Conservation (Natural Habitats & c.) Regulations 1994 it is charged with ensuring the conservation of natural habitats and habitat species sites. As a responsible authority Scottish Natural Heritage's water related operations performed under these regulations will be carried out in accordance with WFD principles.

Under the Nature Conservation (Scotland) Act 2004, Scottish Natural Heritage have a range of functions relating to sites of special scientific interest, nature conservation and land management. As a responsible authority, they would work closely with SEPA to ensure Water Framework Directive principles are given full consideration when carrying out these functions.

Scottish Natural Heritage already has a memorandum of understanding with SEPA and works closely with them on a range of issues.

## **NATIONAL PARK AUTHORITIES**

National Park Authorities have responsibility for planning and the preparation of the National Park Plan, which includes plans relating to watercourses. In certain cases this can include taking on the role of planning authority in place of local authorities, e.g. Schedule 3, paragraph 8 to the National Parks (Scotland) Act 2000, which give national park authorities powers to improve waterways for purposes of open-air recreation.

## **THE FORESTRY COMMISSION**

Forestry can have a major impact on the water environment. Owners and managers of woodlands and forests are currently provided with Forest and Water Guidelines (under Section 8 of the 1967 Forestry Act) on how their activities can impact the fresh water ecosystem and gives guidance on how operations should be carried out in order to protect and enhance the water environment. It will be necessary to ensure that these guidelines promote the objectives of WFD.

## **DISTRICT SALMON FISHERY BOARDS**

Under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 District Salmon Fishery Boards have responsibilities to protect and improve salmon stocks. This can include the construction of structures within water bodies and as responsible authorities such construction and other activities will be undertaken considering WFD from the outset, avoiding conflict where licences must be sought from SEPA.

## **BRITISH WATERWAYS**

British Waterways own and are in charge of all canal systems in Scotland. They are governed by the British Waterways Act 1995 and the Transport Act 1962. Their powers include permitting any abstraction from a canal, engineering works by or in the canal and discharge into the canal. These are actions that should be undertaken with due consideration of WFD, therefore making designation as a responsible authority appropriate.

## **PORT AUTHORITIES**

There are three types of ports in Scotland; private, trust and municipal. All three types of port may be considered for designation if they are carrying out functions of a public character. The Harbour Act 1964 allows for ports to issue licences for dredging in rivers, estuaries and coastal waters. This is a function that would need to be undertaken with due consideration to WFD objectives.

**These bodies are also expected to be key players in the development of river basin planning and so co-operation will be essential. Participation in River Basin Management Plans is not a primary aim of designation but it will be an important outcome and an additional benefit.**

*We would welcome your thoughts on further responsibilities bodies have that are relevant to their designation.*

### **2. Bodies for further consideration**

In addition to Scottish public bodies, it is likely that it will be necessary to designate cross-border public bodies whose functions are reserved, to ensure compliance with the WFD. Contact has been made with bodies such as the Maritime and Coastguard Agency and Ministry of Defence, and discussions will continue about an appropriate way to proceed.

## **FISHERIES COMMITTEE**

The Fisheries Committee advises and assists Scottish Ministers and any person engaging in, or proposing to engage in, the generation of hydro-electric power on any question relating to the effects on fisheries or stocks of fish. As a responsible authority this advice would be assured to be compliant with WFD. However, this role may evolve in order to be aligned with SEPA's regulatory responsibilities under the Water Environment and Water Services (Scotland) Act 2003. Further consideration will therefore be given to the Committee's designation in due course.

### **3. Bodies not proposed for designation**

Details of bodies that were considered for designation as a responsible authority but will not be designated can be found in Annex A.

### SECTION 3: PROPOSED FUNCTIONS

The Designation Order for responsible authorities that will be laid in Parliament will not only list bodies but also legislation that sets out functions relating to the water environment for those bodies. The table below therefore provides a draft list of the pieces of legislation. For inclusiveness, the order is likely to list only statutory instruments (Acts and Regulations) rather than specific sections of the legislation. However, we have listed some sections in the table below in order to provide bodies with precise examples of functions that will be relevant for them as responsible authorities.

<b>LOCAL AUTHORITIES</b>
<b>Town and Country Planning (Scotland) Act 1997</b>
<b>Reservoirs Act 1975</b>
e.g. Sections 2 and 3
<b>Flood Prevention Act 1961</b>
e.g. Sections 1 to 4B, Sections 6 and 6A, Schedule 1
<b>The Local Government in Scotland Act 2003</b>
e.g. Sections 1, 15, 16, 20 and 47
<b>Civic Government (Scotland) Act 1982</b>
e.g. Sections 38, 112 and 121-122
<b>Environmental Impact Assessment (Scotland) Regulations 1999</b>
e.g. Part II
<b>Conservation (Natural Habitats &amp; c.) Regulations 1994</b>
e.g. Regulations 48-52, 54(2), 55, 56(2), 62 and 63
<b>Harbours, Piers and Ferries (Scotland) Act 1937</b>
e.g. Section 1
<b>Environmental Impact Assessment Regulations</b>
<b>Local Government (Scotland) Act 1973</b>
<b>Water (Scotland) Act 1980</b>
<b>Harbours Act 1964</b>
<b>Land Drainage (Scotland) Act 1958</b>
<b>Environmental Protection Act 1990</b>
<b>Building Regulations</b>
<b>Coast Protection Act 1949</b>

<b>SCOTTISH WATER</b>
<b>Water (Scotland) Act 1980</b>
e.g. Section 71
<b>Sewerage (Scotland) Act 1968</b>
e.g. Sections 12, 24 and 25-27
<b>Water Industry (Scotland) Act 2002</b>
e.g. Sections 30, 31 and 54

<b>SCOTTISH NATURAL HERITAGE</b>
----------------------------------

<b>Natural Heritage (Scotland) Act 1991</b>
---

e.g. Sections 2 to 5
----------------------

<b>Conservation (Natural Habitats &amp; c.) Regulations 1994</b>
--

e.g. Regulation 33
--------------------

<b>Nature Conservation (Scotland) Act 2004</b>
--

<b>Environmental Impact Assessment Regulations</b>
--

<b>FORESTRY COMMISSION</b>
----------------------------

<b>Forestry Act 1967</b>
--------------------------

e.g. Sections 1, 3 (1), 8, 10 and 46.
---------------------------------------

<b>Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999</b>
---

<b>BRITISH WATERWAYS BOARD</b>
--------------------------------

<b>British Waterways Act 1995</b>
-----------------------------------

<b>Transport Act 1962</b>
---------------------------

e.g. Section 10
-----------------

<b>NATIONAL PARKS AUTHORITIES</b>
-----------------------------------

<b>National Parks (Scotland) Act 2000</b>
---

e.g. Sections 9, 11, 13, 15 and 19. Schedule 2: paragraph 8 and Schedule 3: paragraph 8.
--

<b>DISTRICT SALMON FISHERIES BOARDS</b>
---

<b>Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003</b>
---

e.g. Part III – section 45
----------------------------

<b>HARBOUR AUTHORITIES</b>
----------------------------

<b>Harbours Act 1964</b>
--------------------------

e.g. Section 18 and 48A
-------------------------

<b>The Harbour Works (Environmental Impact Assessment) Regulations 1999</b>
---

*We would welcome your comments on the pieces of legislation that are listed above and their relevancy to the role of responsible authority. If there is additional legislation you feel may be relevant, we will be happy to consider it. It is not necessary to identify sections unless you wish to; the title of the statutory instrument will suffice..*

## **SECTION 4: ISSUES FOR RESPONSIBLE AUTHORITIES**

### **Considerations/actions for responsible authorities**

Responsible authorities may wish to develop internal guidance or provide training for their staff on WFD matters. Co-ordination with other bodies in line with the duties outlined above could help to ensure the training and guidance are consistent.

(NB. It should be noted that the broad expectation is one of due recognition of WFD principles rather than the acquisition of expert knowledge of the WFD through the recruitment of extra staff, for example)

### **Costs and benefits**

Once comments have been received on this discussion paper, the Executive's policy for responsible authority designation will be published in a statement. This will include a costs and benefits analysis that will assess the costs responsible authorities are likely to incur and the benefits of being designated. It is envisaged that the act of considering WFD at an early stage in particular will reduce costs that might arise from potential conflicts at a later stage.

*In order for the costs and benefits analysis to be as comprehensive and useful as possible for responsible authorities, we would welcome detailed information from bodies being considered.*

*Examples might include:*

- *the cost of providing staff training to ensure compliance with the Directive;*
- *the benefits of running such training in co-ordination with other responsible authorities;*
- *professional fees, for example from consultant work or legal fees that will be incurred or saved as a result of designation.*

*You may wish to provide cost/benefit information on a per staff member basis, a per hour basis or whatever basis is most relevant for your organisation.*

*Estimates of staff time that will be required, staff time that might be saved by avoiding potential conflicts at later stages, and an indication of current awareness levels amongst staff for WFD matters would also be welcome.*

## SECTION 5: NEXT STEPS & ADDITIONAL INFORMATION

### Timetable

It is anticipated that the order designating the responsible authorities will be laid in the Scottish Parliament in 2005.

### River Basin Management Plans

In 2006, consultation will start on the development of River Basin Management Plans and responsible authorities will be included in the consultation and expected to contribute. This is with a view to developing draft River Basin Management Plans by 2008. At this point an additional benefit of being designated will appear as responsible authorities will be able to prepare plans themselves in relation to a particular aspect of water management within a district. Responsible authorities will consult other responsible authorities if they do this so awareness is raised and individual bodies are able to contribute their specific expertise.

*We would welcome your comments on how you foresee the next steps affecting your organisation.*

### Additional information

Stakeholders should be aware that, in parallel to the designation of responsible authorities, we are currently reviewing existing legislation within the sphere of the WFD, WEWS and the forthcoming Controlled Activities Regulations. The aim is to ensure that all existing legislation is coherent and the principles of WFD are complied with.

As a result of this review, in a process that is similar to designating functions for responsible authorities, functions will be designated for Scottish Ministers and SEPA where their activities impact on the water environment. Just like responsible authorities, they will be required to carry out such functions in a way that secures compliance with WFD requirements.

In addition, some existing legislation will need to be amended to conform with WFD, WEWS and the Controlled Activities Regulations. This is legally referred to as **Consequential Amendment and involves the textual amendment of existing legislation. Responsible authorities should be aware of this because it may have implications** for some of the legislation which is of relevance to them.

#### **Consequential Amendment Example**

*Part II of the Control of Pollution Act 1974 currently regulates point source pollution in Scotland. In order to avoid duplication of regulation this part will be repealed as part of a Consequential Amendments Order before the Water Environment (Controlled Activities) (Scotland) Regulations 2005 come into force. This will mean that point source pollution authorisations will only be issued under the Regulations and not under the Control of Pollution Act.*

Information on other areas of WFD implementation in Scotland can be found at: <http://www.scotland.gov.uk/Topics/Environment/Water/17316/8084>

## **ANNEX A**

**The process of developing policy on bodies for designation as responsible authorities has included consideration of bodies that the Executive does not now plan to designate. Details of why this decision has been taken are to be found below:**

### **BRITISH GEOLOGICAL SURVEY**

The British Geological Survey may be called upon to provide information to SEPA or take part in monitoring but their functions do not impact upon the water environment in a way that would warrant designation as a responsible authority.

### **THE WATER INDUSTRY COMMISSION FOR SCOTLAND (WIC)**

The Water Services etc. (Scotland) Act 2005, replaced the Water Industry Commissioner with a Water Industry Commission for Scotland, and introduced a new mechanism for setting water charges. Given that the Commissioner's former role in the charge setting process was less well defined, it was originally considered that it might be appropriate to designate him as a responsible authority. Under the new system of charge determination, the roles of the different parties involved in the charge setting process have been clarified, and policy and economic functions are clearly separated. Ministers set the policy framework for charges by defining objectives for Scottish Water and principles by which costs are to be distributed across different customer groups. On the basis of this, the Commission calculates what it will cost to deliver Ministers' objectives at lowest reasonable overall cost, and how this cost should be split between different groups of customers based on Ministers' principles of charging. The Commission then produces a draft determination, and is required to consult Ministers, Scottish Water and the Convener of the Customer Consultation Panels, on its content. If Ministers at this stage decide that the objectives and principles of charging which they have set result in charges which are unacceptable, they have the opportunity to amend either the objectives for Scottish Water or the principles by which costs are distributed. The Commission would in this case be required to undertake again the technical calculations required to determine the outcome in terms of charges, of Ministers' revised policy framework.

This new set up precludes the Water Industry Commission from taking policy decisions, instead giving it determinative powers in relation to economic decisions. This is a careful balance, which leaves responsibility for policy decisions in the water industry squarely with Scottish Ministers, quality regulators (SEPA and DWQR) and Scottish Water. On this basis it would be inappropriate for the Commission to be designated as a responsible authority under WEWS.

### **THE CROWN ESTATE**

The Crown Estate owns extensive marine assets throughout the UK including the seabed out to 12 nautical miles and is governed by the Crown Estates Act 1961. At present the Crown Estate also has responsibility for issuing Fish Farm Planning Controls but this is in the process of being transferred to Local Authorities. As this will in effect remove the planning element from the Crown Estate's role, we do not currently plan to designate them as a responsible authority.

## **FISHERIES RESEARCH SERVICE**

The Fisheries Research Service is an Executive Agency of the Scottish Ministers and therefore cannot be designated as a responsible authority. The duty placed upon Scottish Ministers by the Water Environment and Water Services (Scotland) Act 2003 to take account of Water Framework Directive principles will cover the work undertaken by the Fisheries Research Service.