

EXPLANATORY MEMORANDUM TO
WATER RESOURCES MANAGEMENT PLANS REGULATIONS

2007 No. 727

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This Statutory Instrument sets out the steps that a statutory water undertaker must follow with respect to publication and consultation of a draft water resources management plan, and the publication of its final water resources management plan. It allows the Secretary of State or the National Assembly for Wales (as the case may be) to hold a hearing or inquiry into a draft water resources management plan.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 There are no matters of special interest.

4. **Legislative Background**

- 4.1 This instrument is made under new powers in section 37B of the Water Industry Act 1991 (the “1991 Act”), which was inserted into the 1991 Act by section 62 of the Water Act 2003 (the “2003 Act”).
- 4.2 Section 37A (which was also inserted into the 1991 Act by the 2003 Act) sets out (from a date to be announced) the statutory duty of a water undertaker in relation to preparing, maintaining and publishing a water resources management plan.
- 4.3 Section 37B to the 1991 Act contains the powers to make regulations in relation to water resources management plans. This instrument specifies further details in relation to the preparation and publication of these water resources management plans: it prescribes how water undertakers are to prepare and publish draft water resources plans; how they are to consult upon them; how they are to deal with representations received; and how they should publish final water resources management plans. The Secretary of State or the National Assembly of Wales (as the case may be) also has the power

under this instrument to call an inquiry or hearing in relation to a draft water resources management plan.

4.4 The instrument is being made jointly for England and Wales to ensure a consistent approach is applied in both countries, and in particular to those water companies that operate in both England and Wales. The instrument takes account of the devolution settlement in respect of the 1991 Act. It ensures that the Secretary of State is made aware of representations on any draft water resources management plans of a water undertaker whose area is mainly but not wholly in Wales, and the National Assembly of Wales of any representations on any water resources management plans of a water undertaker whose area includes any part of Wales but is not wholly or mainly in Wales or who abstracts water in Wales but whose area is wholly outside Wales.

4.5 As a result of the consultation (see 7.2 below), water companies which supply or receive water, or have a shared water resource and water companies identified as a possible supply or potential partner for the development of new water resources, have been added to the list of statutory consultees. This is to ensure that all possible sources of supply are consulted upon in a water company's draft water resources management plan.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 Since 1999 water companies have been producing water resources management plans on a voluntary basis to help inform Ofwat's periodic price review. Under the current voluntary arrangement, water resources plans are submitted to the Environment Agency for assessment. The plans are also subject to annual review by the Agency, and report on the outcome of the review is sent to Ministers.

7.2 A proposal to place water companies under a new duty to produce water resources management plans in a future Water Bill was considered in the consultation paper "Extending Opportunities for Competition in the Water Industry in England and Wales" published in July 2002. The proposal was included within the draft Water Bill, which following Parliamentary scrutiny became the Water Act 2003.

7.3 In January 2006, the Government and Welsh Assembly Government issued a consultation paper inviting views on proposals for secondary legislation to support elements of the water resources management plan preparation process

introduced by the Water Act 2003. The consultation also served the purpose of informing the water industry and key stakeholders about the main steps in water resources management planning process. Each of the main questions in the consultation paper on the Government's and the Welsh Assembly Government's proposal for developing water company water resources management plans were supported by a majority of consultees. Support ranged from approximately 75% to nearly 100%.

- 7.4 Water companies take around 40% of abstracted water to provide the public water supply. Proper water company water resources management planning is therefore vital to take account of the impact of events such as demographic and climate change on the future availability of water.
- 7.5 The general public, environmental non-governmental organisations and those local councils who are responsible for planning controls all have an interest in the ability of water companies to continue to supply adequate quantities of water. As a result of this instrument there will be, for the first time, transparency in how companies plan to fulfil their duty to maintain customers with a supply of water and achieve an appropriate balance between the essential needs of the public water supply and the environment, by ensuring a wide consultation on draft water resources management plans.
- 7.6 This instrument is legally important as it specifies further details about how water companies will be required to prepare and publish water resources management plans once water companies are under a statutory duty to prepare and maintain such plans under section 37A of the 1991 Act.
- 7.7 The Environment Agency will provide detailed guidance for water companies on the statutory process and the content and development of the water resources management plans.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this Memorandum.

9. Contact

- 9.1 Mike Walker at the
Department for Environment, Food and Rural Affairs
Tel: 020 7082 8351
Email: mike.walker@defra.gsi.gov.uk

can answer any queries regarding this instrument.

Regulatory Impact Assessment of The Water Resources Management Plan Regulations 2007

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1 Purpose and effect of water resources management plan regulations

1.1 Background

Currently there is no statutory provision for water companies¹ to prepare water resources management plans, but since 1999 water companies have produced plans on a voluntary basis, following Environment Agency guidelines.

The Water Act 2003 makes it a statutory requirement² for water companies to prepare, maintain and publish water resources management plans. The Act inserts sections 37A, 37B, 37C and 37D into the Water Industry Act 1991 (WIA). These statutory provisions govern the overall process of how a water company is to prepare a water resources management plan, but do not specify all of the detail. The Water Resources Management Plan Regulations 2007 are made under powers in sections 37B, 213(2) and 219 of the WIA.

The power to make Regulations has been conferred upon the National Assembly for Wales ('the Assembly') in relation to water undertakers whose areas are wholly or mainly in Wales, and the Secretary of State in relation to all other water undertakers, by sections 37B(3)(a) and (c),(5),(6) and (8)(a), 213(2)(e) and (f) and 219 of the WIA. These Regulations are made jointly to ensure that the same regime applies to all the water companies in England and Wales.

The Regulations specify details of how each water company should publish a draft water resources management plan, consult and take account of representations made upon the draft plan, and publish the final plan. The Regulations also allow the Secretary of State or National Assembly of Wales (as the case may be) to hold a hearing or inquiry into a draft plan.

1.2 Scope of the Regulatory Impact Assessment

This Regulatory Impact Assessment (RIA) accompanies the Water Resources Management Plan Regulations 2007, and updates the partial RIA that was published in a consultation on the content of the Regulations³, taking account of consultation responses. The RIA sets out the views of central Government and the Welsh Assembly Government.

It assesses the additional benefits accrued and costs that will be incurred by water companies and third parties as a result of the Regulations, over and above those costs associated with the preparation of existing, non-statutory, plans.

1.3 Risk assessment

Planning for water resources management will:

¹ The term 'water company' is used throughout to denote a statutory water undertaker within the meaning of the Water Industry Act 1991

² Section 62 of the Water Act 2003

³ Consultation on water company water resources management plan regulations, Defra and the Welsh Assembly Government, January 2006

- ensure effective water resources management planning that maintains a balance between the needs of the public water supply and the environment;
- ensure consistency of water resources management plan information across water companies;
- ensure transparency of water resources management plan information across water companies, licensed suppliers, the general public and the Environment Agency;
- ensure that bodies with planning, conservation or regional interests are directly consulted about draft water resources management plans;
- enable representations to be made to water companies about proposed plans and provide a mechanism for those representations to be heard at a public inquiry, if appropriate.

The last three points above are specifically addressed by the Regulations.

Some risks that could worsen if water resources management plans were not made mandatory, and made more transparent, include:

- inadequate water resources planning;
- increase in the number of abstraction licence applications which are not part of a planned framework for water resources management;
- inadequate consultation with groups or bodies who may be affected by water resources management plan provisions;
- inadequate information for the Environment Agency to fulfil its duty to secure proper and efficient use of water resources.

2 Consultation

The overall objectives for sustainable water resources management were consulted upon on several occasions, including:

- The Review of the Water Abstraction Licensing System in England and Wales - consultation paper. DETR/Welsh Office, June 1998;
- Water Bill – Consultation on draft legislation, DETR, November 2000;
- Extending Opportunities for Competition in the Water Industry in England and Wales, Defra/Welsh Assembly Government, July 2002.

The Government's proposals for water resources management planning were debated in Parliament during the passage of the Water Bill, which received Royal Assent in November 2003 to become the Water Act 2003.

The contents of the Water Resources Management Plan Regulations 2007 themselves were consulted upon between January 2006 and April 2006. This consultation covered all of the water supply companies, local authorities, regional development agencies and other interested organisations. Initial input to the partial RIA, and in particular costs, was provided by Water UK (which represents the UK Water Industry). This RIA takes account of responses to the public consultation and discussions with the water industry.

3 Options

Our objectives are that a system of statutory water resources planning should deliver the level of environmental protection necessary for sustainable development and benefit water companies by a better use of water resources from effective planning. There are also benefits to stakeholders by increasing transparency and enabling them to influence the water resources planning process.

The Water Bill RIA⁵ considered high-level options to achieve the level of control over water resources and the level of environmental protection considered necessary for sustainable development, including the impacts of the new duty to plan for water resources management. In this RIA our options for achieving a transparent system of statutory water resources management planning have been refined to the following two:

- Option 1: The “do nothing” option; which relies on voluntary action to improve water resources plan consistency, transparency and consider the wider views of stakeholders.
- Option 2: Using the regulation making powers conferred by the Water Industry Act 1991; putting into place regulations for water resources plan publication and consultation, as proposed in the water resources management plan regulations consultation.

The potential risks of Option 1 are those set out in the risk assessment above. This option would not reliably deliver the level of consistency considered necessary to meet sustainable development objectives, nor would it necessarily ensure that wider consultation issues are effectively implemented without the required legislation. To date water companies produce water resources plans on a voluntary basis but do not meet all requirements set out by the Environment Agency in its guidelines. It is unlikely that without regulation, water companies would carry out these additional requirements such as public consultation.

Option 2, production of water resources management plan regulations, ensures that a statutory planning process results in consistency and transparency of information. In addition this option ensures that wider information requirements such as the

4 Consultation on water company water resources management plan regulations, Defra and the Welsh Assembly Government, January 2006

5 Water Bill – Regulatory Impact Assessment, Environmental and Equal Treatment Appraisals, July 2003 available from the Defra website:

http://www.defra.gov.uk/environment/water/legislation/pdf/riaupdate_030722.pdf

Freedom of Information Act⁶ are met as well as helping meet the requirements of the Strategic Environmental Assessment (SEA) Directive⁷ (where these apply). This option helps to meet the aims of sustainable development in an equitable and cost effective way.

4 Cost and benefits

4.1 Cost Assumptions

Option 1 ('do nothing') costs are not included as water companies who already produce water resources plans on a voluntary basis are not expected to incur any additional costs. Some water companies may be underspending on water resources planning if they are not fully meeting the current Environment Agency requirements. This has not been factored into this RIA which only assesses additional burdens on water companies brought about by proposed regulations.

A range of costs is given for Option 2 for each requirement brought about by the proposed water resources management plan regulations. The cost ranges are derived from estimates made by the industry. Each company will have different costs depending on the level of external participation in the consultation process and the complexity of any issues that may arise. If public representation leads to a public inquiry this will increase the overall costs of a particular company.

The range of costs in the Option 2 category is for a single cycle; they will be repeated every 5 years for a new set of water resources plans.

4.2 Regulation 2 - Publication and consultation on draft plan

Current practice

At present, water companies only share a draft copy of their water resources management plan with the Environment Agency.

Requirements of the Regulations

The draft water resources management plan will be published electronically on the water company's website with hard copies available (excluding any parts which may be commercially confidential or contrary to the interests of national security, as agreed by the Secretary of State or the Assembly) to be viewed at the company's offices or other appropriate location.

The water company will send a copy of the draft water resources management plan to specified groups or individuals. These groups or individuals will also receive the accompanying statement that explains the broad nature of any information, determined as commercially confidential or contrary to the interests of national

⁶ The Freedom of information Act 2000 can be accessed at the following website:
<http://www.legislation.hmso.gov.uk/acts/acts2000/20000036.htm>

⁷ Practical guidance about the SEA Directive (2001/42/EC) has been published by the Office of the Deputy Prime Minister and is available on its website at: <http://www.odpm.gov.uk>.

security that has been excluded from the draft plans.

The following organisations will receive a copy of the draft water company plans:

- (a) The Office of Water Services, the Environment Agency and the Secretary of State (for companies operating wholly or mainly in England) or the Assembly (for companies operating wholly or mainly in Wales), plus any licensed water suppliers operating in the area covered by the plan;
- (b) any Regional Development Agencies, in the area covered by the plan;
- (c) any elected regional assembly, in the area covered by the plan;
- (d) all Local Authorities (except parish or community councils), in the area covered by the plan;
- (e) any National Park Authorities, in the area covered by the plan;
- (f) the Broads Authority, where the plan covers the Norfolk or Suffolk Broads;
- (g) Natural England and the Historic Buildings and Monuments Commission for England, where a plan covers any part of England;
- (h) the Secretary of State, for those companies whose area is mainly but not wholly in Wales;
- (i) the Countryside Council for Wales and Cadw for companies whose area includes any part of Wales;
- (j) the Assembly for companies whose area includes any part of Wales but is not wholly or mainly in Wales;
- (k) the Assembly for companies that abstract water in Wales but whose operating area does not include any part of Wales;
- (l) any navigation authority, which operates in the area covered by the plan;
- (m) any other water undertaker:
 - (i) which supplies water to, or receives water from, or has a shared water resource with the water undertaker;
 - (ii) whose water resources are identified by the water undertaker in its draft water resources management plan as a possible supply, or
 - (iii) is identified by the water undertaker, in its draft water resources management plan, as a potential partner for the development of new water resources, and
- (n) the Consumer Council for Water, which represents consumer interests.

Business sectors affected

Water companies will have the additional costs associated with the publication and distribution of draft water resources management plans to the statutory consultees.

The consultees themselves will also have some costs associated with the time that they will need to spend considering, and liaising with water companies, about their draft plans.

Benefits

It is of benefit to water companies to show that they are being open and transparent from the start about the water resources management planning development process. This will have the added benefit of promoting customer confidence in water companies' ability to maintain a security of supply.

The requirement for water companies to consult specified bodies ensures that the environmental, planning, regional etc interests are taken into consideration at an early stage in the water resources management planning process. This advance consultation will be of benefit to the water company, as it will minimise the risk of any potential conflicts of interest that may arise later in the planning stage or when a plan is being put into action.

There will also be a benefit to the bodies consulted, as they can ensure that the water resources management plan can take into consideration potential requirements that would not normally come to light until the implementation of a water resources management plan. This helps to meet, for example, the requirements of the SEA Directive. It will also ensure that any actions that may impact on a Natura 2000 site (designated under the Habitats or Wild Birds Directives) can be scrutinised at the planning stage.

Costs

A printed copy of the draft plan will need to be sent to each of the statutory consultees. The numbers of copies will be dictated by the number of local authorities (excluding parish or community councils) covered by the area covered by the plan; one company has indicated that up to 100 copies will need to be provided to statutory consultees but this is likely to be a maximum, with an average of around 40.

The anticipated costs of publication are estimated to range from £2,000 - £10,000 depending on the level of publishing costs incurred by individual companies.

More substantial costs, which will be wide ranging, will relate to the time taken communicating with and resolving any issues with the specified groups. This will depend on the level of interest from specified groups and the complexity of any issues. It will also depend on whether the water company has in-house experts or requires the use of consultants. Water company costs are estimated to range from £1,000 to £10,000.

It is difficult to accurately estimate the costs that will be incurred by consultees (as

specified by the Regulations) in providing an input to the water resources management planning process, but this could be in the region of £1,000 per consultee per plan, depending on their level of involvement and whether the body is consulted on all plans (e.g. national organisations) or only some (e.g. local authorities).

4.3 Regulations 3 & 4 - Taking representations into account

Current practice

As above, water companies are currently under no obligation to consult upon and take into consideration representations about draft water resources management plans.

Requirements of the Regulations

The Regulations contain provision for water companies to produce and publish a statement detailing how the consultation responses have been taken into consideration, how the plan has changed as a result of the representations received and the reason for this, and where no change has been made to the draft plan as a result of considering any representations, the reasons for this. The companies will also send its statement of response to those making representations on the draft plan.

Business sectors affected

Water companies will have the administrative responsibility of taking into consideration a wide range of feedback from the wider community about water resources management plans and formulating a response and preparing a statement.

Considering how to respond to the draft water resources management plan should not produce a significant burden to consultees and is an optional process for them.

Benefits

Allowing the public to comment on draft water resources management plans raises awareness about potential local water resources management issues and helps to educate the public about efficiency measures which can help to manage water demand. Informing the public at an early stage will help the water companies receive 'buy in' of their water resources management planning and any subsequent implementation of plans. It also ensures that any potential problems can be raised early in the water resources management planning process.

Ensuring that water companies consult widely on draft water resources management plans and take into consideration any comments when revising their plans means that there is transparency of information and helps to meet the aims of the SEA Directive, where this applies to the plan in question.

The public availability of information should reduce the burden on the water company of dealing with ad hoc requests for information made under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

Costs

The costs associated with this provision will again vary between companies depending on whether they use an in-house expert or external consultant. There will be minor costs associated with publication of the water company statement on their website and more significant costs involved in the consideration of responses (again depending on the complexity and number of response) and drafting of a water company statement.

Costs are estimated to be from £2,000 (approximately 40 man working hours) to £10,000 (greater amount of working hours and specialist advice required).

4.4 Regulation 5 - Provision for a local hearing to be held

Current practice

There is currently no provision for a hearing to be held in respect of a draft water company water resources management plan.

Requirements of the Regulations

Regulation 5 allows the Secretary of State or the Assembly to hold an inquiry or hearing in connection with draft water resources management plans, using the procedures contained within subsections (2) to (5) of section 250 of the Local Government Act 1972. Such a hearing or inquiry would be used by the Secretary of State/Assembly to inform decisions about whether to direct the company to change its plan in a particular way.

Business sectors affected

The sectors affected by this provision will be:

- i) Water companies who will be required to provide evidence and attend any inquiries. This may require the water company to buy in specialist legal advice.
- ii) Organisations (or individuals) who wish to make representations; they will probably need to have specialist or legal advice although these are likely to be related to very local issues so it is not possible to identify exactly which sectors may be affected.
- iii) Government will have an increase in casework associated with the water resources management inquiry procedure. This will result in an increased workload for the Planning Inspectorate, Central Government and the Assembly. The Environment Agency will have additional burdens such as providing

8 Statutory instrument No 2004/3391

evidence for the local inquiry.

Benefits

As set out above, it is of benefit to ensure transparency in the water resources management planning process and to iron out any difficulties that may arise early in the planning process.

This is of benefit to organisations or the general public that may be adversely affected by water resources management plan measures. At present there is not an opportunity for representation in the water resources management planning process.

It could also be of benefit to water companies to resolve any general issues through a water resources management plan inquiry before action is taken in implementing a plan that may be a source of dispute.

Costs

The Secretary of State or the Assembly will not wish to hold inquiries unnecessarily. A soundly based plan, addressing all the key issues in an appropriate manner should not need to be the subject of an inquiry. Plans that do not appear to properly balance the needs of consumers with the need to adequately protect the environment may well be the subject of an inquiry.

It is, therefore, difficult to establish the likelihood of a public inquiry becoming necessary. The following cost estimates are based on assumption that one will happen for each water company. This is to allow it to be factored into the overall costs, though in reality it is unlikely that there will be many public inquiries, as in most cases issues should be able to be resolved between a water company and third party without recourse to an inquiry.

The estimated costs of an inquiry can be split between the different sectors as follows:

- i) Water companies – the estimated cost of a water company attending and providing evidence at a public inquiry is in the region of around £100,000-200,000, including legal advice (although one water company estimated that this could be as much as up to £1M).
- ii) Organisations (or individuals) who wish to give evidence at the inquiry – it is difficult to approximate costs and identify which bodies would want to use this provision, therefore an estimate is not included.
- iii) Both Governments and the Environment Agency. In the first instance it is estimated that the cost of each inquiry including the costs of the Planning Inspector and staff time to process the inquiry casework will be approximately £3,000 to £5,000 per inquiry. The estimated costs for the Environment Agency (input of specialist evidence to the inquiry) would be in the region of £50,000 per inquiry.

4.5 Regulation 6 - Publication of the final plan

Current practice

Water companies are currently expected to make their plans available to the general public although in practice only about half of companies make their plans available for inspection⁹. However most companies provide their customers with a summary document, available on request or on the water company website.

Requirements of the Regulations

Regulation 6 requires that the water resources management plan must be published on the water company's website (excluding any parts which may be of commercial confidence or contrary to the interests of national security, as agreed by the Secretary of State/the Assembly) and in paper form (which will be available to be viewed by the public).

Business sectors affected

Water companies will have some costs associated with the publication of the final water resources management plans.

Benefits

As with the publication of the draft water resources management plans, publishing these plans helps to raise public awareness and ties in strongly with the education and water efficiency campaigns run by water companies.

25 year water resources plans will help businesses reliant upon the public water supply to better plan for their future water resource demands and to consider any contingency planning that may be necessary.

Costs

The estimated costs to water companies will range from £2,000 to £10,000, mainly associated with the web site version of the plan.

4.6 Overall costs and benefits

Social Impacts

The main social impacts resulting from the water resources management planning regime, and the Regulations, will be:

- better water company water resources management planning, to ensure a secure public water supply in the response to the demands of demographic and climate change;

⁹ Environment Agency's 'Review of water company water resources plans, 2004' chapter 3 refers to the Agency's disappointment that water companies are not being more active in informing their customers about the measures they would take during a water resources management.

- improved water resources management plan consistency and transparency, which takes into consideration relevant stakeholder and wider public interests
- greater availability of information to assist small businesses in assessing possible risks to supplies;
- reduced risk of third party losses arising from badly planned water resources management measures by water companies;
- raising public awareness of water resources issues (and the value of water) through the water resources management plan consultation process.

Environmental Impacts

The Regulations will assist environmental protection in a number of ways:

- early identification of potential problems by stakeholders, for example ensuring that water resources management plans will not jeopardise the requirements of the Habitats Directive;
- helping to meet any requirements of the SEA Directive, Freedom of Information Act and Environmental Information Regulations;
- better information to the Environment Agency to allow them to fulfil their duties to secure the proper use of water resources, including early identification of the possible need for additional abstraction.

Economic Impacts (per five year period)

The table below summarises the anticipated costs that could be associated with the Water Resources Management Plan Regulations 2007 over each five yearly planning cycle; these are only the costs over and above those already incurred through the voluntary planning process.

Regulatory Requirement	Costs (£k) to				
	Single Water company	All 24 water companies	Statutory consultees	Central Government /National Assembly	Environment Agency
Publication and consultation on draft plan [(Reg. 2)]	3 – 20	72 – 480–	1 per plan	-	-
Dealing with representations [(Reg. 3)]	2 –10	48- 240	-	-	-
Publication of final plan [(Reg. 6)]	2 – 10	48 - 240	-	-	-
Total (no hearings)	7 – 40	168 - 960	960[‡]	-	-
Discretionary hearing or inquiry [(Reg. 5)]	100-200	2400 - 4,800 [†]	-	3 – 5 per inquiry	50 per inquiry
Total (with hearings)	107 - 235	2568 – 5760 [†]	960 [‡]	72 – 120 [†]	1200 [†]

[†] only if hearings were held on each company plan

[‡] assumes 40 consultees respond to each of 24 company plans

The costs to the water companies will be recovered from customers through water bills (see section 6 below).

Benefits such as better-informed stakeholders and reduced environmental risk are difficult to quantify and value in monetary terms.

5 Small firm impact test

The Regulations impact directly only upon the 24 water supply companies in England and Wales. Of these 7 can be classified as small businesses and one as a micro-business, based on the number of employees. Turnovers for the small businesses are in the range £13 - £470 million (2003/04), and around £100,000 for the micro-business.

The costs of consultation and publication of draft plans incurred by the 8 smallest water companies should be at the lower end of the indicated range. The companies cover relatively small geographical areas and therefore fewer local authorities will be statutory consultees.

Meeting obligations of the Regulations are a statutory requirement and therefore part of the company's operational costs can be passed through to customers through the pricing mechanism to customers (operated by the economic regulator, the Office of Water Services).

The increased costs will therefore be passed on to small businesses through increased water prices; but these will be very small, as they will be borne by all customers in the supply area.

6 Competition assessment

As identified in previous sections, water companies will be the main sector affected. The Regulations will affect all water companies, but the total cost to any company will depend on numbers of statutory consultees within a particular water company boundary. This is not anticipated to affect the competitiveness of companies, because each is currently a regional monopoly for their own supply area. As noted in Section 5 above, the costs of meeting the requirements of the Regulation will be passed through to customers.

Separate provisions in the Water Act 2003 provide for competition for water supply to be introduced for non-household customers that use large quantities of water. As part of these provisions all new licensed suppliers will have to provide water companies with any necessary information for their water resources management plans.

7 Enforcement and sanctions

At present, water companies are only required to produce water resources management plans on a voluntary basis. The majority of companies do not fully comply with the requirements of the Environment Agency water resources management planning guidelines.

The new water resources management planning regime, including compliance with the *Water Resources Management Plan Regulations 2007*, will ensure that robust water resources management planning is in place.

The Secretary of State and the Assembly have enforcement powers under section 18 of the Water Industry Act 1991. Enforcement powers could be used in cases where, for example, water companies have not met the requirements of the regulations, or have not carried out a public consultation or published the draft or final water resources management plans, or does not comply with directions from the Secretary of State/ Assembly.

Under section 37A(6)(b) of the Water Industry Act 1991, the Secretary of State/ National Assembly is able to direct each water company to review (or further review) its water resources management plan and prepare a revised plan. This can take place at any time within the five-year lifetime of the final water resources management plan.

Under section 37A(5)(a) and (b) water companies will also be required to review its plan annually before the anniversary of the date its plan (or revised plan) was last published and submit a statement of its conclusions to the Secretary of State.

8 Implementation and delivery plan

The *Water Resources Management Plan Regulations 2007* are intended to come into force on 1 April 2007. The duty on water companies to prepare water resources management plans will also commence on 1 April 2007.

9 Post-implementation review

Under the Water Industry Act 1991 provisions¹⁰ it will be a requirement for water companies to review their water resources plans not later than every five years (from the date of publication). The Act also provides for plans to be revised if there is a material change in circumstances¹¹, and for an annual review of plans¹².

The water company reviews of water resources plans will feed into the Environment Agency's review of its guidelines and help to provide an evaluation of the statutory water resources planning process brought about by the Water Act 2003 and the proposed water resources plan regulations.

Defra will review the costs and benefits of the Regulations after two planning cycles have been completed.

10 Summary and recommendation

This RIA assesses the costs and benefits of *Water Resources Management Plan Regulations 2007*. These regulations will ensure that there is wide representation and input into the development of water company water resources management plans.

The RIA presents two options – to put in place these Regulations or not (the 'do nothing' option). It is concluded that 'do nothing' would not meet Government objectives for a transparent system of water resources management planning because water companies are unlikely to comply with the additional requirements on a voluntary basis. Currently not all water companies are meeting all the Environment Agency recommended water resources management-planning requirements. The 'do nothing' option leaves a greater risk to water resources managements not being managed adequately, with associated impacts on the environment and to the public water supply.

The main benefits of water resources management plan regulations are: better water company water resources planning, taking into consideration wider public interests; improved water resources plan consistency and transparency; less threat to the environment through use of unnecessary abstraction licence applications; and helping to meet the requirements of the SEA Directive (where this applies).

The costs to water companies will vary depending on the level of participation in a water resources management plan consultation and whether a public inquiry is necessary. It is difficult to anticipate the likelihood of unresolved issues necessitating

10 new section 37A(6)(c) of the Water Industry Act 1991 (introduced by Water Act 2003 section 62)

11 new section 37A(6)(a) of the Water Industry Act 1991 (introduced by Water Act 2003 section 62)

12 new section 37A(5)(a) of the Water Industry Act 1991 (introduced by Water Act 2003 section 62)

an inquiry, but in most cases we would not expect this to be the norm. Therefore each water company is estimated to have costs in the range of £7,000 to £35,000, depending on public participation, man-hours and publishing costs. In the event of a public inquiry being necessary, these costs will increase and are expected to be around £107,000 to £235,000.

Costs to the statutory consultees would be fairly small depending on the level of their involvement in the planning stage (approximately £1,000 to £5,000 per plan). The costs to both Governments and the Environment Agency are expected to be in the region of £53,000 to £55,000 per inquiry.

It is recommended that the Minister accepts this assessment of the costs and benefits of the *Water Resources Management Plan Regulations 2007* on the basis that the benefits justify the costs.

11 Ministerial declaration

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Sign...Ian Pearson

Date...7th March 2007

Ian Pearson, Minister of State (Climate Change and the Environment)
Department for Environment, Food and Rural Affairs

Contact point: wsr.enquiries@defra.gsi.gov.uk