



Department
for Environment,
Food & Rural Affairs

Policy paper

Government response to the Office for Environmental Protection report on the implementation of the Water Framework Directive Regulations and River Basin Management Planning in England

Updated 11 September 2024

Applies to England

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1. Introduction

The government welcomes the Office for Environmental Protection's (OEP's) review of the implementation of the Water Framework Directive Regulations and River Basin Management Planning and accepts its key conclusions that not enough progress has been made in improving the water environment. This government is committed to working collaboratively with the OEP to improve our waterways. The government accepts that not enough progress has been made in meeting the Framework's objective for water quality, to restore water bodies to good ecological status or good ecological potential, and that this is due to a lack of investment and action over the last 15 years since the first River Basin Management Plans were published.

This government is committed to taking action to accelerate progress on improving the water environment. The Secretary of State has made cleaning up the water environment a priority for Defra. To meet the scale of the challenge, and deliver transformational change, the government will be carrying out a review of the water sector regulatory system, with further details to be set out in the Autumn.

1.1 Summary of the OEP's conclusions and recommendations

The OEP's report assesses the government's implementation of Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFDR) and River Basin Management Plans ('RBMPs') which implement the WFDR. The WFDR is a piece of retained EU law, which has transposed the Water Framework Directive (WFD).

The report makes 15 recommendations for government to consider. These recommendations have been grouped together in this response under the key themes brought out in the OEP's report:

- Progress so far in improving the water environment and the measures in RBMPs
- Recommendations for the content and presentation of future RBMPs
- Monitoring the state of the water environment
- OEP advice to the government on future reform of the regulatory framework

1.2 Summary of the government's response

The government agrees that there has been insufficient progress towards existing water environmental objectives over the time frame of the current regulatory framework and that increased action and investment, and more effective management of the water system as a whole is required. The government notes that the OEP have recognised in their report that EU countries are struggling to meet the objectives of WFD.

The government will set out in the coming months its plans to reset the water sector regulatory system. This will involve a review to ensure the framework that underpins our water sector delivers long-term stability, with clear, achievable targets that reflect the needs of customers and the environment at a catchment, regional and national level. The review will bring in expertise from a range of sources covering specific areas, such as the environment, public health, consumers, investors, engineering and economics and will culminate in further legislation (subject to parliamentary time) to fundamentally transform our water industry and restore our rivers, lakes and seas to good health for good.

We expect that the OEP will be a key stakeholder informing the evidence considered by the review, and the government welcomes the contribution the OEP has already made through this report to inform those considerations.

More specific responses to the OEP conclusions and recommendations are set out below. The government will continue to consider these suggestions and believes we must look again at the regulatory framework itself and the purpose it was originally designed for.

2. The government response to the OEP's recommendations

See footnote regarding order of this section [\[footnote 1\]](#).

2.1 Progress so far in improving the water environment and the measures in RBMPs (recommendations 1-3)

Background

The OEP report criticises previous governments for failing to create and invest in adequate measures in the RBMPs to meet the environmental objectives of WFD and also failing to focus on delivery and governance around those measures. It concludes that the government is not on track to achieve Good Ecological Status (GES) or Good Ecological Potential (GEP) [\[footnote 2\]](#) for most surface water bodies within the time frame of three river basin management cycles (by the end of 2027), and that additional measures should be introduced into the current third cycle RBMPs as a matter of urgency in order to achieve the WFD objectives by 2027.

The report recognises the lack of progress in meeting the WFD goal to achieve Good Ecological and Chemical Status across the EU. The report also concedes that the metric used under the WFD to classify water body status may hide genuine improvement (the so called 'One Out All Out' principle), which would support developing new national approaches to reporting the state of the water environment.

EU context

The WFDR, examined extensively in the report, are a detailed and prescriptive transposition of the 24-year-old EU Water Framework Directive, now retained EU law.

Chapter 3 of the report provides data from the 2015 EU RBMPs and analysis which shows that no EU state has yet met the objectives of the WFD. The report recognises that comparable countries to the UK such as Germany, Netherlands and Belgium, have worse water body classification results in the 2015 classifications than the UK. Analysis shows that over the development of the WFD and RBMPs, countries like the UK with high population density, extensive urban development and industrial legacies will have far greater challenges in meeting their WFD goals than less populous countries with large wilderness areas.

Data gathered by member states has incrementally improved our understanding of the pressures on the water environment and the time

needed for water ecology to naturally recover once effective measures are in place. The primary objective of the WFD is to achieve GES for surface water bodies by no later than 2015 (i.e. within the time span of the first RBMPs: 2009 to 2015). The WFD also allowed future time extensions for another two RBMP cycles, extending the deadline for achieving this aim until 2027, with exemptions for water bodies in some circumstances based on disproportionate cost or technical feasibility. The Directive does not set out the position after the 2027 deadline, although some Member States have been engaging the EU Commission to amend WFD to allow further extensions beyond 2027.

The challenge of physical modification of water bodies

Part of the challenge hindering progress for populous industrialised countries is that physical modification of natural water bodies, in some cases over centuries, severely disrupts natural ecological process. This is a challenge beyond simple pollution controls. Restoring natural process in these cases is difficult, costly and often infeasible.

Over 40% of England's water bodies are artificial or heavily modified. Physical modifications can be a difficult and costly pressure to deal with, with no one sector responsible. There are various types of physical modification including protected uses of water bodies for economic and social benefits e.g. for navigation, aggregate extraction, ports and harbour activities and flood prevention measures. The OEP's report explains that the WFD objectives for heavily modified and artificial water bodies is 'Good Ecological Potential' which is achieved when all necessary mitigation measures are in place. In many cases, it is not certain what mitigation measures are needed to achieve the WFD objectives. The approach to physical modification was always an under-examined area of WFD and the EU and its members states have had differing opinions on the correct approach^[footnote 3]. The report recognises this issue. Under the WFD classifications, physical modification of water bodies is the primary pressure preventing good status.

The Environment Agency's (EA) assessment of the pressures impacting the water environment is available on gov.uk^[footnote 4].

Assessing the state of the water environment

Another important piece of context to understanding the pressures of the water system is the classification process. The report explains the WFD 'One Out All Out' principle whereby if just one water quality element tested for ecological status fails to reach Good, the water body overall cannot be rated Good, even if all the other elements are at Good. The report recognises that this approach may hide improvements at element level.

Whilst the WFD metric may aim to drive ambition and planning approaches, it does pose challenges in assessing and demonstrating the impact of specific measures. Stakeholders contributing to the OEP report suggested that the biological elements in WFD classification were the most important and link best to other nature (e.g. species abundance) targets. For example, research by Cardiff University^[footnote 5] has shown trend data suggesting increases in pollution sensitive macro-invertebrates in England's water which could indicate possible long-term improvement in water quality. Defra has recently commissioned external research by the UK Centre for Ecology and Hydrology, to review whether the WFD classification framework is designed and implemented in the best way to measure and assess the water environment and direct and inform interventions. The project will provide a detailed and independent evidence base to inform policy on the suitability of the ecological classification framework for water management.

Lack of investment

The report concludes that there is not enough investment committed in the third cycle RBMPs (2022 to 2027) to deliver the WFD objectives. The report refers to economic analysis the EA produced in 2022 to accompany the update to the third cycle RBMPs when they were published. The report concludes that there is a shortfall of 88% of the £51 billion estimated by the EA.

Whilst the report does expand on the economic analysis cited, it is important to note that the majority of the committed investment is from the water industry, rather than government spend. This industry investment is set as part of the Price Review process. At the time of RBMP publication in 2022, water company investment for Price Review 2024 (2025 to 2030), had not yet been agreed. During the Price Review process, Ofwat independently scrutinises water company business plans to ensure that they offer the best value for their customers, communities, and the environment. Draft Determinations on the proposed investment package were set out by Ofwat on 11 July 2024, with a proposed allowance package of £88bn to fund water sector infrastructure improvements. Final Determinations will be set out December 2024. This investment will mean cleaner rivers, seas and lakes across the country, more jobs and more investment into the UK. The OEP's report acknowledges that the shortfall identified should take into account further water industry investment once Price Review 2024 Final Determinations are confirmed.

Currently, the 5 yearly Price Review cycle is out of sync with the 6 yearly RBMP cycle, as a result of the EU legislation. As part of the forthcoming review of the water sector regulatory system, we will consider how we can support better alignment of the Price Review with other plans and programmes for water.

Government response to recommendations 1-3

The government accepts the conclusion that more progress could have been made since the first cycle of RBMPs were launched in 2009. Recommendations 1 and 2 of the report follow from this conclusion. Recommendation 1 also suggests that regulation 25 of the WFDR requires additional action to be taken to ensure that environmental objectives are met.

The recommendations regarding water planning and management in the report will be considered as part of the review's consideration of reforms to the water planning and governance framework.

Water body specific measures

Recommendation 1 indicates that new measures should be time bound and water body level specific. It is a requirement in WFD that all new measures must be implemented within three years.

The government supports the view that there needs to be a renewed focus on catchment and water body level planning and the local delivery of measures. However, the recommendation that these specific measures could be effectively introduced into the current RBMPs is not feasible. The EA has estimated that a review of nearly 5000 water bodies would occupy a substantial number of EA Area staff diverting them from their other duties and would take approximately 18 months to 2 years to complete.

Looking beyond the current cycle, the government will consider these recommendations, and potential new planning and regulatory frameworks, as part of the forthcoming review of the water sector regulatory system.

2.2 Recommendations for the content and presentation of RBMPs

The report criticises RBMPs for containing programmes of measures that it regards as 'too generic'. An RBMP is a strategic plan for a river basin district, which is normally a very large area made up of several river basins, many catchments and up to 1,000 water bodies. This is the spatial unit of planning used in the WFDR and is the approach taken in all previous iterations of the RBMPs (2009, 2015) in the UK and across the EU.

Government response to recommendations 4-8

There are local measures and programmes of action planned and implemented by Catchment Partnerships in England with support from the EA, but these are currently voluntary groups with variable coverage across the country. The report brings out a valid point about the lack of visibility around organisation, governance and funding of these local plans which could be strengthened. The government agrees that more government focus on these local catchment level activities should be explored as part of the forthcoming review.

The report cites the Pickering judicial review case alongside its analysis that the measures in the RBMPs are too generic. This a recent judgment and is subject to appeal to be heard early in 2025. As this is an ongoing legal case, the government cannot comment further at this time and is limited in what can be said in response to relevant recommendations. The government will however keep the associated report recommendations under review.

The strategic framework for water planning, governance and delivery will be considered further by the forthcoming review of the water sector regulatory framework. This will necessarily have an impact on the future framework for water management and planning, and therefore future RBMP cycles. The government expects the OEP's report and recommendations to form an important part of the evidence considered by the review.

2.3 Monitoring the state of the water environment (recommendations 9, 11)

Background

The OEP's report explains how an effective monitoring programme lies at the heart of WFD and provides an essential evidence base for setting environmental objectives, designing measures and other regulatory activities such as permitting. It notes that WFD allows for surveillance, operational and investigative monitoring.

WFD sets broad principles which a compliant monitoring programme should meet, but the actual programme design is a matter for member states. The report also notes that monitoring is not entirely the responsibility of the EA; water company monitoring under the Water Industry National Environment Programme (WINEP), and, more recently, event duration monitoring of storm overflows, are also major contributors.

The report concludes that the current monitoring programme is

inadequate and argues that this has resulted from EA budget cuts in this area. The report acknowledges that the majority of funding for monitoring comes from EA chargeable income. It also acknowledges the extra funding that was provided by the previous government for the Natural Capital & Ecosystems Assessment programme and the EA's Prioritisation and Early Warning System (PEWS)^[footnote 6] development.

Government response to recommendations 9, 11

The government agrees that a review of water quality monitoring and its funding is necessary. A broader review of monitoring, as a whole, will form part of the review of the water system.

The EA has been working on new technical approaches to monitoring but this needs to be balanced with an understanding of the extent of the resources required and its complexities. To give perspective to this, the EA carries out around 90,000 water quality sampling visits a year from 13,000 different locations. From these, they gather approximately 1.5 million separate measurements, both from in-field observations and from laboratory analyses.

The challenge of meeting the scale of this task is not confined to England. Across the EU, over the first and second RBMP cycles, increasing numbers of EU states moved to surveillance and investigative monitoring, as they considered this to be a more cost-effective method for assessing the pressures on the water environment.

The EU 'Watch List'

The report acknowledges that the EA has developed an advanced early warning system (PEWS) for new and emerging chemical substances, to help inform decisions to add to the list of Priority Substances from which Good Chemical Status is measured. The report criticises, however, the lack of a UK replacement for the EU Watch List.

The EU Watch List was designed to operate across EU member states. Before a candidate substance can appear on the list, it must have been detected as a present concern in more than 3 EU States. Therefore, the government questions the value of the EU Watch List in the UK context. There are further issues with the EU system for setting Environmental Quality Standards (EQSs) for these substances. Many of the EQSs for substances on the EU Priority Substances list were set in 2013 and new monitoring data since then may indicate that they need to be reviewed.

One of the criticisms of the EU system was that it took too long (4 years of monitoring data) before a substance on the Watch List could be transferred to the Priority Substances list. On that list, it is isolated from any assessment of its overall ecological impact. There were calls for a

merger of the specific pollutants (ecological status) and priority substances (chemical status) in the review of the Environmental Quality Standards Directive (EQSD) in 2022 to 2023 but this was rejected by the EU. In its review of this area, the government will consider how a more agile system could be developed and better link these chemical pollutants to their ecological impacts.

2.4 OEP advice to the government on future reform of the regulatory framework (recommendation 10, 12-15)

Background

The OEP's report recommends that government retains the fundamental underlying structure and approach of the WFDR, while consulting on proposals to improve the legal and governance framework. The OEP highlights specific elements of the framework that it recommends Defra retains, and opportunities for improvement including strengthening the duty to 'have regard to' RBMPs and reviewing the overall coherence of WFDR and RBMPs with other water law and policy.

Government response to recommendations 10, 12-15

The government agrees that there is a clear need to review the current framework, including through the forthcoming review of the water sector regulatory model. The review will take into consideration the OEP's recommendations on future reform of the framework.

The report points out the need for other public authorities to do more than 'have regard to' RBMPs, and hence, water body environmental objectives. Much of the impact here falls on the planning system. The government will review how the wider planning regime can better support water body objectives, noting the safeguards already built into the system. In addition, the government will consider how governance around these plans can be streamlined to ensure greater water quality benefits can be delivered while supporting economic growth and ensuring we build the homes the country needs.

Annex A: List of the OEP's recommendations

Recommendation 1: We recommend that the Secretary of State and the EA take urgent action in accordance with Regulation 25 of the WFD Regulations. This should include taking action to ensure that Programmes of Measures contain the additional measures that are necessary to achieve the Environmental Objectives, including those to be met by 2027. Programmes of Measures should be produced with specific and time-bound measures that demonstrate with sufficient certainty how Environmental Objectives will be met at the water body level. This should also include sufficient and confirmed funding to meet those outcomes.

Recommendation 2: In support of Recommendation 1, we recommend that Government and the EA prepare an updated economic analysis and assessment of investment requirements for the RBMPs. This should take account of new commitments since the RBMPs were approved, for example in the Plan for Water, and additional measures included in the Programmes of Measures under Regulation 25 to achieve the Environmental Objectives, including those to be met by 2027. It should include a comprehensive update of the EA's 2015 impact assessment, which was not carried out in 2022, and should be produced alongside the identification of additional measures under Recommendation 1 to demonstrate the adequacy of the investment to meet the Environmental Objectives.

Recommendation 3: In relation to the requirement to make measures operational within three years of approval, we recommend that measures in the Programmes of Measures be time-bound, and implemented accordingly, in alignment with the Environmental Objectives and their intended dates of achievement. This should include the implementation of specific physical and regulatory actions, as well as the development of necessary enabling policy measures and funding mechanisms. We also recommend that Defra and the EA review and clarify their approach to this provision as part of Defra's review of implementation of the WFD Regulations. This should ensure clear alignment between legal requirements, policies, funding, guidance and operational practice.

Recommendation 4: We recommend that Defra and the EA review and improve how exemptions are justified and presented in the RBMPs to ensure they are appropriate, clear and transparent. We recommend specifically that RBMPs should include at least an outline of the substantive justifications for individual exemptions at the water body level. The approach to how exemptions are determined, justified and presented should also be subject to greater oversight by Defra before the RBMPs are approved by the Secretary of State.

Recommendation 5: We recommend that Defra and the EA adjust the structure, presentation and content of RBMPs for future cycles. For each RBD, the RBMP should provide the 'driver-pressure-state-impact-response' information for the RBD as a

whole and each water body. It should be clear in the RBMPs how the measures will achieve the Environmental Objectives at the water body level. The RBMPs should also be adjusted to make the next cycle of plans and supporting documents clearer, and more reader- and user-friendly, including through the provision of a non-technical summary.

Recommendation 6: We recommend that Defra and the EA improve the approach to public consultation on the draft plans for future cycles. This should ensure it supports full, active and informed public consultation including in relation to Environmental Objectives, at both the RBD and water body levels, measures to achieve those objectives, and the review and justification of exemptions.

Recommendation 7: We recommend that Government, in seeking to extend the reach of Catchment Based Approach partnerships, more clearly define their role and functioning, and then organise and fund them so they can deliver as intended. This will require a closer alignment with the contents of the Programmes of Measures, relating to individual water bodies and catchments, and clarification of the role of partnerships in identifying and supporting the implementation of those measures where appropriate. We also recommend that Government determine how best to further develop partnership working in conjunction with other plans covering water, nature, land use and other development.

Recommendation 8: We recommend that the EA update its assessments of risks to water bodies from the pressures caused by human activities, including climate change as well as infrastructure and domestic and commercial development, when it next reviews them for the fourth cycle RBMPs. We also suggest that, in tandem, Defra update the related economic analyses of water use in each RBD in the next review of these analyses on behalf of the Secretary of State.

Recommendation 9: We recommend that Defra develop and implement a coherent and nested monitoring and evaluation framework for the state of the water environment and progress on measures to improve it. This should include a clear relationship between monitoring for individual water bodies, catchments and river basin districts under the WFD Regulations through to wider monitoring and evaluation of the water-related goals and targets of the EIP23.

Recommendation 10: We recommend that Government retain the fundamental underlying structure and approach of the WFD Regulations, while also consulting on proposals to improve the legal and governance framework to produce a regime that is stronger and includes mechanisms for better implementation. Central aspects of the WFD Regulations that we consider should be retained include:

Integrated protection of all water body types to cover aquatic ecosystems

as a whole.

Ambitious Environmental Objectives based on strong scientific underpinnings and evidence. This should include retention of the 'No Deterioration' principle and targets for the ecological, chemical and quantitative health of surface water and groundwater.

An integrated, multi-element approach to classifying water bodies and determining if overall Environmental Objectives are met, while providing for assessment and reporting of progress towards these objectives at a more detailed level for the various individual elements monitored.

An evidence-based framework using the 'driver-pressure-state-impact-response' model to address key pressures and enable tailoring to local conditions. • Coordination across administrative and geographic boundaries.

Public participation provisions to enable and encourage active involvement of interested parties.

Recommendation 11: We recommend that Defra determine how to approach the monitoring and regulation of new and emerging chemicals in reviewing the implementation of the WFD Regulations. In particular, we highlight the need for Defra to establish effective processes to replace the former EU 'Watch List' mechanism and for setting environmental quality standards. This should ensure the WFD Regulations can provide a continuing framework for addressing new and emerging threats.

Recommendation 12: We recommend that, in further developing the Plan for Water and reviewing implementation of the WFD Regulations, Defra: i) clarify how the WFD Regulations' objectives and the goals and targets of the Environment Act, EIP23 and Plan for Water relate and contribute to each other for both surface water and groundwater, including chemical status; (ii) review their coherence with other water law and policy and broader environmental and sectoral law; and (iii) review and rationalise the overall wider suite of relevant plans and measures, including their timings and plan periods, to ensure that their alignment and sequencing serves to optimise outcomes.

Recommendation 13: We recommend that, in reviewing implementation of the WFD Regulations, Defra assess current levels of understanding of and compliance with the general duty on public authorities to have regard to the RBMPs (Regulation 33). The assessment should prioritise public authorities with functions that are key to delivering the Environmental Objectives.

Recommendation 14: We recommend that Defra and the EA issue guidance to all public authorities with functions that may affect RBDs on a

standardised process for WFD assessment. This should take account of any relevant evidence and information gathered through the implementation of Recommendation 13 above. We also recommend that the EA engage with public authorities concerning implementation of the guidance, prioritising those with functions that are key to delivering the Environmental Objectives. Defra should also itself adopt and apply a standardised process for WFD assessment in relation to its own decision-making.

Recommendation 15: We recommend that, in reviewing implementation of the WFD Regulations, Defra consider: (i) strengthening the wording of the 'have regard to' duty for RBMPs; (ii) introducing a free-standing duty on all public authorities to consult with the EA when WFD assessment identifies risks to water bodies; and (iii) increasing transparency concerning mechanisms to ensure and monitor the implementation of all measures in the approved Programmes of Measures. The EA should also provide more detailed information in its report describing progress in the implementation of each planned Programme of Measures, to support scrutiny and transparency concerning their delivery.

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1. The report recommendations are dealt with here under themes so may not appear in numerical order. For reference, each recommendation retains the number it is assigned in the report.
 2. The WFD objective for Artificial or Heavily Modified Water Bodies (AHMWBs)
 3. EU Common Implementation Guidance 37 suggests two differing approaches to classification of HMWBs: the Reference Conditions vs. Mitigation Measures approaches. [Common Implementation Strategy for the Water Framework Directive \(2000/60/EC\) \(https://circabc.europa.eu/sd/a/d1d6c347-b528-4819-aa10-%206819e6b80876/Guidance%20No%2037%20-%20Steps%20for%20defining%20and%20assessing%20ecological%20potential%20for%20improving%20comparability%20of%20Heavily%20Modified%20Water%20Bodies.pdf\)](https://circabc.europa.eu/sd/a/d1d6c347-b528-4819-aa10-%206819e6b80876/Guidance%20No%2037%20-%20Steps%20for%20defining%20and%20assessing%20ecological%20potential%20for%20improving%20comparability%20of%20Heavily%20Modified%20Water%20Bodies.pdf)
 4. [State of the water environment indicator B3: supporting evidence \(https://www.gov.uk/government/publications/state-of-the-water-environment-indicator-b3-supporting-evidence\)](https://www.gov.uk/government/publications/state-of-the-water-environment-indicator-b3-supporting-evidence)
 5. [Analysis of National Macroinvertebrates Trends for England 1991-2019 \(https://assets.publishing.service.gov.uk/media/616feeabe90e07197c0c2b17/An_analysis_of_national_macroinvertebrate_trends_for_England_1991_2019_-_report.pdf\)](https://assets.publishing.service.gov.uk/media/616feeabe90e07197c0c2b17/An_analysis_of_national_macroinvertebrate_trends_for_England_1991_2019_-_report.pdf)
 6. [Recommendations for a Prioritisation and Early Warning System \(PEWS\) on Chemicals in the Environment \(https://assets.publishing.service.gov.uk/media/60c0d757d3bf7f4bcb0efcf7/HSAC-](https://assets.publishing.service.gov.uk/media/60c0d757d3bf7f4bcb0efcf7/HSAC-)

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