

The Environment Agency's Objectives and Contribution to
Sustainable Development in Wales:

Statutory Guidance from the National Assembly for Wales

Consultation Document

Further copies of this document are available from:

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Welsh Assembly Government

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It is also available on the Assembly's website: <http://www.wales.gov.uk>

Introduction

This consultation document invites comments on draft statutory guidance from the National Assembly for Wales to the Environment Agency. The guidance concerns the Agency's activities in Wales. It:

- sets out the statutory objectives which the Agency should pursue over the next few years;
- identifies its roles in contributing to the achievement of sustainable development; and
- sets out the principles it should follow in deciding its priorities.

The draft guidance has been developed in response to recommendations in the Stage One Report of the first Financial, Management and Policy Review (FMPR) of the Agency. Since the creation of the National Assembly for Wales there has been no single statement bringing together the Assembly's strategic objectives for the Agency nor has there been specific guidance on the contribution the Agency is expected to make to sustainable development.

The Department for Environment, Food and Rural Affairs has consulted separately on draft statutory guidance in respect of the Agency's activities in England.

Summary of the Issues for Consultation

We would especially welcome your comments on the following issues:

Section 2- Prioritisation and Accountability

- Do you agree with the principles for prioritisation set out in paragraph 2.1

Section 3 - Statutory Objectives

- Have we identified the right objectives for the Agency? In particular:
 - Do you endorse the objectives in paragraph 3.1 for **how** the Agency should go about its work?
 - Do you support the objectives in paragraph 3.2 for **what** the Agency should achieve through its functions? These are grounded in existing legislation and central Government and Welsh Assembly policies.

Section 5 - Sustainable Development

- Do you agree with the roles identified for the Agency in contributing to the achievement of sustainable development?

How to respond

We need to receive your response by **18 July 2002**. Please send it:

by e-mail to:

environmental.protection.division@wales.gsi.gov.uk

or by post to:

Environmental Protection Division

Welsh Assembly Government

Cathays Park

Cardiff

CF10 3NQ

or by fax to:

029 20825008

In your response please:

- Explain who you are, and where relevant who you represent, and include your name and address.
- Order your comments under the same headings as the consultation paper.
- Include a summary of your comments if they are more than three pages long.
- If you want your comments to be treated as confidential, please say so. (Responses may be made public unless consultees specifically request confidentiality. All responses will be included in any statistical or other summary of the results.)

If you would like to discuss any aspect of this consultation please phone 029 20825204.

Further copies of this consultation paper are available from the Assembly's Environmental Protection Division at the above postal or e-mail addresses. It will also be posted to the Assembly's website at: <http://www.wales.gov.uk>

The final guidance will be produced bilingually in English and Welsh.

Next Steps

All responses received by the deadline will be analysed and a summary placed on the Assembly's website at <http://www.wales.gov.uk>

Regulatory Impact

We have considered the regulatory impact of this draft guidance. Since it is grounded in existing legislation and central and Assembly Government policy we have not included a Regulatory Impact Assessment.

CONSULTATION DRAFT

THE ENVIRONMENT AGENCY'S OBJECTIVES AND CONTRIBUTION TO SUSTAINABLE DEVELOPMENT IN WALES: STATUTORY GUIDANCE FROM THE NATIONAL ASSEMBLY FOR WALES

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1. INTRODUCTION and context

1.1 This statutory guidance:

- sets out the principles which the Environment Agency should follow in deciding its priorities;

- states the statutory objectives which it should pursue over the next few years; and
- identifies its roles in contributing to the achievement of sustainable development.

This guidance relates to Wales; the Department for Environment, Food and Rural Affairs (DEFRA) will be issuing separate guidance in relation to England.

2. The Environment Agency was set up under the Environment Act 1995. The main purpose in establishing the Agency was to enable the functions vested in it to be carried out in a way which brought greater overall benefit for the environment as a whole.
3. Section 4 of the 1995 Act defines the principal aim for the Agency: in discharging its functions the Agency is required so to protect or enhance the environment, taken as a whole, as to make the contribution that the Secretary of State for Environment, Food and Rural Affairs ("the Secretary of State") considers appropriate towards achieving sustainable development. (This principal aim is subject to the other provisions of the 1995 Act, and to any other enactment under which the Agency operates. Similarly, this guidance is subject to the requirements of legislation under which the Agency operates.) The functions of the Secretary of State under section 4 of the 1995 Act have, so far as exercisable in relation to Wales, been transferred to the National Assembly for Wales ("the Assembly") by the National Assembly for Wales (Transfer of Functions) Order 1999.
4. The Agency is required to take into account likely costs in achieving its principal aim, and to have regard to costs and benefits in exercising its powers. This includes both costs to people and organisations, and costs to the environment.
5. The Assembly is required by section 4 of the 1995 Act, after consultation with the Environment Agency and other interested parties, to give guidance to the Agency from time to time with respect to:
 - the objectives which it considers it appropriate for the Agency to pursue in the discharge of its functions; including
 - the contribution it considers it appropriate for the Agency to make towards the objective of achieving sustainable development.

The Agency must have regard to such guidance.

2. This guidance replaces that issued jointly by the then Department of the Environment and the Welsh Office in 1996. It has been developed following the

first Financial Management and Policy Review (FMPR) of the Agency carried out by the Department for Environment, Food and Rural Affairs during 2001 in consultation with the Assembly.

3. Since the creation of the Assembly there has been no single statement bringing together the Assembly's strategic objectives for the Agency nor the environmental priorities it is expected to concentrate on. Neither has there been specific guidance from the Assembly to the Agency in respect of the contribution the Agency is expected to make to sustainable development.
4. The Assembly has a duty under Section 121 of the Government of Wales Act 1998 to make a scheme setting out how it proposes to promote sustainable development in the exercise of its functions. The Assembly's Sustainable Development Scheme, "Learning to Live Differently" was adopted by the Assembly Plenary in November 2000. In defining sustainable development within the Scheme, the Assembly states that it will take social, economic and environmental issues into account in everything that it does. Under Section 5D of the Scheme, headed "By working with others", the Assembly describes how it will work with other public bodies to deliver the changes that it wants. It will guide or require them to:
 - promote sustainable development actively through their corporate planning and policy development particularly in key areas such as grant schemes, consultation, guidance and advice to the Assembly and others; and
 - work with each other and with the Assembly's partners whenever possible.

It will also scrutinise their corporate plans and strategies to make sure that this agenda is incorporated into their activities, and monitor their sustainable development performance.

1.9 This statutory guidance therefore identifies the Assembly's objectives for the Agency which reflect the policy priorities of the Welsh Assembly Government ("the Assembly Government"), and gives new guidance on the contribution the Agency should make to sustainable development.

1.10 The Agency is expected to focus primarily on the achievement of the objectives set out in this guidance and should prioritise its work and resources in Wales accordingly. The statutory objectives are not intended to provide a comprehensive picture of what the Agency may wish to do over the next 5 years or so (or what the Assembly Government may ask it to do). Neither are they intended unreasonably to limit the activity of the Agency, or the resources to be

made available to it. But the Agency, like all Assembly Sponsored and other Public Bodies, operates in a resource-constrained environment where hard choices need to be made. The priorities set out in this guidance will be an important factor in influencing the Assembly Government's strategic decisions, including in relation to the Agency's resources.

2. PRIORITISATION AND ACCOUNTABILITY

Principles for Prioritisation

2.1 The Agency should prioritise its activities and its resource allocations, according to the following principles:

- **Relevance to objectives:** Giving priority to work which is clearly and directly related to the specific delivery of the statutory objectives set out in this guidance.
- **Legislative remit:** Giving priority to work which directly supports or enhances the delivery of its statutory duties, and particularly to those areas where it has unique duties or functions or the principal statutory role.
- **Relative expertise:** Giving priority to those areas or activities where, by virtue of its functions and resources, it has developed a unique or leading level of expertise, or a high level of specialist skills or leverage.

Accountability

2. The Agency should develop, in accordance with the principles outlined in this guidance, and agree with the Assembly Government and, as appropriate, the Secretary of State:

- a corporate strategy for England and Wales which describes how the Agency will work to deliver the objectives outlined in this guidance;
- a corporate plan for England and Wales which translates these objectives into specific targets; and
- a corporate plan for Wales that translates these objectives into specific targets related to

its activities in Wales.

2.3 The Agency's Management Statement further sets out its accountability, and the administrative arrangements that have been put in place between the Assembly Government, central Government and the Agency to support this.

3. STATUTORY OBJECTIVES

3.1 In discharging its functions in Wales and in developing its corporate strategy the Agency's objectives shall be to:

- a. Protect or enhance the environment in a way which takes account (so far as is consistent with the Agency's legal obligations) of economic and social considerations, so as to make the contribution towards achieving sustainable development which the Assembly considers appropriate, as set out in this guidance.
- b. Adopt an integrated approach to environmental protection and enhancement, which considers impacts of substances and activities on all environmental media, on natural resources, and where appropriate on human health.
- c. Discharge the Agency's functions in an economical, efficient and effective manner and to organise its activities in ways that reflect good management practice and provide value for money.
- d. Meet high standards of professionalism (based on sound science, information and analysis of the environment and of processes which affect it) and environmental performance.
- e. Conduct its affairs in an open and transparent manner in full compliance with the requirements of all relevant statutory provisions and codes of practice relating to the freedom of, and public access to, environmental and other information, and make such information available to the maximum extent permitted by legislation.
- f. Ensure that regulated organisations comply with relevant legislation.
- g. Develop in conjunction with the UK Government and the Assembly Government a risk-based, proportionate, efficient and cost-effective approach to the regulatory process; follow better regulation principles; and evaluate and where necessary improve the operation of regulation.

- h. Provide timely and high quality advice to the Assembly Government, grounded in the Agency's technical expertise and operational knowledge, and, in areas where the Agency has such expertise and knowledge, work with and support the Assembly Government in relation to the development and implementation of its policies and strategies.
- i. Develop a close and responsive partnership with, the public, local authorities and other representatives of local communities, and, as may be requested from time to time by the Assembly Government, provide advice to and work with Assembly Sponsored Public Bodies, other public bodies and regulated organisations, and adopt effective procedures to govern these relationships.
- j. Collect data of appropriate quality and prepare and disseminate information in a timely fashion for monitoring and reporting on all areas of Agency responsibility in Wales.
- k. Monitor and produce periodic reports on the state of the environment, in collaboration with others as appropriate.
- l. Undertake research necessary to support the Agency's functions and the delivery of its objectives, in a manner which is consistent with and complementary to the Assembly Government's and central Government's research programme and takes account of research undertaken by others.

3.2 The Agency, having regard to the guidance in paragraph 3.1 above, should pursue the following objectives in discharging its main operational functions and in developing its corporate strategy:

a. Flood defence

To reduce the risks to people and to the developed and natural environment from flooding, and in particular:

- to provide adequate, economically, technically and environmentally sound and sustainable flood and coastal defences;
- to provide adequate and cost-effective flood warning systems which contribute to a seamless and integrated service of flood forecasting, warning and response; and
- to discourage inappropriate development in areas at risk from flooding.

a. Water quality and water resources

To help protect, enhance and restore the environmental quality of water (covering inland and coastal surface water and groundwater, and addressing both point source and diffuse pollution) and ensure that the relevant quality standards are attained, and in particular:

- to provide support to the Assembly Government in the transposition and implementation of the EC Water Framework Directive; and
- to seek to ensure that all bathing waters meet the mandatory standards of the EC Bathing Water Directive.

To administer the water abstraction and impounding licence system efficiently, so as:

- to protect the water environment whilst meeting the reasonable needs of licence holders and applicants, as set out in Catchment Abstraction Management Strategies which are to cover all catchments by 2008; and
- to implement the actions assigned to the Agency in its Welsh water resources strategy and report annually to the Assembly Government on progress.

To promote the recreational use of inland and coastal waters and associated land, and regularly review the Agency's Welsh recreation strategy.

a. Waste management

To contribute to the successful implementation of the Welsh Waste Strategy, and in particular:

- to ensure that waste is recovered or disposed of in ways which protect the environment and human health, by supervising waste management operations (including collection, transport, treatment, storage and tipping) and enforcing waste management controls in a nationally consistent manner; and
- to provide comprehensive monitoring data to enable the amount of waste arising and the final disposal method to be tracked and recorded for each significant waste stream; and to assist regional waste planning groups and Welsh local government in developing waste plans and strategies.

a. Process industry regulation

To control pollution from industry by means of the Pollution Prevention and Control (England and Wales) Regulations 2000 (the PPC Regulations) and any subsequent amendments or additions, and in particular:

- to encourage and determine applications for new and existing installations within the timescales laid down in the PPC Regulations; and
- to determine Best Available Techniques in a consistent and proportionate fashion taking due and quantified account of:
 - site specific compliance costs; and
 - the resulting local, national and transboundary environmental benefits.

Insofar as the PPC system has not progressively replaced the integrated pollution control (IPC) system, to secure through the IPC provisions of the Environmental Protection Act 1990 the prevention or minimisation of pollution by industry.

In conjunction with the IPC/IPPC systems:

- to control industry discharges to watercourses through the powers provided by the Water Resources Act 1991; and
- to work with local authorities towards delivering the objectives of the Air Quality Strategy for England, Scotland, Wales and Northern Ireland.

a. Fisheries

To maintain, improve and develop salmonid and freshwater fisheries, and in particular:

- to promote and enhance the conservation and diversity of salmonid and freshwater fisheries; and
- to contribute to the Assembly Government's aims and objectives for freshwater fisheries management.

a. Radioactive substances

To regulate aerial and liquid radioactive discharges, and solid radioactive waste

disposal, in accordance with statutory duties, statutory guidance and Assembly Government policy.

b. Land contamination and soil

To help identify and remove unacceptable risks to human health and the environment from contaminated land, and in particular to develop guidance to support the new contaminated land regime in Wales; and to support Assembly Government and UK Government policies for the sustainable use of soil.

c. Navigation

To maximise the use of the waterways for which the Agency is the navigation authority and to work with other navigation authorities and others to create, an integrated inland waterway system and in particular:

- to maintain its assets in a condition which ensures the safe use of its waterways.
- to promote urban and rural regeneration; and
- to promote greater recreational use of its waterways by all sectors of society and provide improved facilities for users.

a. Conservation

To help conserve and enhance the diversity of native wildlife, and in particular:

- to review, and where necessary modify, all Agency consents which adversely affect the integrity of Special Protection Areas, Special Areas of Conservation and Ramsar sites.

4. INTERPRETATION OF OBJECTIVES

This section provides additional guidance on the interpretation of the regulatory objectives (3.1 (f) and (g)), and on how the Agency's objectives relate to climate change and land use planning and regeneration.

Better regulation

1. The Agency should have regard to the five principles of good regulation: transparency, accountability, proportionality, consistency and targeting. Any enforcement action should be proportionate to the risk, and alternatives to formal enforcement action should be considered. Where the Agency has discretion as to the manner in which it implements regulatory regimes or requirements it should have due regard to the impact on competition in markets.

4.2 The Assembly Government will work in partnership with the Agency and the UK Government to improve the effectiveness of the regulatory system that the Agency operates. In some cases, replacing traditional regulatory with other approaches may be cheaper for business, the Agency and the taxpayer, and more effective in reducing environmental impacts and furthering the Agency's objectives. The Agency should seek (in particular through the corporate strategy and corporate planning processes) the optimum mix of approaches, having regard to the environmental impacts and risks involved and the costs and benefits of different approaches.

4.3 The Agency should take account of robust environmental management systems, in particular the Eco-Management and Audit Scheme (EMAS) and ISO 14001. Account should also be taken of the 'Green Dragon' Environmental Standard as appropriate. The Agency should support and promote good practice that benefits the environment by improving resource use and minimising waste and pollution and which also enhances competitiveness and helps business save money. The Agency should work closely with partner organisations such as the UK Government's Envirowise best practice programme and ensure that it does not duplicate or confuse their role.

4.4 Wherever possible, the Agency should discharge its functions in ways which maximise the scope for regulated organisations to plan for cost-effective investment in improved technologies and management techniques. It should also follow the principles of "think small first", a framework for UK Government support for all the UK's small businesses, so that burdens of regulation can be reduced.

4.5 Environmental impacts arise from non-regulated as well as regulated bodies. The Agency should consider with the Assembly Government whether there are priority areas in which its resources could be effectively used to further its statutory objectives by helping non-regulated bodies improve their environmental performance.

The Agency's work in relation to climate change, and land use planning and regeneration

4.6 Several of the Agency's objectives contribute to slowing the rate of climate change and mitigating its impacts. The Agency affects greenhouse gas emissions through its process industry regulation objective, provides information on the effects of climate change under its data collection and monitoring objective, and plans for the likely impacts of climate change especially through its flood defence and water resources objectives.

4.7 In support of its objectives the Agency is involved with land use planning, including advising on Welsh planning policy and guidance, unitary development plans and planning applications. Its primary role is to advise on those aspects of draft plans, planning applications, environmental statements and hazardous substances consent applications which relate to its operational functions and particular expertise, using information it already has. If the Agency considers there are gaps in a planning authority's draft plan or appraisal of an application from the wider sustainability point of view; it should draw the authority's attention to this.

4.8 The Agency is required to promote urban and rural regeneration under its objective for navigation, where this activity is especially relevant. In exercising its other functions it may also have opportunities to promote regeneration, especially in collaboration with other public bodies, in a manner which is consistent with its legal powers and proportionate.

5. SUSTAINABLE DEVELOPMENT

1. Section 4(3) of the Environment Act 1995 requires the Assembly to give guidance on the contribution which it considers it appropriate for the Agency to make, in discharging its functions, towards attaining the objective of achieving sustainable development. This guidance must have regard to the Agency's responsibilities and resources.

Agency roles

2. The Agency's principal roles in contributing to the achievement of sustainable

development under the Assembly's sustainable development scheme are:

- protecting or enhancing the environment in a way which takes account (so far as is consistent with its legal obligations) of economic and social considerations;
 - being an independent advisor on environmental matters affecting policy-making, both within the Assembly Government and more widely; and
 - through its advice to the Assembly and its work with other organisations and with the public, facilitating decisions that will be conducive to sustainable development.
1. These roles are an integral part of the Agency's normal business. It follows that, in the allocation of its resources, sustainable development should not be seen as a separate and additional undertaking. The Agency's main and most obvious contribution to achieving sustainable development will be to deliver the statutory objectives in part 3 of this guidance in a way which takes account (so far as is consistent with its legal obligations) of economic and social considerations.
 2. As an independent advisor, the Agency will be one of the Assembly Government's main sources of expert advice on environmental matters, which are a key component of sustainable development. It is an important source of influence as policy and strategy develop, given the skills and expertise it has at its command. The Agency is also well placed to influence the actions of others in relation to environmental matters. It should strive to maintain itself as a recognised centre of knowledge and expertise within its areas of responsibility.
 3. It is for democratically elected bodies at all levels to take the public policy decisions that will integrate social, economic and environmental needs. However, all organisations can contribute to identifying courses of action that will help to meet these needs simultaneously. The Agency's advice and influence should reflect the environmental perspective, where its expertise is greatest. In framing its advice and views the Agency in Wales should however bring to bear its knowledge of the interactions between environmental practice and social and economic factors. It should take account of the principles and approaches in the UK Sustainable Development Strategy which are embraced in the Assembly's Sustainable Development Scheme. These are:

- taking a long term perspective;

- putting people at the centre;
- taking account of the full range of costs and benefits;
- respecting environmental limits;
- the precautionary principle;
- using scientific knowledge;
- transparency, information, participation and access to justice; and
- preventing pollution as far as is possible, and making the polluter pay for damage done by pollution.

1. The Agency's sustainable development role can be reinforced by awareness-raising and education (for example in professions directly affected by its work, in further education, and through the National Curriculum) where this offers good value for money and adds value to the work of lead bodies in this area. While the Agency should have regard to sustainable development as a whole, its work should focus on its particular expertise in environmental matters, rather than particular social or economic aspects of sustainable development.

Economic and social considerations

2. The Agency's work can have major social and economic as well as environmental consequences. The Agency should develop approaches that deliver environmental requirements and goals without imposing excessive costs (in relation to benefits gained) on regulated organisations or on society more widely.
3. The requirement to take account of economic and social considerations must be seen in the context of the specific activity the Agency is engaged in, and the degree of discretion it has under its statutory powers.
4. The Agency's ability to take account of economic and social considerations will in practice be affected by the extent of its knowledge of how these interact with environmental practice. Through its work the Agency thus needs to develop and maintain or have access to adequate experience and understanding of the interactions between environmental practice and social and economic factors. The partnerships it forges with other organisations could be particularly germane to this and thus help the Agency meet its objectives.
5. The Agency should ensure that it has, or has access to, appropriate levels of

expertise for making sustainable development assessments. In some cases, such as impacts on public health, the Agency will not be the major source of expertise. For example, the Agency may need to look to the Assembly Government or central Government for advice on impacts on public health. It thus needs to develop and maintain adequate experience and understanding of these interactions or to have access to appropriate levels of external expertise. The Agency should not seek to duplicate the existing role of other expert bodies. For example, it will need to consult as appropriate with bodies with responsibilities for protection of public health, including the NHS Wales

Department and local authority Environmental Health Departments. The Agency should where possible enter into agreements with other expert bodies to enable it to have continuing and rapid access to the necessary advice, while developing 'in-house' capability to act as an intelligent client.

6. In assessing how best to integrate environmental, economic and social considerations the Agency should bear in mind all relevant Assembly Government and, as applicable, UK Government policy and guidance.