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JOINT NATURE CONSERVATION COMMITTEE

IMPLEMENTATION OF THE WATER FRAMEWORK DIRECTIVE: KEY ISSUES FOR THE UK CONSERVATION AGENCIES

STRATEGY SESSION

Paper prepared through consultation with the Freshwater and Marine Inter-Agency Groups on the Water Framework Directive

1. Background

1.1 In March 2002, the Joint Committee discussed implementation of the Water Framework Directive in the UK, and, in particular, various issues requiring liaison between the environment and conservation agencies. This paper sets out some of these issues in greater detail, and discusses how JNCC and the country agencies might maximise the opportunities for nature conservation gain offered by the Directive.

1.2 The main provisions of the Water Framework Directive and the implementation process in the UK are described in the paper discussed by Committee in March 2002 (JNCC 02 D02). The relationships between the various groups involved in implementation are summarised in Annex A.

2. The role of the conservation agencies in implementing the Directive

2.1 What marks the Water Framework Directive out from its predecessors (e.g. the Urban Waste Water Treatment and Nitrates Directives) is that it defines the quality of surface waters in terms of ecology rather than chemistry or water pollution. In particular, the new Directive requires ecological status objectives to be set, with reference to native aquatic biodiversity and natural habitat conditions. The expertise of the conservation agencies is highly relevant in this context.

2.2 The conservation agencies are making important contributions towards meeting the technical requirements of the Directive. Specialist staff from the agencies are represented on the UK Technical Advisory Group (chaired by the Environment Agency) and on task teams dealing with lakes, rivers, coastal and transitional waters, and economics. These groups have strong links to the Common Implementation Strategy (see 2.4 below). Conservation agency staff are also involved in a range of research projects and other initiatives. These include developing a typology of UK water bodies, defining the various ecological status classes, and identifying the key information and monitoring requirements of the Directive.

- 2.3 Through their representation on the DEFRA Implementation Steering Group, English Nature is able to propose policies and to comment on Government proposals. The other country agencies have close links with the devolved administrations. English Nature has been invited to meet Ministers to discuss its proposals for a strategic approach to agricultural diffuse pollution, which must be controlled under the Water Framework Directive. SNH has similar opportunities, through its involvement in implementing the Forward Strategy for Scottish Agriculture.
- 2.4 The Common Implementation Strategy is being overseen jointly by the European Commission and senior water policy staff from the Member States, and aims to provide guidance on implementation in ten key areas (see Annex B). This will be advisory in nature, but might become *de facto* if adopted. At present, the conservation agencies have no direct influence on the contents of this guidance, and it is not clear whether, and if so how, the European Commission might adopt the guidance as a formal view.
- 2.5 Member States are required to transpose the Directive into national legislation by 2003. Consultation on this process is underway in some parts of the UK, and is planned later in the year in others (see Annex C). Within the next few months, the conservation agencies, therefore, need to decide:
- i. how they want to be involved in the implementation of the Directive;
 - ii. what needs to be included in relevant UK legislation (primary law and/or implementing regulations) to secure this involvement; and
 - iii. what issues (if any) they want to press for to enhance the effectiveness of the Directive (i.e. what national measures should be added to the basic requirements of the Directive, and included in River Basin Management Plans).
- 2.6 In determining their position, the conservation agencies need to consider what measures would bring the optimal benefits for nature conservation, taking account of the deployment of resources by the agencies and the efficacy of the provisions of the Water Framework Directive as compared with other routes, such as existing SSSI legislation.
- 2.7 Discussions within inter-agency groups, government consultations to date, and the findings of a number of research projects, have highlighted several significant issues which require resolution before the Directive is transposed into law. These issues are discussed in sections 3-7 below.

3. **A statutory role for conservation agencies in implementing the Directive**

- 3.1 It may be desirable for the conservation agencies to seek particular statutory roles in the implementation of the Directive, alongside those of the likely competent authorities (Environment Agency, SEPA and DoE NI). Possibilities here (in increasing order of resource costs) include:
- i. agreement of the conservation agencies to be obtained on typology, reference conditions and classification system;
 - ii. agreement of the conservation agencies to be obtained on measures proposed for improving the condition of SSSIs, before they are included in River Basin Management Plans;
 - iii. the conservation agencies to have a statutory role in the preparation and implementation of certain elements of River Basin Management Plans and in contributing to monitoring programmes.
- 3.2 Although an increased operational role would give the conservation agencies a greater say in River Basin Management Plans, it might be considered to deflect efforts from work on non-aquatic biodiversity and special sites across a wider range of habitats and species.

4. **Implications for the conservation of designated sites, including SSSIs/ASSIs**

- 4.1 Member States are required by the Directive to register as 'Protected Areas' all areas lying within each River Basin District which have been designated as requiring special protection under specific European Community legislation for the conservation of habitats and species directly depending on water. This register shall include all Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) where the maintenance or improvement of the status of water is an important factor in their protection.
- 4.2 However, the consequences, in terms of obligations under the Directive, of listing sites on the Protected Areas register is still rather unclear. The Directive can be taken as implying that measures specified in River Basin Management Plans have to achieve compliance with the objectives of 'Protected Areas' as set out in the Community legislation establishing those areas. For example the Plans have to achieve compliance with the objectives of the Habitats Directive for SACs and of the Birds Directive for SPAs as they relate to the maintenance or improvement of the status of water. However, another interpretation is that the need to take measures under River Basin Management Plans as regards Protected Areas is more restricted than this, e.g. the benefits will accrue to surface waterbody SACs/SPAs, rather than to wetland SACs/SPAs more generally.

In practice, to comply with the Habitats and Birds Directives there will be a need to take measures for the conservation of SACs and SPAs in advance of the preparation of River Basin Management Plans, the deadline for which is 2015. However, the Plans provide an opportunity to improve on these

measures, where necessary, and to take a more holistic view of water management within catchments to support the objectives of the Natura sites.

- 4.3 While the Water Framework Directive only specifies SACs and SPAs within the scope of Protected Areas for wildlife, the legislation brought in to give effect to the Directive in the UK potentially offers an opportunity to meet also the needs of SSSIs/ASSIs directly dependent on water. As it stands, the Directive only addresses the needs of surface waterbody SSSIs/ASSIs through requiring the maintenance of high ecological status to waters which are already of this status, and through requiring the maintenance or improvement of other waters to good ecological status. Such a requirement may be lower than the conservation objectives set for such SSSIs/ASSIs (e.g. where those objectives would require the improvement of waters currently having good ecological status to high ecological status).
- 4.4 SSSI/ASSI wetlands which are not surface waterbodies, or directly dependent on the quality of groundwaters (e.g. many fens, marshes and peatlands), receive an uncertain level of protection under the Water Framework Directive. While the Directive provides a general requirement for wetland protection and restoration, this is not supported by the need to take specific measures within River Basin Management Plans to meet conservation objectives for such sites. The legislation transposing the Directive into UK law offers an opportunity for remedying this.
- 4.5 Concern has been expressed within the country agencies that the timescale for meeting the requirements of the Directive on ecological status (by 2015) are longer than the Government's aims for achieving favourable condition on 95% of SSSIs (in England) by 2010, and that, a consequence of bringing them within the framework of River Basin Management Plans may be to delay improvements.
- 4.6 The questions of policy for the country agencies include:
 - i. How can the UK legislation be best constructed, and River Basin Management Plans best be used, to achieve the water-related conservation objectives of SPAs and SACs?
 - ii. How can SSSIs directly dependent on water best be incorporated into measures taken under the Directive, and in particular those adopted in River Basin Management Plans? Should they be given the status of 'Protected Areas' and attract obligations analogous to those for water dependent SACs or SPAs, or is this better achieved through a separate provision requiring the need for them to achieve favourable condition to be recognised within River Basin Management Plans?
 - iii. How can the possible conflict in terms of timescale for Directive implementation and the need to bring designated areas into good condition, best be resolved?

- iv. If it does not prove possible to achieve effective measures for SSSIs within the transposing legislation, effort could be directed into ensuring an improved condition of SSSIs by 2009, so that they can benefit from the 'no deterioration' provision of the Water Framework Directive *for water bodies with 'high ecological status'*. This will require active co-operation from the Environment Agency and SEPA within the next seven years (i.e. on a different timescale from the River Basin Management Plans).

5. Monitoring

- 5.1 One of the key objectives of the Directive is that all surface waters which are already at 'high ecological status' should be maintained in this condition, and that all other surface waters (with the exception of artificial and heavily-modified waters¹) should achieve 'good ecological status' by 2015. 'High ecological status' is defined as a pristine or near-pristine condition; waters at 'good' status will exhibit slight changes from this condition due to human activity. In the first instance, it is up to individual Member States to determine what these categories mean. An intercalibration exercise between Member States will take place in 2006 to ensure the comparability of biological monitoring results.
- 5.2 The Directive requires that Member States establish programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each River Basin District. For surface water such programmes shall cover:
 - i. the volume and level or rate of water flow to the extent relevant for ecological and chemical status and ecological potential;
 - ii. the ecological and chemical status and ecological potential.

In addition, for Protected Areas (e.g. SACs and SPAs), monitoring programmes shall be supplemented by the relevant monitoring requirements of the Community legislation relating to those areas (e.g. of the Habitats and Birds Directives)

- 5.3 The condition of designated interest features within SACs, SPAs and SSSIs will be assessed as part of the conservation agencies' Common Standards Monitoring programme. In broad terms, they will be considered to be in either 'favourable' or 'unfavourable' condition. The UK transposing legislation offers the potential to develop a unified scheme of monitoring of SACs, SPAs, SSSIs/ASSIs which, both meets the needs of the Directive and is compliant with Common Standards Monitoring.

¹ Artificial and heavily-modified waters have a goal of 'good ecological potential', which essentially means that their physical modifications will not be required to be restored.

- 5.4 The main question of policy for the country agencies is:
- i. How to ensure that monitoring programmes under the Directive can support Common Standards Monitoring for designated sites?

6. The scope of River Basin Management Plans

- 6.1 Significant uncertainties remain about the scope of River Basin Management Plans. Government consultations to date suggest that they are likely cover large areas (e.g. Environment Agency regions), but it is unclear how they will relate to sectoral water plans at a smaller scale, such as individual catchments. Equally, links between the new Plans and the town and country planning system (e.g. Development Plans produced by local authorities) remain unclear, as is the link with the plethora of other planning initiatives e.g. Catchment Flood Management Plans, Catchment Abstraction Management Strategies, Local Environment Agency Plans, and so on.
- 6.2 The Directive does not cover the exploitation of fish and certain aspects of flood and coastal defence, and only indirectly deals with invasive species. It also only includes coastal waters up to one nautical mile from the territorial baseline. However, the UK could choose to make the statutory River Basin Management Plans an umbrella for integrated catchment management, and extend their coverage out to three nautical miles from the territorial baseline (the current limit of the Environment Agency's and SEPA's jurisdiction), or even to the outer limit of territorial waters.
- 6.3 The main questions of policy for the country agencies are:
- i. Should River Basin Management Plans provide a framework for integrated catchment management, and how could this best be achieved?
 - ii. Is the current 1 nautical mile limit set by the Directive appropriate or would an extension of the limit seawards be appropriate?

7. Definition of water bodies

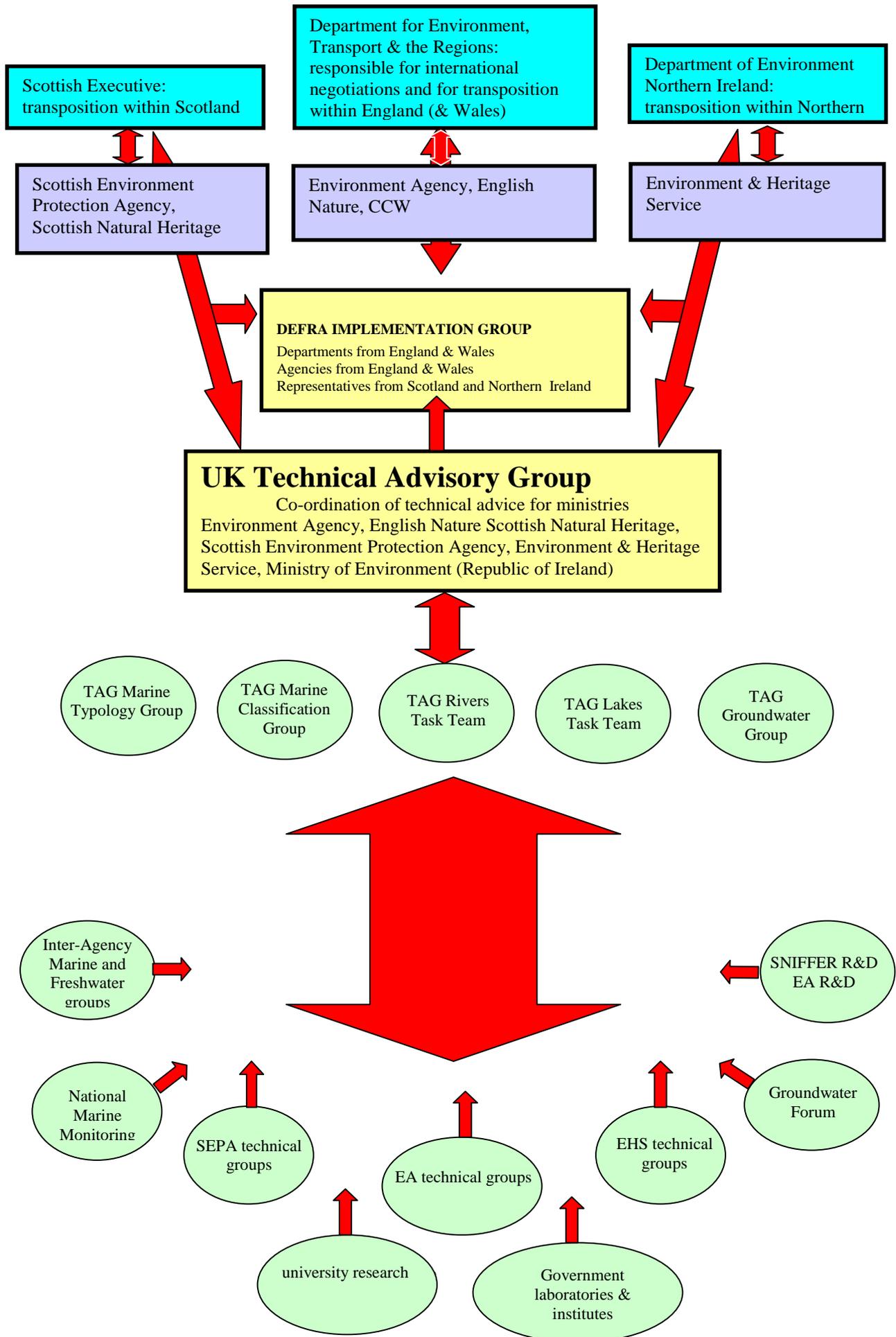
- 7.1 The Directive applies to all surface waters. However, water bodies will be the unit for which ecological objectives are set, and Annex II of the Directive states that only lakes over 50 ha should be identified as water bodies. The forthcoming consultation will invite suggestions on criteria for identifying smaller lakes as water bodies, allowing ecological objectives to be set for lakes less than 50 ha (many SSSI waters fit into this category). The conservation agencies need to consider what would be an appropriate size at which to set a smaller limit.
- 7.2 the policy question for the country agencies is:
- i. What should the limit size for lakes be in the terms of the Directive?

8. **Joint Committee discussion**

8.1 The Joint Committee is asked to:

- i. **discuss** the issues listed under sections 3-7 of this paper; and
- ii. **advise** how high-level policy discussions on these issues can best be arranged between the country agencies, and how the outcomes can be communicated to the environment agencies and Government.

ANNEX A. Water Framework Directive: implementation structure in the UK



ANNEX B. Water Framework Directive: Common Implementation Strategy

Ten working groups have been set up by Member States' Water Directors. Their work is being co-ordinated by the European Commission and in some cases supported by common research projects led by individual Member States. This process is likely to lead to guidance being issued in 2003 on the following topics:

- Analysis of pressures and impacts
- Reference conditions for inland surface waters
- Typology and classification of transitional and coastal waters
- Heavily-modified water bodies
- Geographical information systems
- Intercalibration
- Monitoring
- Economic analysis
- Tools for the assessment and classification of ground waters
- Best practice in river basin planning

ANNEX C. Consultation on the Implementation of the Water Framework Directive

1. Following initial consultation papers in 2001, DEFRA and devolved administrations are undertaking further consultation this year. In January 2002, the Scottish Executive issued a consultation paper on the transposition of the Directive (to which Scottish Natural Heritage has responded). In September 2002, DEFRA and the Welsh Assembly Government plan to issue a joint consultation paper covering England and Wales. This consultation will identify gaps in domestic law which need to be covered by regulations, and will be followed early in 2003 by draft regulations. In the week beginning 23 June 2002, the Implementation Steering Group will be meeting to consider DEFRA's draft consultation paper.
2. Scotland does not currently have an integrated catchment management approach; fisheries and flood defence are not covered by the Scottish Environment Protection Agency (SEPA) and there is no universal system of abstraction licensing. The Scottish Parliament has devolved powers to implement the Water Framework Directive through primary legislation, and this will lead to separate legislation in Scotland. A Scottish bill is expected to be published in June, with a significant amount of secondary legislation to follow.
3. A technical consultation on Annexes II and V² of the Directive is being co-ordinated by SEPA and the Environment Agency, and is due to be issued early in June 2002. The conservation agencies have made a significant contribution to this document. A workshop based on the consultation is planned for late June.

² Annex II of the Water Framework Directive outlines the characterisation system for surface waters and groundwaters. This requires all surface waters to be characterised as rivers, lakes, transitional waters, coastal waters, or as artificial water bodies or heavily modified surface water bodies. These water bodies are then to be allocated to types depending on for example altitude, depth and size. Groundwaters are to be assessed for their uses and the degree to which they are at risk of failing to meet environmental objectives.

Annex V outlines the approach to be taken for the classification of surface waters and provides normative definitions of ecological status classifications (high, good and moderate). It sets out a definition of good groundwater status. The Annex also provides details on monitoring requirements.