



Department
for Environment
Food & Rural Affairs

www.defra.gov.uk

Red Tape Challenge (RTC) – Water & Marine Theme

Water Proposals

December 2012

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PB 13847

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Introduction

The Red Tape Challenge (RTC) is a Cabinet Office lead initiative designed to draw on the experience and ideas of both business and individuals to assist Departments in a review of the regulatory stock, to ensure that the regulations are fit for purpose in the 21st century. This includes the consideration of a range of outcomes including scrapping, simplifying and retaining the existing regulations.

Due to the large number of regulations being taken forward under this initiative and to make the discussion more focused only a select number of regulations are being taken forward for review at any one time, with these being grouped on a thematic basis e.g. Water & Marine regulations. The Water & Marine theme is the second Defra led theme and covers some 344 Regulations, with the Department having already announced its proposals for the Environment theme in March this year.

The Water and Marine theme covers drinking water quality, flood management, inland waterways, marine conservation and fisheries. As with the Environment theme, the review of Defra's Water & Marine regulations has sought to deliver a balance between the removal of our regulations that are creating unnecessary barriers to innovation and efficiency, whilst at the same time continuing to protect the health of our rivers and seas, maintaining the diversity of aquatic life and managing our water and marine resources effectively.

This paper focuses on the Water element of the RTC theme and covers 168 regulations in four areas: Water Treatment and Supply; Water Quality; Flood and Coastal Erosion Risk Management; and Inland Waterways. The website spotlight ran for 8 weeks from 12 February, with the theme attracting around 150 website comments and about 80 written submissions from a wide range of contributors.

Over the past eight months, Defra has put each of the regulations through a vigorous challenge process incorporating crowd-sourced comments, inbox submissions, and views from our Sounding Board of key stakeholders and environmental organisations. Defra's reviews, allied to evidence gathered through the RTC process, have formed the basis for the package presented in this paper. Out of 168 instruments we are proposing to scrap or improve 63% of the regulations:

Scrap 22 (13%)	mainly obsolete regulation
Improve 84 (50%)	mainly through simplification and consolidation, and improving implementation on the ground
Keep 62 (37%)	combination of measures either supported by business, providing consumer protection in terms of affordability and supply, or preserving environmental protections

Please note: Many of these proposals are subject to further public or stakeholder consultation.

This paper only sets out the proposals for the Water element of the theme. A paper will follow in the New Year on the Marine regulations. The Department will also be producing an implementation plan in the New Year which will set out the proposed action and timeline for each of the 344 regulations under this RTC theme.

Water Quality

The purpose of this legislation is to protect environmental water quality, and in turn human health, amenity value and ecology. The vast majority of water quality legislation either directly implements European Directives or provides tools essential to implementing their requirements.

Of the 40 regulations in this area, we propose to:

Scrap 12 (27.5%) obsolete regulations

Improve 17 (30%) mainly by improving implementation on the ground

Keep 11 (42.5%) to maintain important environmental and public protections

Water Framework Directive

The regulations transposing the Water Framework Directive set out requirements for good ecological and chemical status in surface water bodies and good chemical and quantitative status in groundwater bodies. They also outline the duties of the competent authorities responsible for implementation. The ambition is to increase the number of water bodies with good status or potential.

Proposed Action: Scrap redundant regulations and improve guidance.

The 10 regulations implementing the requirements of the Surface Water Abstraction, Shellfish Waters, Freshwater Fish and Dangerous Substances Directives will be made redundant by the Water Framework Directive. We will scrap these regulations by 2014 to simplify the regulatory landscape and clarify requirements for business.

We will also consult on revised guidance on updating 'River Basin Planning' in 2013 with the aims of clarifying confusing issues such as no deterioration, and issues which can reduce business burdens such as the application of disproportionate cost.

Urban Waste Water Treatment Directive

The Urban Waste Water Treatment Regulations implement the Urban Waste Water Treatment Directive and set out the requirements for the collection and treatment of waste water (mainly sewage) from domestic and industrial sources and so protect the environment from pollution. The level of treatment required depends on the size of the population being served by a treatment works and the nature of the waters into which the treated effluent is discharged.

Proposed Action: Improve implementation

Policy relating to new sewage treatment works will be changed by improving our implementation of the Urban Waste Water Treatment Directive. Currently, secondary treatment of sewage is required at works discharging to coastal waters and serving populations greater than 2,000. We will raise this threshold from 2,000 to 10,000 in line with the EU Directive to reduce burdens for business.

Defra and the Environment Agency will continue to work with water and sewerage companies to review the wider regulation of operations relating to sewage treatment, anaerobic digestion and biogas. This ongoing review aims to ensure that we deliver appropriate levels of environmental protection and compliance with European law in an integrated and proportionate way whilst avoiding perverse incentives not to reuse this potential renewable energy source.

Bathing Waters Directive and Regulations

The Bathing Water Regulations 2008 introduce a new legal obligation to provide information on water quality and sources of pollution which is not currently available at all bathing waters. The new information requirements aim to help the user make an informed decision on bathing, as lower quality bathing water can lead to a higher risk of illness.

Proposed Action: Improve implementation

Defra will amend the 2008 Regulations in January 2013 to move the duty to provide information at bathing waters from private controllers to local authorities. Local authorities are already responsible for providing this information at around 75% of waters. This will reduce the burden on private enterprise and ensure greater consistency in the provision of information at bathing waters.

Nitrates Directive and Silage, Slurry and Agricultural Fuel Oil

The Nitrates Directive aims to reducing water pollution from agriculture and requires the Government to review both our designation of Nitrate Vulnerable Zones, and the Action Programme of measures that applies inside them, every four years.

Proposed Action: Improve implementation

The Regulations that implement the Nitrates Directive were scrutinised by the Task Force on Farming Regulation. Defra has consulted on the Task Force's recommendations and will take forward measures to exempt some farmers from field-level record keeping for nitrates purposes altogether and amend the rules to better accommodate some grass and fruit growers. These measures will reduce burdens for businesses.

Defra also aims to review and consult on the Silage, Slurry and Agricultural Fuel Oil regulations in 2013 and will develop with the industry a method to allow greater flexibility in the dates of closed periods.

Environmental Permitting and other Measures to Manage Water Pollution Risks

The Environmental Permitting Regulations establish a permitting framework for waste management licensing, discharges to water and pollution prevention control. They aim to reduce bureaucratic environmental controls without affecting environmental standards. For example, they allow businesses that would otherwise require several permits for activities on a single site to have one permit and enable regulators to focus resources on higher risk activities. Water discharge permits were introduced into the scheme in 2010.

Proposed Action: Improve implementation

Defra committed to reviewing Environmental Permitting guidance under the Red Tape Challenge Environment theme. This will include guidance relating to water discharge permits.

We will also review the Environmental Permitting Regulations in 2014 to assess their effectiveness. In the meantime, Defra and the Environment Agency (EA) will continue to seek new ways of streamlining processes to minimise business burdens. Implementing guidance will be updated to reflect these improvements.

The EA will further develop its risk based approach to permitting, including the use of position statements to remove permitting requirements from certain categories of discharge such as dewatering of construction sites.

The EA will also review a number of its approaches to permitting impacting on water and sewerage companies in particular. This will include its approach to the use of cold weather waivers when assessing compliance with permits for discharges from sewage treatment works. The EA will work with companies to increase the use of seasonal permits and earned recognition schemes. Defra will report back on progress by end 2012.

Trade Effluent Discharges to Sewers

The Trade Effluent regime helps protect the water environment by limiting some of the substances which can be discharged to sewer. It also protects the health and safety of those working in sewers and treatment plants and aims to ensure the effective operation of those plants.

Proposed Action: Improve implementation

Water and Sewerage Companies are responsible for regulating consents to discharge into their sewers. They have identified a number of possible improvements to the current

regime which we are looking to take forward. We will carry out a detailed evaluation of their proposals by March 2013. We will specifically consider whether any of the proposed changes place new burdens on the businesses regulated by the Water and Sewerage Companies.

Water Treatment and Supply

These regulations cover a range of activities in the Water Sector but can be broadly split into the following five areas:

- Protecting Public Health
- Economic Regulation of the Industry
- Charging and Affordability
- Managing Water Resources
- Efficient use of Water

Of the 68 regulations in this area, we propose to:

Scrap 4 (6%) mainly obsolete regulation

Improve 43 (63%) mainly through simplification and consolidation, and improving implementation on the ground (including 21 regulations relating to the privatisation of the Water Industry, where Legal advice is being sought on whether the regulations are now obsolete and could be scrapped)

Keep 21 (31%) to maintain important environmental and public protections

Protecting Public Health

Proposed Action: Improve Implementation

We will look to merge requirements relating to public health into a single set of regulations for drinking water quality to simplify the regulatory landscape and increase the transparency of the requirements.

Economic Regulation of the Industry

The bulk of these regulations relate to the requirement for water and sewerage companies to hold a licence to operate. There are regulations setting minimum standards of service that water customers are entitled to expect and appropriate compensation failing this.

Proposed Action: Scrap

We will scrap regulations requiring those applying to become a licensed water supplier to publish their applications as this duplicates action already undertaken by the regulator. We will scrap regulations setting out opening times for members of the public to be able to

inspect hard copies of licences and other regulatory notices held by Ofwat as this information is now available online.

We will also scrap redundant legislation laying down reporting and borrowing provisions on private sector water only companies that were not registered companies under the Companies Act 1985 as this duplicates provisions existing elsewhere.

Proposed Action: Improve implementation

We are asking Ofwat to review all of the standards with a view to reducing burdens on businesses whilst maintaining consumer protection.

Defra will also review with Ofwat whether allowing self-lay operators to undertake a connection between the development and the live water supply network can reduce mains water infrastructure connection costs and delays whilst continuing to ensure appropriate safeguards.

Through the upcoming Water Bill we aim to reduce to zero megalitres of water usage threshold at which business customers can tender for their water supplier.

Charging and Affordability

These regulations put in place protections for vulnerable groups of household customers and restrict the circumstances in which companies may charge by reference to the volume of water used (i.e. by installing a meter).

Proposed Action: Improve Implementation

The first group of regulations place a requirement on water companies to offer a scheme to cap the bills of vulnerable, metered customers with high essential water use. We propose to merge these regulations for the sake of transparency and simplicity.

Proposed Action Improve implementation

The second group of regulations set out the rules under which a water company may charge via a meter. At present, around 60% of water customers are charged according to the Rateable Value (RV) of their home, whilst the remainder pay according to the volume of water they use. We are looking to merge these regulations for the sake of transparency and simplicity. We are also reviewing the evidence base underpinning some of the key conditions to ensure they are up to date.

Managing Water Resources

There are two areas of regulation under this heading covering the processes for managing water resources effectively: responding to drought and abstraction licensing.

Proposed Action: Improve implementation

A number of regulations allow water companies to respond to a drought situation. They relate to procedures for applications to the Secretary of State for Drought Orders, the steps that water companies must follow to consult on a water resources management plan and a drought plan, and allowing water companies to temporarily prohibit certain uses of water during a drought (commonly known as hosepipe bans). We are looking to consolidate and simplify these regulations where possible.

There are also a number of regulations relating to the licensing of abstraction activities. The Water White Paper has already made a commitment to review abstraction regulation. This work is being undertaken with a view to implementing a smarter and more flexible regulatory regime. Stakeholders are keen to see this work advance as quickly as possible. However, the abstraction regime is a complex system from an economic and environmental perspective and we must ensure that our plans for reform are based on firm evidence and take full account of the likely impact on abstractors' businesses and the environment.

We will formally consult at the end of 2013 and plan to legislate in the following Parliament. The challenges we are addressing through this reform are of a longer-term nature, so require a measured, evidence-based and phased approach.

Efficient use of Water

Proposed Action Improve Implementation

These regulations are designed to prevent both contamination and waste of water. We are reviewing these regulations as per the Water White Paper commitment to minimise any potential burdens on business whilst retaining appropriate safeguards for public health.

Measures Required to Enable Privatisation circa 1989

Proposed Action: Improve with a view to scrapping

There is a group of 20 regulations made between 1968 and 1989 in the run up to privatisation of the water industry. They are largely enabling regulations which pose no direct burden on business. However, some make consequential arrangements to enactments that are still in force. These set out corporate liabilities (such as pension arrangements) and provide clarity regarding the structures in place during the passage of privatisation. We are undertaking further work with lawyers to explore whether these can be scrapped or merged.

Flood & Coastal Erosion Risk Management (FCERM)

These regulations maintain an effective, resilient and robust capability to respond to flood emergencies.

Of the 50 regulations in this area, we propose to:

Scrap 5 (10%) mainly obsolete regulation

Improve 19 (38%) mainly through simplification and consolidation, and improving implementation on the ground

Keep 26 (52%) to maintain important environmental and public protections

Reservoir Safety

These provisions cover a regime of inspection and management of large raised reservoirs to ensure that all necessary steps are taken to avoid failure that may result in the loss of life.

Proposed Action: Improve implementation

Amendments to the Reservoirs Act 1975 arising from the Flood and Water Management Act 2010 will improve the clarity of the seven regulations covering reservoirs, support necessary enforcement activity to ensure safety, clarify responsibilities and provide a right of appeal.

Coast

These provisions relate to the protection of the coast of Great Britain against erosion and encroachment by the sea.

Proposed Action: Improve implementation

Schedule 4 to the Coast Protection Act 1949 excludes certain waters from the definitions of “sea” and “seashore” in the Act but provides that the Schedule may be varied by regulations. The seven Regulations removing certain waters (parts of specific rivers, estuaries and harbours) from these definitions will be improved by merging, to present the information in one place with the content remaining the same.

Land Drainage

These regulations address the poor quality and flow of small watercourses, drainage in relation to boundaries, maps, elections and organisation of internal drainage boards and their districts.

Proposed Action: Scrap

The Public Health Act 1936 was introduced to address poor quality and flow in small watercourses. Since then various improvements have been made, particularly in provision of foul sewerage treatment. Other subsequent Acts, notably the Land Drainage Act 1991, contain overlapping provisions.

We will scrap the three relevant provisions from the Public Health Act 1936 due to duplication in other regulations to simplify the regulatory landscape.

Proposed Action: Improve implementation

Section 2 of the Land Drainage Act 1991 allows qualified persons (such as agricultural rate payers) to petition for altering the boundaries of internal drainage districts. Section 3 provides for the reorganisation of Internal Drainage Boards. Schedule 3 sets out the procedure. Section 22 gives Ministers powers to authorise landowners or occupiers to carry out drainage works when they believe it could be improved by drainage, but a neighbour objects. Section 28 gives powers to the Agricultural Land Tribunal to make orders requiring the cleansing of ditches.

We will improve sections 2, 3 and schedule 3 by streamlining Internal Drainage Board processes. In section 22 we will replace application to Ministers for dispute resolution concerning drainage works with access to the Agricultural Land Tribunal. We will also explore amending Section 28 to offer applicants and respondents an option for resolving their disagreements informally, after the technical report has been produced, through a form of mediation.

Consenting

These provisions relate to consent for works that may obstruct or affect the flow of a statutory main river or ordinary watercourse. There are also provisions relating to the maintenance of defences on particular rivers.

Proposed Action: Improve implementation

The Water Resources Act 1991 sets out the functions and duties of the Environment Agency. Section 109 requires those wishing to carry out works that are in, over or under a statutory main river to seek prior consent from the Environment Agency. The Land Drainage Act 1991 sets out the functions of internal drainage boards and local authorities in relation to land drainage. Section 23 (as modified by the Flood and Water Management

Act 2010) requires those wishing to carry out works that may obstruct or affect the flow of an ordinary watercourse to seek prior consent from the relevant internal drainage board, or lead local flood authority.

We are integrating Section 109 flood defence consents into the Environmental Permitting framework. We are also investigating with the relevant authorities whether Section 23 consents could also be improved by integrating them into the framework.

We will also investigate setting up a single website for all information on flood defence consents including, for example, who to contact, what is exempt and what requires a consent.

Environmental Impacts

Proposed Action: Scrap

The Code of Practice on Environment Procedure for Flood Defence Operating Authorities (Internal Drainage Boards and Local Authorities) Approval Order 1996 and The Code of Practice on Environment Procedure for Flood Defence Operating Authorities (Environment Agency) Approval Order 1996 give formal Ministerial approval to a code of practice on environment procedure for flood defence operating authorities. It is proposed that both Orders relating to the Code of Practice are scrapped as they are embedded in good practice.

Inland Waterways

These regulations enable the Environment Agency and British Waterways to manage our inland waterways effectively.

Of the 10 regulations in this area, we propose to:

Scrap 1 (10%) obsolete regulation

Improve 5 (50%) mainly by updating

Keep 4 (40%) to maintain important environmental and public protections

Proposed Action: Scrap

British Waterways' statutory functions and duties in England and Wales transferred to the Canal & River Trust (CRT) in July. The Regulatory Reform (British Waterways Board) Order 2003 provided powers to British Waterways, necessary when it was a public corporation but not required by the charity which will have greater commercial freedom.

Proposed Action: Improve

The Environment Agency (Inland Waterways Order) 2010 harmonises boat registration and licensing schemes on four regional waterways administered by the Agency. The Order will be amended to reinstate registration of Medway craft accidentally removed. When the Agency's navigations transfer to the Canal & River Trust in 2015/16, subject to affordability in the next spending review and agreement of the new charity's trustees, we will look to further harmonise charging and administration of boat registration schemes for waterway networks currently managed by Agency and Canal & River Trust.

Also, when the Agency's navigations transfer to Trust in 2015/16, the Wye Navigation Statutory Advisory Committee could be replaced by a CRT Waterways Partnership in the Wye Navigation Order 2002.

Proposed Action: Improve with a view to scrapping

When British Waterways took over from the British Transport Commission, there was a need to transfer across the relevant pension schemes and the rights of employees. The British Transport (Transfer from British Waterways Board Pension Schemes) Order 1968 , British Waterways Board (Alteration of Pension Schemes) Order 1971 and British Waterways Board (Alteration of Pension Schemes) (No 2) Order 1971 reflect what was agreed. Whilst these Orders may no longer be required, changing or revoking them may infringe the rights of British Waterways' employees. We are undertaking further work with lawyers to explore whether these can be scrapped.