



Department
for Environment
Food & Rural Affairs

**Improving our management of water in the
environment**
Summary of responses and government response
July 2019



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Introduction

This document constitutes the summary of responses received to our January 2019 consultation, 'Improving our management of water in the environment', the Government's responses to the points respondents raised and our decisions on the proposals.

Our 25 Year Plan for the Environment, 'A Green Future', set out a target to ensure clean and plentiful water by improving three quarters of our waters to be as close to their natural state as soon as is practicable. The Plan also set out our aim to reduce the risk of harm to people, the environment and the economy from natural hazards including flooding, drought and coastal erosion.

We explained in our consultation that there has been a significant improvement in the water environment and in resilience to flood and drought in recent years. This has partly been as a result of investment by the water industry, and a reduction in serious pollution incidents and leakage levels, Government action on water abstraction, and Government investment in flood and coastal defence projects. For example, in December 2017 we published our Abstraction Plan explaining our approach to reform, which included revoking licences unused for more than 10 years and, in January 2018, commencing a process to end previously exempt abstractions. We are also investing £2.6 billion between 2015 and 2021 to better protect 300,000 homes from flooding and £1 billion for the maintenance of existing defences; and local partners already raise and invest additional funding to support flood and coastal risk management.

Having the right amount of water in the right place for people, business and the environment in the face of a changing climate and a growing population is an evolving challenge, however, we recognise that we need to do more. The consultation proposals for both improving long-term planning and our regulatory systems incorporate additional tools that might help us with this. Elements of the proposals were familiar to stakeholders, having formed part of our on-going discussions with them over a number of years. Other elements were less familiar, having been developed more recently.

The consultation policy proposals

Our proposals were:

- better long term planning for water resources and drainage through:
 - improved water resources planning

- statutory drainage and wastewater planning
- modernising and strengthening our regulatory systems by:
 - reforming elements of abstraction licensing to link it more tightly to our objectives for the water environment. In particular, we proposed changes to the conditions under which the Environment Agency could amend licences to secure good ecological status for water bodies without paying compensation to the licence holder
 - amending existing legislation to enable a new valuation methodology for internal drainage boards. Internal drainage boards are flood Risk Management Authorities and carry out an important duty in managing water levels in drainage districts. The proposed change would enable government, where there was local support, to create new or expand existing internal drainage boards
 - enabling the Somerset Rivers Authority to be incorporated and established as a flood Risk Management Authority and a major precepting authority so it can work more effectively with other organisations to protect better the residents and local environment from flooding
 - modernising the process for modifying water and sewerage company licence conditions to bring the process more in line with other utilities and to strengthen Ofwat's ability to improve the way that water and sewerage companies operate

We also took the opportunity of the consultation to:

- ask for any specific evidence respondents might wish to provide to assist in our assessment of the costs, benefits or other impacts of the consultation measures; and
- begin discussions and seek stakeholders' views around enabling new local funding to be raised to tackle flooding and coastal erosion

Handling of responses

The consultation was launched on 15 January 2019 on Citizen Space and ran for eight weeks, closing on 12 March 2019.

Defra is grateful to everyone who took the time and effort to respond. The responses have been reviewed by Defra and Environment Agency staff dealing with the consultation proposals. They may also be seen by other Defra staff to help them plan future consultations.

This summary includes responses submitted online through Citizen Space, by post and by email. This summary is a high level overview of the main messages from the consultation responses; it tries to reflect the views offered but, inevitably, it is not possible to describe all the responses in detail.

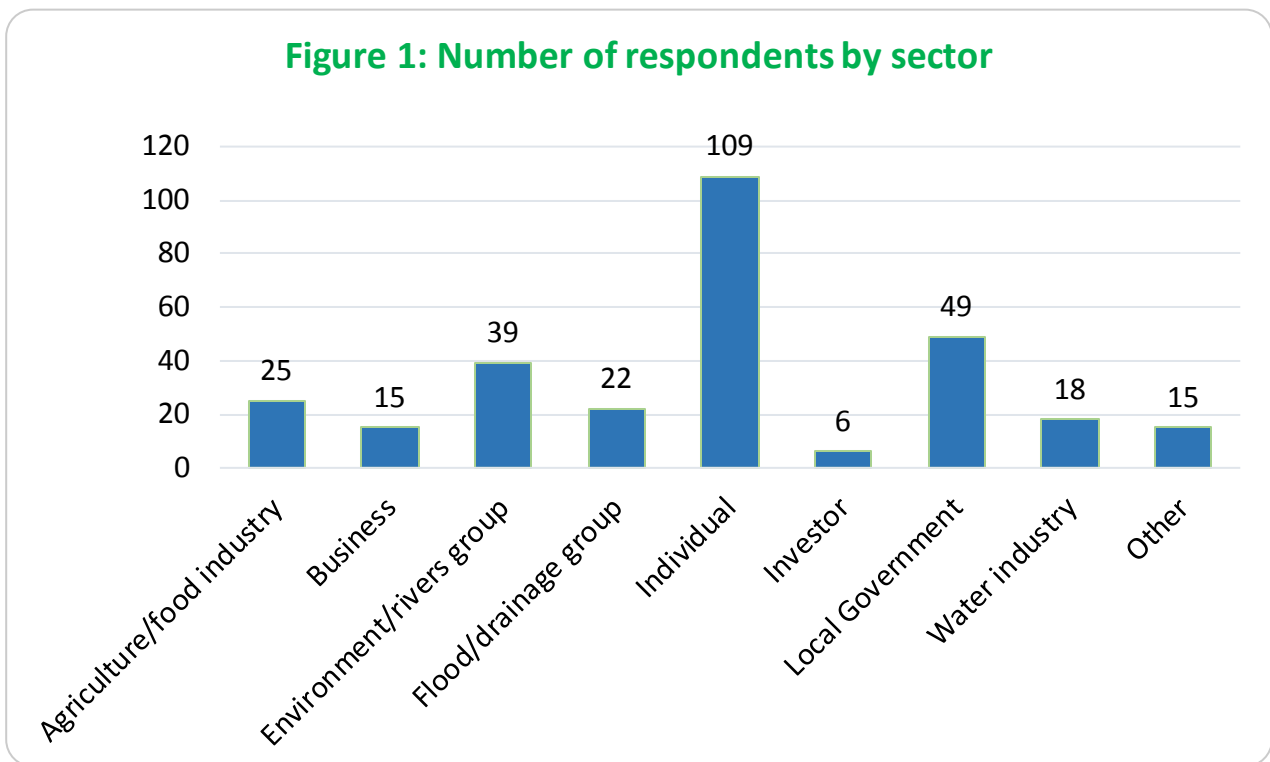
A broad analysis has been made of the key issues raised, including (where feasible) a numerical estimate of those for and against each proposal and the breakdown of responses by sector.

Overview of responses

We received a total of 298 responses to the consultation. Of these, two hundred (200) were submitted via the online consultation portal Citizen Space, ninety-four (94) were submitted via email and four were received as hard copy through the post.

Attached at Annex A is a list of the organisations who responded, excluding those organisations who asked that their details remain confidential.

Figure 1 below shows the sectors from which responses were received.



The largest number of responses (one hundred and nine (109)) were received from individuals. Local government and Environment/rivers groups accounted for the next highest number of responses – forty-nine (49) and thirty-nine (39) respectively.

Respondents who replied through Citizen Space selected the sector under which they wished their response to be listed. The sector option 'other' was selected by a number of diverse organisations, including HR Wallingford, East Suffolk Water Abstractor Group, Historic England, CWEM and Country Land and Business Association (known as CLA).

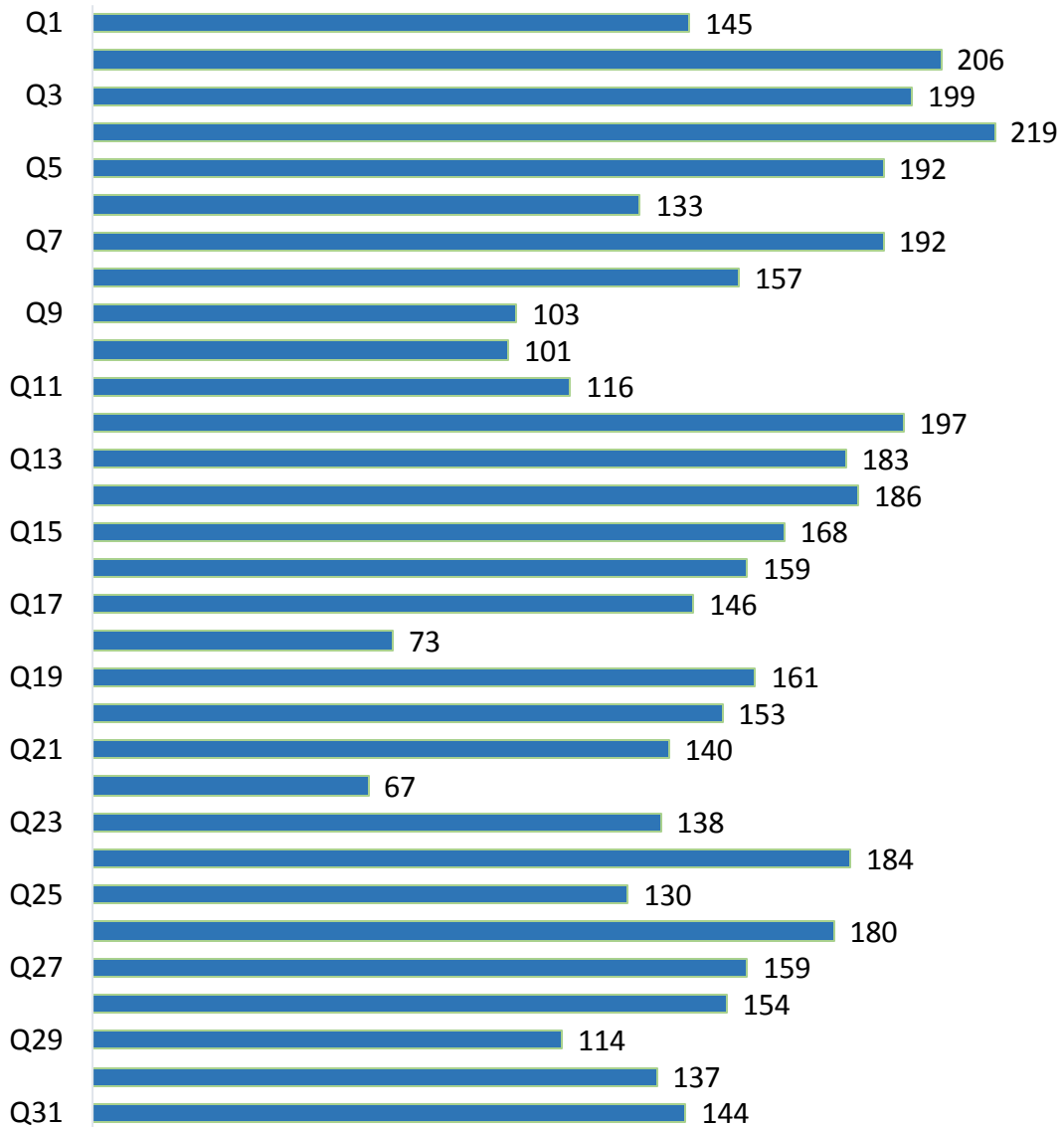
Defra allocated a sector to those respondents who replied via email or in hard copy where they did not specify a sector.

No respondent responded to all of the questions in the consultation. Respondents appeared to be selective in answering questions in which they had an interest. Some respondents also stated that they did not have sufficient knowledge of the issues to provide a response to some questions such as those concerning the modernising of the process for modifying water and sewerage company licence conditions.

There were some campaign-type responses from environmental groups. These provided support for the response of Blueprint for Water while also supplementing that with information about specific issues local to them. We do not respond to those local issues in this document.

Figure 2 below shows the total number of responses (a combined figure for all 'yes', 'no' and 'don't know' responses) that were received for each individual question.

Figure 2: Number of responses to each question



An initial summary of the main points made for each of the policy sections is below, and we provide a detailed breakdown of those responses and a summary of the comments provided to each individual question in the sections of this document that follow.

Summary of main points from the consultation responses

Water Resources Management Plans (questions 2 to 6): more than three quarters of those who responded to these questions supported the proposals to amend the existing statutory Water Resources Management Planning process. This support was from across

all sectors. Respondents also provided some suggestions for supporting the amended process.

Drainage and Wastewater Management Plans (questions 7 to 11): more than half of those who responded to these questions supported the proposal to make the planning process statutory. This support was across all sectors. Some comment was provided on what could be learnt for drainage and wastewater management from the existing Water Resources Management Planning process. A key point was around adopting a more light touch approach to statutory oversight of the planning process.

Water Abstraction (questions 12 to 18): there was a mixed response to the abstraction proposals across sectors. Generally environmental groups and individuals were supportive of the proposals, and the agricultural sector against. Environmental groups believed that further action was needed to address issues caused by potentially unsustainable abstraction, with concerns from agricultural groups about the impact of the proposals on land values and business growth. Many suggested that more time was needed to see how the Abstraction Plan was embedding and achieving abstraction reform.

Land Drainage: Internal drainage methodology (questions 19 to 23): there was strong support to amend the existing legislation to allow for the use of up to date data sources to calculate the values of non-agricultural land and agricultural land. These values are used by internal drainage boards in order to apportion payment of their expenses between the special levy and the drainage rate. There were mixed views on whether existing internal drainage boards not planning to expand should have the option to move to the new system or should be required to do so over time. Some respondents did raise concerns about the impact on local tax payers with the expansion of existing or creation of new internal drainage boards.

Flood and coastal erosion risk management: raising local funds (questions 24 to 25): this was an open question and the start of exploratory discussions. Most respondents agreed there is a need to consider new ways to raise local funding dedicated to flood and coastal erosion risk management, and several suggestions were put forward. These will be considered as we further explore options. However, some concern was highlighted over how the potential economic disparity between places might disadvantage some areas.

Rivers Authority: supporting legislation to enable the Somerset Rivers Authority to be formalised (question 26): there was support from across the range of respondents, including individuals, local government, environmental/rivers groups, and flood/drainage groups, for this proposal, although some expressed particular views over the governance, accountability and membership of a future incorporated body.

Water and sewerage company licence condition modification process; information gathering powers and electronic service of documents under Water Industry Act 1991 (questions 27 to 31): the majority of respondents were supportive across all of the questions, although the majority of water sector and water investors disagreed with the proposal to modernise the process by which Ofwat, the economic regulator for the water sector, modifies water and sewerage company licence conditions. Environmental groups and individuals were the sectors that provided the majority of support for this proposal. The support for the other two proposals – to modernise Ofwat’s powers to request information from water and sewerage undertakers and licensees and to include provision for the electronic service of documents served under the Water Industry Act 1991 (the principal Act that makes provision for the water industry) – had broad support from across all sectors.

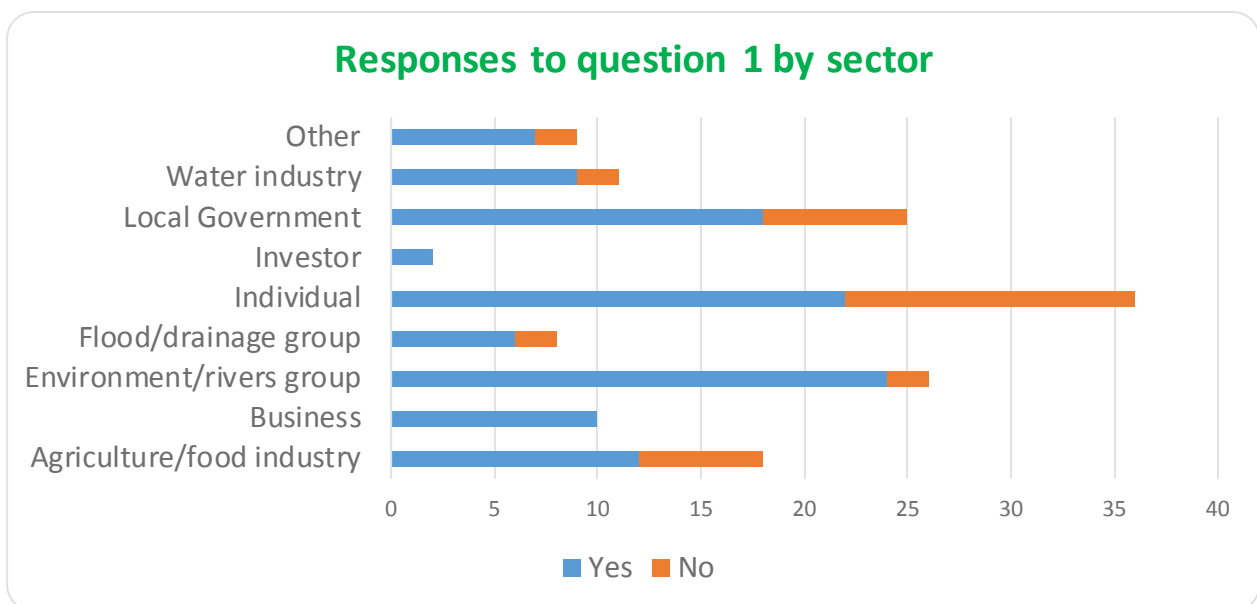
Consultation response detail

Evidence on possible impact of the proposals

Question 1: Do you have any specific evidence that you think could assist Defra in our assessment of the costs, benefits or other impacts of these possible measures? If yes, please provide details.

We included in the consultation document a summary of our assessment of the costs, benefits and impacts for each of the proposals. Question 1 sought to provide respondents with an opportunity to put forward any views on our assessments or to provide other evidence which might assist government in its further assessments of the proposals.

Overall, one hundred and forty five (145) respondents addressed question 1.



One hundred and ten (110) respondents said that they did have specific evidence that could assist Defra in our assessments. However, in considering the detail of those responses, most were not specifically attributed to individual policy proposals and a significant number, more than half, provided either:

- details of individual, often local, issues which were affecting or had affected the respondent; or
- general comments about water related issues.

General comments made included:

- 'I would like both the level of surface and ground water looked at - see if there are any areas where water is wasted and could in the long term be put to better use'
- 'with regard to water use in agriculture, horticulture, amenity horticulture and private gardening, the crucial thing is to prevent waste at source so that everyone has the availability of the water that they need'

A small number of respondents referred to some other information sources, such as their individual water abstraction records, or organisations, such public bodies, that would hold some relevant information.

Points were made about for example, the costs of gravel and sediment removal from rivers, that government should take into account the benefit of returning [water] flows and that we erroneously see all abstractions as environmentally negative; and that abstraction proposals could affect land prices.

One individual thought that there was 'plenty of anecdotal and photographic evidence, showing that low water levels and abstraction are having a serious and detrimental impact on our rivers and lakes', and another suggested looking at open source data from best practice from USA and Europe. A local authority offered to work with Defra on evidence regarding land drainage.

HR Wallingford explained with regards to Water Resources Management Planning that 'water companies in the Water Resources South East (WRSE) and Water Resources East (WRE) areas will have details on the costs of these two groups, in terms of the contributions these companies make to the WRSE / WRE organisations. However this is not the complete cost, as companies have internal costs of providing data etc.'

Kingston University (as part of the Hogsmill Catchment Partnership) suggested that 'in terms of assessing the costs, benefits and other impacts of these proposed measures, we would support a natural capital approach with ecosystem services evaluation to help characterise and take account of the value of maintaining and restoring high-quality ecosystems and the services they provide. We also believe that Defra must take account of the benefits of reducing abstraction (and costs of continued over-abstraction) to businesses that are dependent on abundant flows and healthy river ecology, such as recreational fisheries.'

Government response to question 1

Where respondents provided evidence, this is being considered as part of our further work to assess the impacts of the individual proposals.

Where the government is taking forward proposals, a full assessment of impacts will be published when final details of the policies are provided. Any evidence taken from consultation responses will be referenced in these assessments.

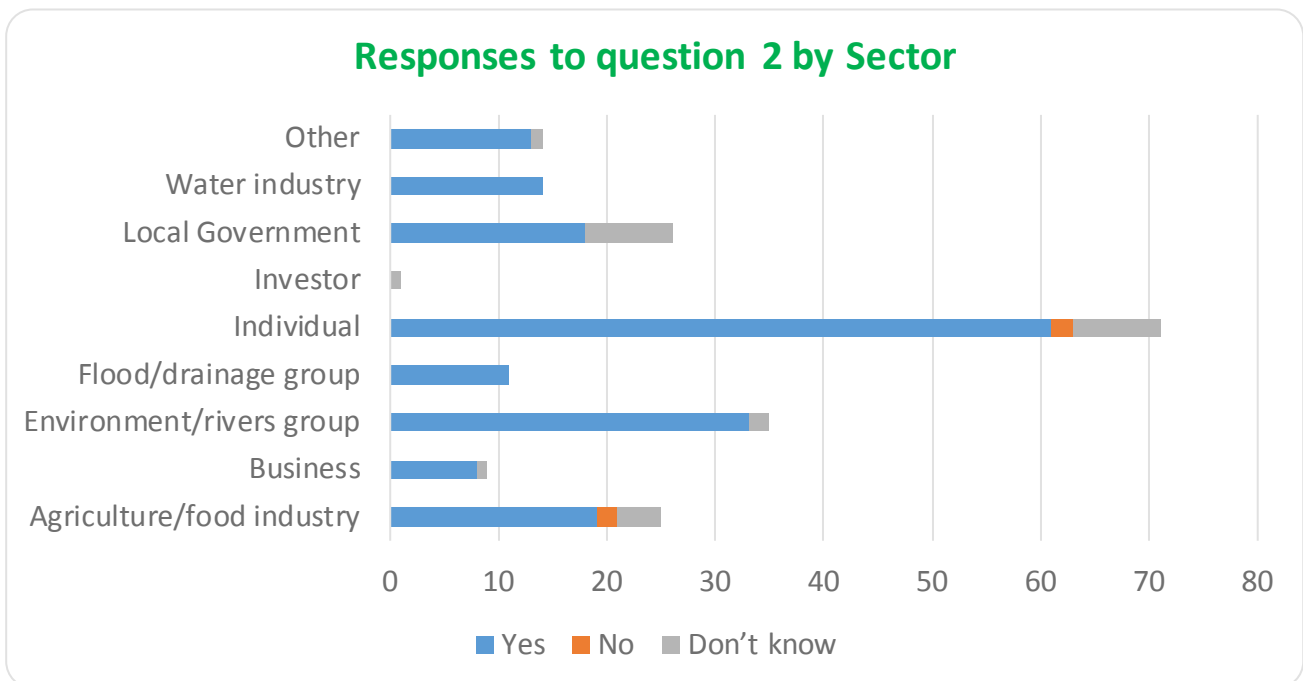
Long term planning of water in our environment

Water Resources Management Plans

Water companies have a statutory duty to develop and maintain Water Resources Management Plans. The aim of effective water resources management planning is to ensure a long-term balance between supply and demand is maintained. Water companies currently determine how to balance supply and demand over a minimum of 25 years through the statutory water resources management planning process. Every five years, water companies have to set out their intended approach in a Water Resources Management Plan. We sought views on our proposal to improve the existing provisions relating to Water Resources Management Plans to require companies to plan at a regional level, and take into account the future needs of the environment and of other water sectors.

Question 2: Do you agree that the Secretary of State should be able to direct water companies to plan on a regional and inter-regional basis? Please provide reasons.

In total, two hundred and six (206) respondents addressed question 2. This included seventy-one (71) individuals, thirty five (35) environmental / river groups and fourteen (14) from the water sector.



A significant number, well over three quarters of respondents, supported the proposal. This support was from across nearly all sectors that responded to the question.

The predominant view from respondents who supported the proposal was that they agreed with the rationale for it as presented in the consultation document. They supplemented this with views about the importance of collaboration across water company boundaries on water resources, recognising that water resources such as aquifers cross those boundaries. Some respondents made the point that regional planning helped to increase resilience of water companies.

Some respondents made suggestions for further improvements to the process such as:

- the importance of guidance to clarify what the purpose of the regional plans will be and to help overcome barriers that prevent collaboration, for example by setting out:
 - good practice about contracting for sharing water resources
 - expectations about effective consultation
 - how regional plans will be fit for purpose and to be produced in such a way as to make them comparable across regions

- consideration as to how regional plans should be sequenced and integrated with existing Water Resources Management Plans, business plans and other plans such as local authorities planning and environmental planning

- regional plans having the ability to take account of local sensitivities

- water companies should have a statutory duty to collaborate, not only when directed to, and they should demonstrate progress on collaboration and environmental targets in their annual reviews

- an environmental assessment of regional plans should be carried out to avoid duplication with the assessments required for the Water Resources Management Plans

- nationally significant water resources infrastructure should not be developed until regional planning was in place

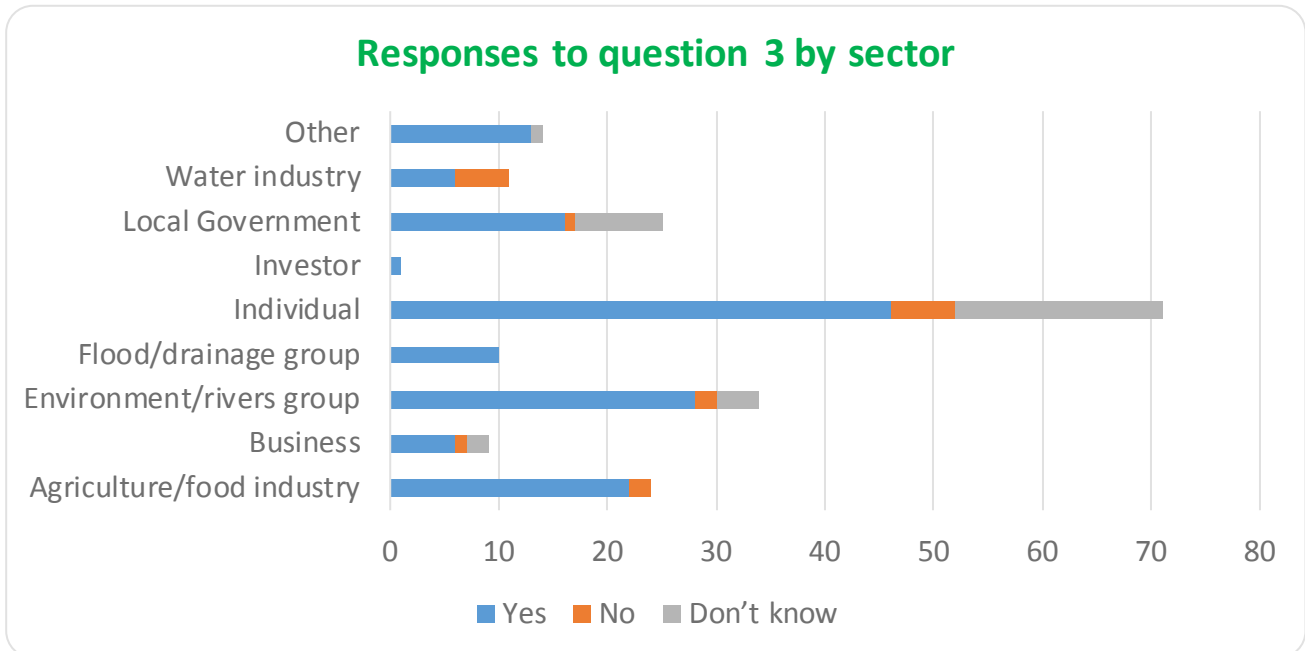
Respondents did not want a “one size fits all approach”, and also proposed that the improved process would need to provide clarity on how:

- the regional groups should be organised, their responsibilities and funding
- it interacted with national border issues, notably with Wales

Four (4) respondents disagreed with the proposal (2 individuals and 2 from agriculture / food sector).

Question 3: Do you agree that the Secretary of State should be able to direct water companies to take account of other abstractors' needs? Please provide reasons.

In total, one hundred and ninety-nine (199) respondents addressed question 3.



A significant number, well over half of respondents, supported the proposal. This support was from across all sectors that responded to the question.

Only 50% of the water sector supported the proposal, largely because they felt it could add delivery risks to their statutory supply duties. However, many others thought that water companies should already be collaborating, including on the needs of the environment and riparian users.

Respondents, notably from the agriculture sector, felt that it was important to have better arrangements and mechanisms for managing water resources in the longer term and as a drought develops, across sectors. The agriculture sector also asked to see water use for food production being prioritised.

There were questions raised about the practicalities of taking account of other water users' needs and how to:

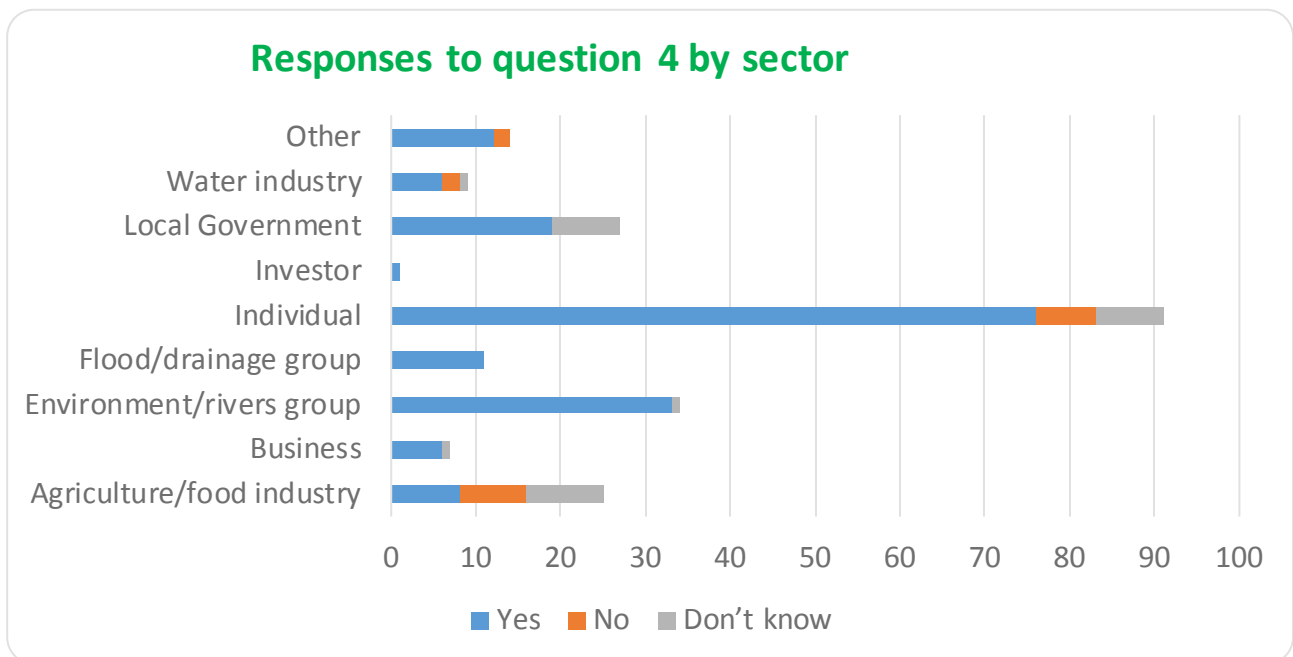
- obtain and use consistent planning cross-sector data
- resolve conflicts
- apportion costs fairly for new water resources

There were numerous suggestions about how using flow monitoring data and modern technology could help with data sharing and water trading.

Some respondents to this question expressed views / concern about water companies having too much responsibility for all water planning across a region, and that more regulatory oversight was required.

Question 4: Do you agree that the water resources management planning process should be recognised in legislation as a measure to deliver environmental objectives? Please provide reasons.

In total, two hundred and nineteen (219) respondents addressed question 4.



Over three-quarters of respondents (172) across all sectors supported the proposal for Water Resources Management Planning to deliver environmental objectives.

All those respondents felt that such an approach could lead to more strategic Water Resources Management Plans. However, many suggested that clarity was needed about:

- what this meant in practice
- who would be responsible
- what difference the proposal would make
- how to avoid potential overlaps or conflicts with other planning processes, such as the River Basin Management Plans

Some respondents also made the point that water companies already delivered environmental improvements through their Water Resources Management Plans, and that the achievement of environmental objectives did not only depend on the water industry.

Environmental groups felt that the proposal and legislative change would overcome “stalemates” between balancing the needs of the environment and risks to the public water supply, provided that *“the supporting guidance is clear, realistic, time bound and binding, with appropriate incentives for success, and penalties for failure”*.

They also suggested strengthening the environmental duties of public bodies in the Natural Environment and Rural Communities Act 2006 and / or placing a statutory duty on water companies to “maintain, restore and enhance biodiversity”.

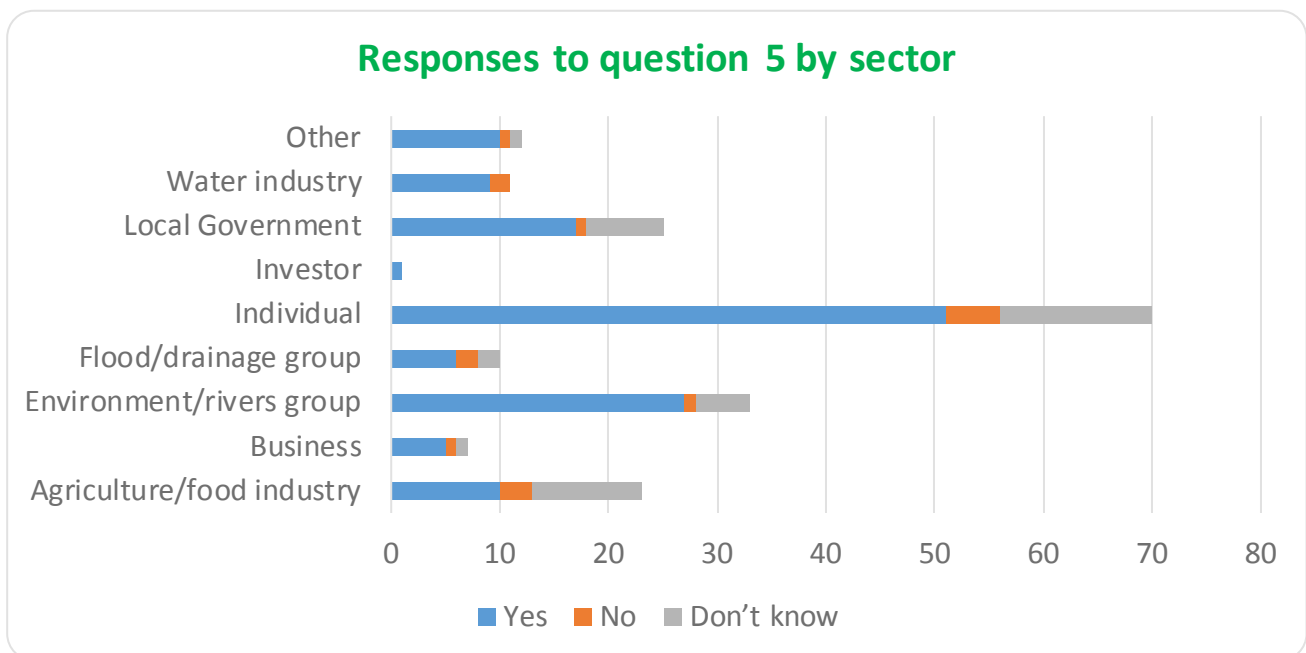
There were nineteen (19) respondents not supportive of the proposal, some of whom suggested that the Environment Agency would lose responsibilities for overseeing

environmental delivery and that access to environmental data could become more difficult if it was increasingly held by water companies.

Internal Drainage Boards thought that further consideration was needed about making the legislative change complementary to any future Environmental Land Management scheme which they and land owners / occupiers would be following.

Question 5: Do you agree with our proposals to improve the legislation governing Water Resources Management Plans? Please provide reasons.

In total, one hundred and ninety two (192) respondents addressed question 5.



Overall there was support for the proposal from about two thirds of respondents from across all sectors.

Some reasons for that support included that:

- simplification of the process should make it more transparent
- consultation would be very important to make the plans effective

Some campaign type responses made by a number of respondents made the points that:

- “any improvements in legislation governing Water Resources Management Plans should ensure that the Public Water Supply and water companies take due regard of the other abstractors and water users”
- “increasing regional and catchment planning would be most welcome and we believe this would result in both major environmental improvements and more resilient water supplies nationally. We would also welcome additional stakeholder and customer engagement in all Water Resources Management Plan planning stages”

- “increasing regional and catchment planning would be most welcome and should result in both major environmental improvements and more resilient water supplies nationally”

Those that disagreed with the proposal explained their reasons as follows:

- “it is unclear from the evidence provided or in the actual proposals what objectives are meant to be achieved through the development of high level plans”
- the proposals were draconian and unnecessary
- it was felt that water companies were not the appropriate leaders for the work
- disagreement with the cost / benefit assessment and a feeling that the benefits of the proposal could come some years after the initial costs of the plan
- the existing Water Resources Management Planning process was already statutory and worked well
- the proposal needed to go further and should provide provision for both drought and storm events

Question 6: Do you have any further suggestions about how we could improve the primary legislation that governs water resources management planning? These could be either administrative improvements, such as how confidential information is dealt with, or to achieve better water resources outcomes. Please provide reasons for your suggestions.

Some of the suggestions made for improving the primary legislation further included:

- modernising the current Water Resources Management Plan directions
- lengthening and breaking the Water Resources Management Planning process down into more steps
- improving the sequencing of plans to allow more efficient planning and delivery cycles and increased integration between water and wastewater planning
- guidance on when an inquiry was required on a Water Resources Management Plan scheme (currently a scheme could be subject to inquiry in the Water Resources Management Plan and again when planning permission was required)
- water companies should publish their annual reviews of Water Resources Management Plans

- updating and clarifying the consultation requirements for the plans
- simplifying confidentiality and anti-competition legislation
- adopting similar ambition for demand management measures
- guidance on balancing the risk of biosecurity and the benefits of water transfers
- making River Basin Management Plans look ahead 25 years
- using natural capital accounting to ensure that environmental costs and benefits are fully factored into decision making
- Ofwat's econometric systems are fit for purpose and responsive to what constitutes best value for society and the environment, not just least-cost to consumer and that measures identified in the Water Resources Management Plan process are funded
- better join up between water wholesalers and retailers on forecasting future water need
- minimum resilience water supply standards for extreme weather [drought] events
- more flexible abstraction licences, drought permits and orders to cope with droughts
- update the drought permit and order legislative processes
- more river flow monitoring and real time data with public transparency
- allowing third parties appeal rights on abstraction licence decisions

- encouraging and financial assistance for farmers increasing water storage and improving water efficiency
- improving legislation that governs water discharges

Government response to questions 2-6

Question 2: Do you agree that the Secretary of State should be able to direct companies to plan on a regional and inter-regional basis? Please provide reasons.

The government will take forward legislative proposals to allow the Secretary of State to direct water companies to plan at a regional or other geographical scale.

We recognise that a one size fits all approach will not work for every region and we will therefore allow flexibility in legislation on which water companies develop a regional plan and the scope of the plan.

The government also recognises that continued work to develop guidance and promoting collaborative ways of working will be required. We will continue to work closely with the water regulators and stakeholders to develop a process that work now and in the future. This includes taking the Water Resources Management Plan legislative proposals forward with the Welsh Government. We see the work the Environment Agency is leading to develop a National Framework for water resources as an important step.

We would use the powers to direct only if required and then once guidance is more advanced.

Question 3: Do you agree that the Secretary of State should be able to direct water companies to take account of other abstractors' needs? Please provide reasons.

The government believes that better cross sector collaboration, including the environment, is essential for managing scarce water resources and will take forward these proposals.

The government believes that it would not be appropriate to impose additional statutory requirements on other water users to develop a regional plan, jointly with water companies to help ensure water companies are able to deliver the measures contained in their plans. However, the government recognises that water companies cannot be solely responsible for the effectiveness of the plans to cater for other sectors' needs. To mitigate this risk we will expect water companies to carry out effective consultation, and the development of plans will have to be supported by the sectors involved, and regulators.

We will therefore be taking forward proposals to this effect and, as noted in the response to question 2, we will continue working with water regulators and stakeholders to improve water resources planning guidance and promoting collaborative ways of working.

Question 4: Do you agree that the water resources management planning process should be recognised in legislation as a measure to deliver environmental objectives? Please provide reasons.

The government recognises that environmental improvements are already planned for in the Water Resources Management Plans and wants to see environmental needs planned for more strategically. We have considered carefully the benefits of making it clear in primary legislation that Water Resources Management Plans address environmental issues but can see arguments too that adding a duty may not drive significant benefits when assessed alongside water companies' other environmental obligations.

The government therefore intends that the Secretary of State will direct each water company that their Water Resources Management Plans should contain specific measures to contribute to the achievement of relevant environmental objectives. We believe this will add more value as it would provide further clarity as to what is expected of water companies. We will also work with the Environment Agency to review how the Water Industry National Environment Programme works in terms of water resources, so environmental improvement can be delivered more strategically.

Question 5: Do you agree with our proposals to improve the legislation governing Water Resources Management Plans? Please provide reasons.

Question 6: Do you have any further suggestions about how we could improve the primary legislation that governs water resources management planning? These could be either administrative improvements, such as how confidential information is dealt with, or to achieve better water resources outcomes. Please provide reasons for your suggestions.

Those who disagreed with the proposals did not provide specific reasons in response to question 5 about why they did not support the improvements that were suggested. A majority of respondents supported the proposals and the government intends to take forward the legislative proposals that were in the consultation to improve the processes for developing a Water Resources Management Plan¹.

In response to questions 6, the government and water regulators are already considering and taking forward the majority of the suggestions proposed, as we update policies and guidance on water resources and drought planning in the coming years to support the next round of plans, and implement the abstraction plan. The government will continue considering the other suggestions and, if relevant, a suitable mechanism for taking them forward.

¹ These proposals will apply to drought planning processes

Drainage and Wastewater Management Plans

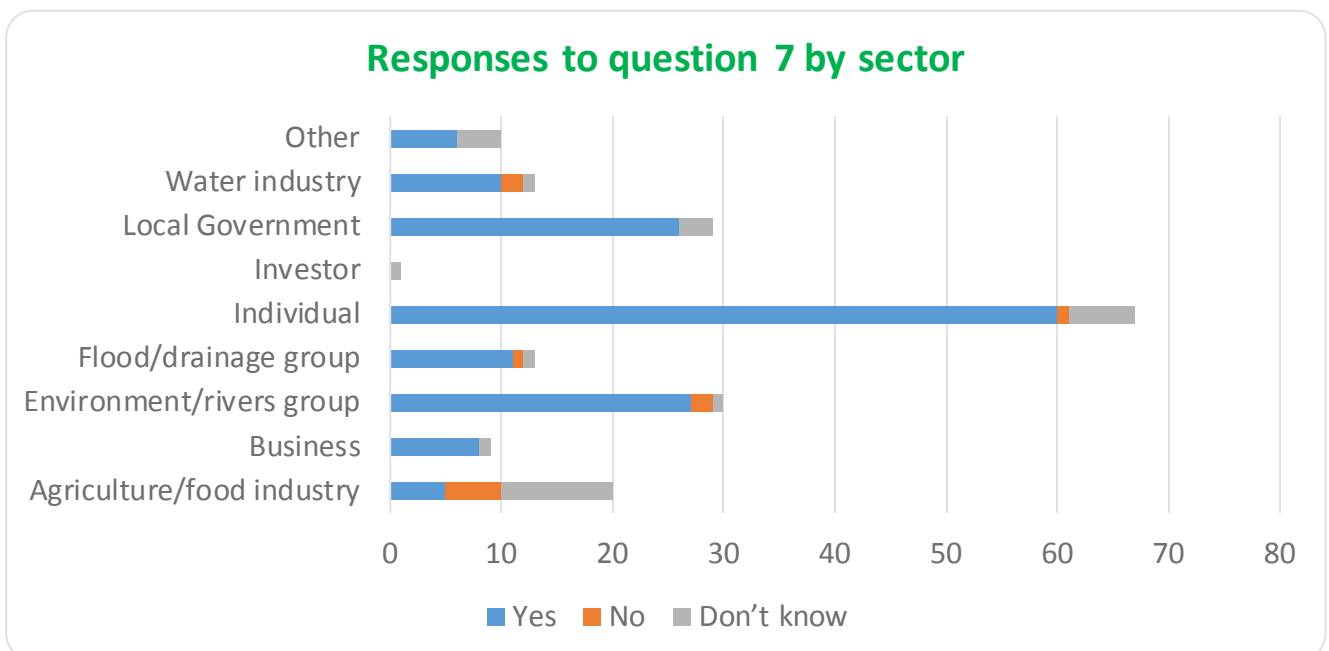
Sewerage companies have a number of duties in relation to drainage, wastewater and sewerage. They have a duty under section 94 of the Water Industry Act 1991 to ensure that their areas of operation are “effectually drained”, including by providing, improving and extending sewer systems.

However, there is currently no statutory duty to plan for the management of drainage and wastewater networks. Failure or overloading of the sewerage network will increase unless action is taken to manage effectively our ageing wastewater network. A better understanding is needed by sewerage companies of how their assets interact with the wider drainage network, for example assets that are the responsibility of local authorities.

Sewerage companies are currently producing Drainage and Wastewater Management Plans on a non-statutory basis under a non-statutory framework. We sought views on whether and how we could put plans on a statutory footing, enabling sewerage companies to secure and prioritise investment more effectively and allow for better management and planning for drainage and wastewater networks. This should also facilitate a more joined up approach and assist customers’ understanding of the sewerage services they receive.

Question 7: Do you agree that Drainage and Wastewater Management Plans should be made statutory and produced every five years? Please provide reasons.

In total, one hundred and ninety-two (192) respondents addressed question 7.



Over three quarters of the respondents (153) supported the proposal, with only eleven disagreeing and the remaining responding ‘don’t know’.

Key themes raised in favourable responses was that a statutory approach would increase accountability, and aid assessment of drainage capacity in new development proposals.

Local authorities in particular were in favour of a process that works alongside and complements existing processes such as River Basin Management Plans and local flood risk management strategies.

The Local Government Association considered that statutory Drainage and Wastewater Management Plans would provide greater opportunities to support the development of statutory local flood plans through increased partnership working and information sharing. It was notable that no responses from local authorities or their representatives suggested that statutory Drainage and Wastewater Management Plans would be considered an additional burden.

Several very detailed responses called for better integration with wider water cycle management, involving multiple stakeholders to maximise benefits.

Blueprint for Water were in favour of statutory plans, suggesting the Drainage and Wastewater Management Plan process should unlock investment through the water company business planning process, which should be focussed on dealing with environmental risks, for example combined sewer overflows. Similar responses were received from others, including the Salmon & Trout Association, RSPB, WWF and several other river and wildlife trusts.

The water industry supported the proposal, suggesting that a statutory role for other stakeholders in the Drainage and Wastewater Management Plan process should be specified in legislation. They also believed that the costs of statutory Drainage and Wastewater Management Plans had been underestimated, although there was broad agreement that benefits will clearly outweigh costs. Water UK strongly supported making Drainage and Wastewater Management Plans statutory, noting specifically that a statutory process would ensure Plans are prioritised appropriately both within and outside the water industry.

Of those not in favour of this proposal, around half were representatives of the agriculture/food sector. Comments received were generally of the opinion that a statutory process represented over-regulation.

Question 8: Who should a water company consult with, and obtain information from, in developing their Drainage and Wastewater Management Plans and at what stage in the development of their plans?

One hundred and fifty-seven (157) respondents provided some suggestions for question 8.

The suggestions most frequently made by respondents were that consultation should take place with: the Environment Agency, all tiers of local government (including Highways departments and planning authorities), abstractors, angling and wildlife groups, landowners, farmers, developers, Internal Drainage Boards, household customers and local flood groups.

Several respondents sent detailed responses echoing the response of Blueprint for Water, suggesting the plan making process should work with catchment partnerships in taking a holistic view of drainage across a catchment and the stakeholders therein.

Some responses also stated that a collaborative approach to plan development would facilitate opportunities for cost-effective collaboration on solutions.

Water UK considered it essential that, in the development of Drainage and Wastewater Management Plans, water companies are able to consult with and obtain information from other flood Risk Management Authorities (as defined by section 6(13) of the Flood and Water Management Act 2010). Water industry and local government respondents also strongly supported the need for a collaborative approach throughout the development of Drainage and Wastewater Management Plans rather than a single point of consultation.

Question 9: What, if any, are the lessons we could use from the Water Resources Management Planning process in making Drainage and Wastewater Management Plans statutory?

In total, one hundred and three (103) respondents provided answers to this question, although few of those responses suggested lessons we could use from the Water Resources Management Plan process.

Among those that addressed the question, there was a call for Drainage and Wastewater Management Plans to have a greater influence over price setting. Several responses called for a simplified process than that currently used for Water Resources Management Plans, as raised in responses to the earlier questions about the water resources planning process. CCWater and others recommended earlier and more substantial collaboration and consultation with customers and stakeholders.

Blueprint for Water's response, which was echoed by several other river and wildlife groups, suggested that meaningful engagement and collaboration with stakeholders was key, and that catchment partnerships may provide a valuable route to improved partnership working at a catchment scale. The wildlife trusts highlight positive work on stakeholder engagement for Water Resources Management Plans which they said should be replicated for Drainage and Wastewater Management Plans.

Very detailed responses were received from the water industry. Severn Trent Water noted their preference for a statutory requirement to set the high level objectives and principal outputs, with the detailed mechanism for delivery in technical guidance, to ensure the delivery framework remains flexible and encourages innovation. A general point made by the water industry was that Drainage and Wastewater Management Plans require far more local strategic detail compared to Water Resources Management Plan water resource zone strategies. One water and sewerage company suggested Drainage and Wastewater Management Plans should be aligned with other existing statutory plans such as River Basin Management Plans, Flood Risk Management Plans, Local Flood Risk Strategies, and Surface Water Management Plans.

Question 10: Is the current non-statutory Drainage and Wastewater Management Plan framework clear and complete, and are there any changes/lessons learnt which we should take on board in making the process statutory?

One hundred and one (101) respondents answered question 10.

A detailed response was received from Blueprint for Water, which was echoed by several other river and wildlife groups. Representatives of the water industry provided several very detailed responses.

General themes in response to this question included suggestions that a statutory approach should be developed in light of a review of the non-statutory Drainage and Wastewater Management Plan framework. Severn Trent Water and another water and sewerage company suggested that the process for making Drainage and Wastewater Management Plans statutory should recognise that the framework would evolve during its application, as such the statutory process should start after December 2022. Anglian Water suggested the statutory principles of Drainage and Wastewater Management Plans should be high-level, with the technical approach remaining adaptable (for example through guidance).

Question 11: Should there be government or regulatory oversight of the Drainage and Wastewater Management Plan process and review of plans? What level and type of oversight should this be? Please provide reasons.

In total, one hundred and sixteen (116) respondents addressed question 11.

The regulators most frequently referred to in responses to this question were the Environment Agency and Ofwat, with some responses suggesting a joint approach. Several respondents saw a potential role for the Office for Environmental Protection.

While responses were mostly in favour, there were some mixed responses that questioned whether oversight was strictly necessary, cautioning against over-regulation.

Blueprint for Water, supported by others representing river and wildlife groups, considered regulatory oversight to be essential, suggesting a role for Ofwat performance commitments to drive ambition. Other river and wildlife groups made the point that regulatory oversight should extend to delivery of plans, not just plan making.

The water industry response was mixed with regard to who the regulatory oversight should be provided by, with water companies suggesting either the Environment Agency or Ofwat. Severn Trent Water expressed an opinion that the level of governance applied to Water Resources Management Plans was not needed for Drainage and Wastewater Management Plans.

Government responses to questions 7-11

Question 7: Do you agree that Drainage and Wastewater Management Plans should be made statutory and produced every five years?

The government intends to proceed with the proposal to place Drainage and Wastewater Management Plans on a statutory footing, produced on a 5-year cycle.

It was clear that respondents felt strongly that statutory plans must be developed to integrate with other existing planning processes, and that a full range of stakeholders must be involved in the planning and delivery of these plans. Government will take account of this as we make the process statutory.

Some water industry respondents suggested that the costs of producing plans had been underestimated. When estimating the costs, government considered any additional costs

on top of those incurred currently in the non-statutory development of the plans. We are aware that statutory plans may add additional costs to current non-statutory planning processes, and we will seek to reduce potential additional burdens in developing these proposals.

Question 8: Who should a water company consult with, and obtain information from, in developing their Drainage and Wastewater Management Plans and at what stage in the development of their plans?

Responses made it clear that a very wide range of parties will have an interest in the development of these plans. We agree that the consultation process adopted in developing plans should provide sufficient opportunities to gain input from all interested parties. In their responses, the water industry recommended that they should be able to obtain information from other flood Risk Management Authorities in order to enable plans to fully take account of inputs into their networks from drainage assets outside their ownership. We agree with the importance of plans incorporating this information and will look to see how this can be best achieved.

Question 9: What, if any, are the lessons we could use from the water resources management planning process in making Drainage and Wastewater Management Plans statutory?

A strong theme of several responses, most especially in response to question 9, was that the statutory processes underpinning drainage and wastewater planning need to be more responsive than the process currently in place for water resources planning.

The clear steer from respondents was that high-level expectations should be set in primary legislation with the detail covered in secondary legislation and guidance, a point also made in response to question 10. Government agrees that there is a need to achieve a suitable legislative balance between setting high level statutory requirements while doing so in a way that is responsive to future challenges and changes needed. This is something we will take account of as we take forward a statutory process.

Question 10: Is the current non-statutory Drainage and Wastewater Management Plan framework clear and complete, and are there any changes/lessons learnt which we should take on board in making the process statutory?

Water industry responses clearly highlighted the importance of acknowledging the work already delivered by the industry to develop a non-statutory framework for Drainage and Wastewater Management Plans, and that a statutory approach should build on this work.

Government acknowledges the considerable work undertaken by the industry in delivering a non-statutory process, and we will seek to ensure that the statutory process builds on this work. In addition, it is intended that the timing for the introduction of statutory plans will dovetail with the timing for non-statutory plans, due to be completed in late 2022.

Question 11: Should there be government or regulatory oversight in the Drainage and Wastewater Management Plan process and review of plans? What level and type of oversight should this be?

Responses mostly favoured the Environment Agency or Ofwat taking some proportionate regulatory oversight of the Drainage and Wastewater Management Plan process. The government is working with these bodies to develop their regulatory role over this planning process and how it will be balanced with government's own oversight role with that of the Office for Environmental Protection.

Modernising and strengthening our regulatory systems

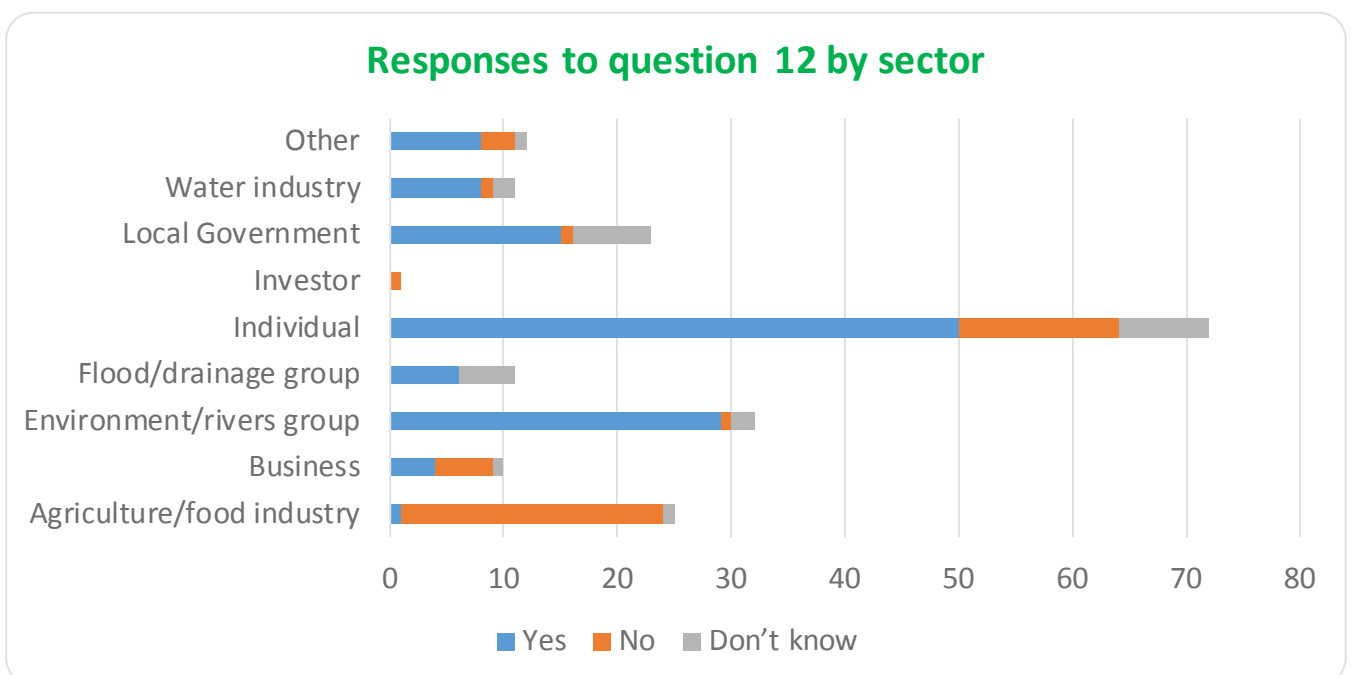
Water abstraction

Many water abstraction licences are over 50 years old, and were granted at a time when our knowledge of the environmental impact of water abstraction was in its infancy. Some of these older licences may pose a risk to the environment during particular times of the year, such as during the summer months, when river flows or aquifer levels are low. This issue has become more acute with the impacts of a changing climate and increasing demand for water due to population growth. While the Environment Agency can propose change to licences to address this risk, under the current system, changes to licences which are causing environmental harm may result in a compensation liability for the Environment Agency.

In the consultation, we sought views on proposals that would enable the Environment Agency to vary or revoke licences without paying compensation to the licence holder, where those licences pose a risk to the environment. This would also reduce inequity in the abstraction licensing system making the treatment of older or permanent licences more consistent with newer time limited licences which can be renewed on different terms, or not renewed at all, without the payment of compensation. We also sought views on proposals to vary licences that have been under used for a significant period of time, so some of the under used licence volume could be removed, again without the payment of compensation.

Question 12: Do you agree that the Environment Agency should be able to vary or revoke any licence that is causing unsustainable abstraction without paying compensation? Please provide reasons.

In total, one hundred and ninety-seven (197) respondents addressed question 12. Individuals provided the highest number of those responses, with the second highest number of responses from environment / river groups and agriculture / food sector.



A majority of respondents expressed support for the proposals. This was from each sector except agriculture / food, which strongly opposed it, and the business sector, which was split on the proposal.

Those in favour cited various reasons for their support including: environmental protection; inequity in the current system; response to a changing climate and growing demand; and the increase in our knowledge of the impact of abstraction on the environment since many abstraction licences were granted.

Environment / river groups, individual respondents and local government argued that the Environment Agency should be able to act to protect the environment from damage, or potential damage, without paying compensation. They stated that if environmental damage was being caused, or could potentially be caused, by an abstractor then it was not fair or right for them to be compensated.

Many of these respondents also stated that taxpayers or other abstractors should not be required to compensate those who are causing environmental damage through unsustainable abstraction. Additionally, the current system was seen as inequitable because those abstractors with newer time limited licences were ineligible for compensation if their licence was not renewed, or renewed on different terms, when it expired. They suggested that this proposal would therefore go some way to addressing the inequity in the system between different types of abstraction licences.

Responses from those sectors supporting the proposal also stated the issue of compensation was a 'barrier' when trying to protect the environment from unsustainable abstraction. Enabling the Environment Agency to act in a greater range of circumstances without being liable to pay compensation would allow it to change those licences where neither the current regulatory position, nor the voluntary approach, has succeeded.

Respondents also stated that permanent licences were granted many years ago and so the terms of these licences were outdated and not appropriate in the modern context of climate change and a growing population.

Several responses, including local government respondents, suggested that time and notice must be given to abstractors to enable them to develop alternative sources of water.

One water company drew attention to the facilitation of water trading as an alternative for abstractors, and another stated that greater support should be given to agricultural abstractors, and a new farming policy post EU Exit could be a way to do this.

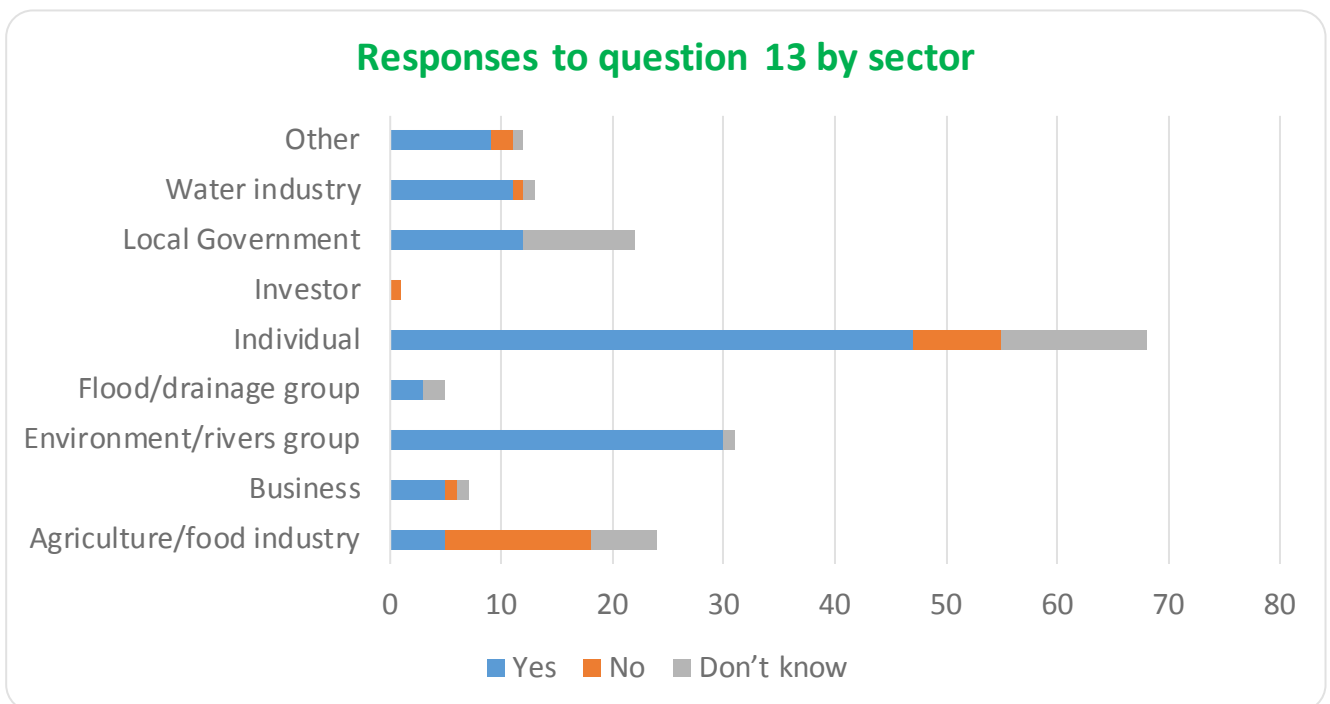
Those from the business sector who responded in favour of the proposal welcomed the approach and recognised the importance of a sustainable supply of water to business. However, these respondents considered the burden of proof should rest with the Environment Agency and should not be passed on to abstractors. These respondents also considered that sufficient checks and balances need to be in place so the Environment Agency uses the power appropriately. Other respondents argued that abstractors need to adapt to the changing climate and demands of water, and should not expect compensation if their ongoing practices damaged the environment. Like the water industry, some in the business sector saw this as a way of incentivising abstractors to act without needing to use the regulatory power. A number of businesses opposed the proposal on the grounds that certainty of water supply is needed for business and failing of water body standards may not necessarily be the fault of the abstractor.

The agricultural and food sector was strongly opposed to this proposal. Most responses stated that licences represented a business asset and a property right and losing the whole, or part, of the licence with no compensation could have a serious adverse effect on food production, business growth and contravened property rights. Additionally, investment decisions had been taken on the basis of this asset and losing the water supply could render those investments and related infrastructure useless. Many respondents, including the National Farmers Union (NFU) and Countryside and Business Land Association (CLA), argued that abstractors had been paying into a compensation pot for many years and access should not be retrospectively blocked. Some respondents stated that, unlike water companies, the agriculture sector could not pass on the costs of additional investment to find alternative solutions to its customers.

A number of responses, cross sector, stated that time should be given to allow the voluntary catchment based approach outlined in the Abstraction Plan to embed before further regulation. Additionally, a number of other responses stated that they needed more clarity regarding the proposals before they could support them. There were also cross sector responses that the reason for the abstraction must be considered, and also where the water is going, for example if the abstraction is non consumptive and returned nearby to the environment or supports the status of another water body.

Question 13: Do you agree with our proposal to link unsustainable abstraction to various environmental duties as set out in this consultation? If not, how would you determine what constitutes unsustainable abstraction and why?

In total, one hundred and eighty-three (183) respondents replied to question 13. Individuals provided the highest number of those responses, with the second highest number of responses from environment / river groups, agriculture / food sector and local government.



A significant amount, about two thirds, of those who responded to this question, supported the proposal. Support was largely from environment / river groups, local government, the water industry, business, and individuals, although it was not unanimous across these sectors. The agriculture / food sector were largely against the proposal.

A large number of environment / river groups stated that the government had made a commitment to improve the status of the country's water bodies through the Water Framework Directive and that unsustainable abstraction was a significant cause of failure in many water bodies. Additionally, they believed it was important that the government should act on its 25 Year Environment Plan commitments, and that the proposal would support these.

Some other sectors, while supportive of the proposal, had reservations about how it would be implemented, and the data and evidence collection that would be required. In particular, they had reservations about the use of Environmental Flow Indicators as a measure of meeting environmental commitments. Many respondents also advocated the need for an open and transparent decision making process about licences, and a robust appeal mechanism against decisions.

In support of the proposal, the water industry encouraged all abstractors to act responsibly. They felt also that the onus to provide proof and evidence for changes should be on the Environment Agency, and not the abstractor. Additionally, they proposed that detailed assessment must be undertaken before an abstraction was deemed unsustainable, with the impacts of the abstraction and direct links to the environment and other contributory factors clearly understood. One water company believed, however, that the Environment Agency already had the powers to act.

Businesses felt it appropriate to link unsustainable abstraction with environmental duties and considerations. However, some suggested that assessment should be based on evidence and terms used in legislation clearly defined.

Amongst those who opposed the proposal, there was general agreement that any evidence of a link between environmental damage and abstraction under this power must be clear and fact based. Some argued in addition that it was not possible to prove the link, and any action taken by the Environment Agency would therefore be based on insufficient evidence.

A number argued that there was insufficient clarity in the proposal and that it was unclear what would constitute unsustainable abstraction under it. A large number of respondents were also concerned that the factors in the consultation document to which we proposed linking unsustainable abstraction were not sufficiently precise. They highlighted in

particular ‘not being able to conclude no adverse effects’ [on integrity of European sites as defined in Conservation of Habitats and Species Regulations 2017 and sites protected under the Convention on Wetlands of International Importance (1971) (commonly known as Ramsar sites)]; and ‘likely to damage a site’ of special scientific interest designated under the Wildlife and Countryside Act 1981.

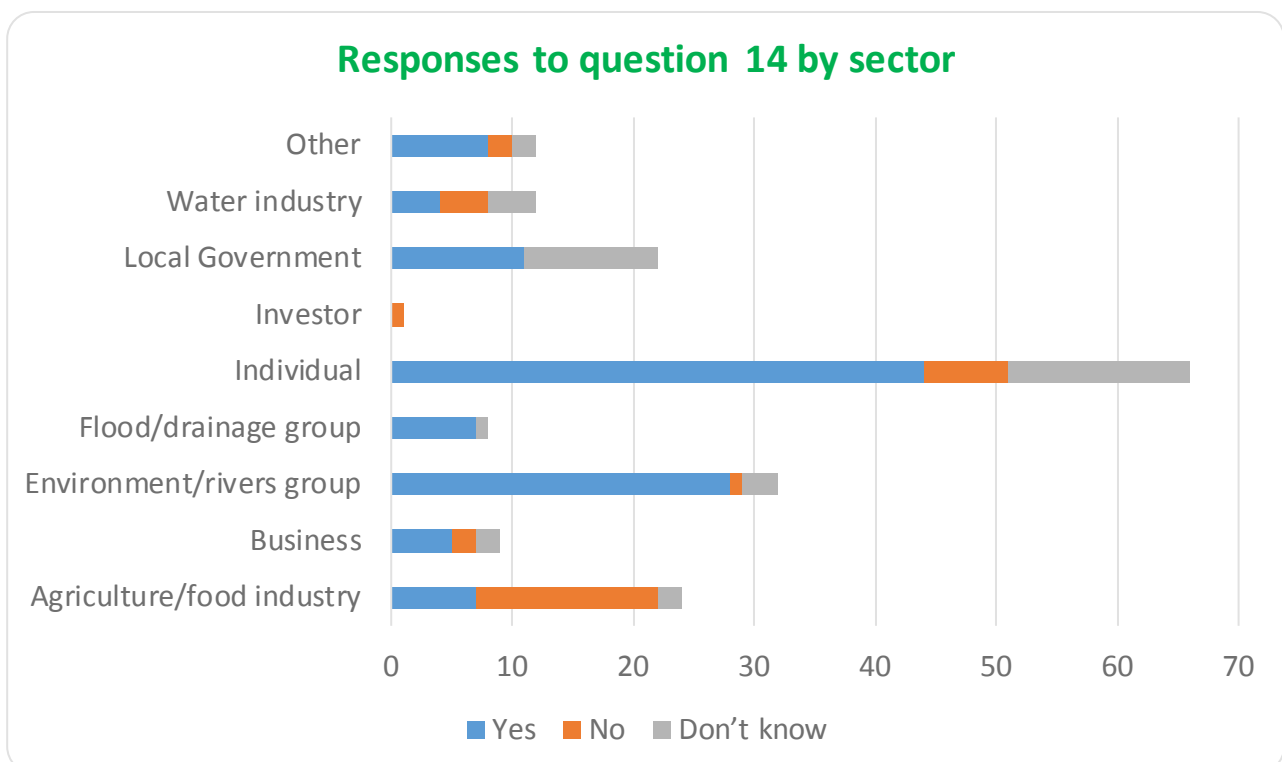
There was also concern about the use of the term ‘in combination’ in the following consultation statement and how the Environment Agency would use this.

“We propose linking what constitutes environmental damage to circumstances where there is a failure to meet water body environmental objectives and other environmental conditions.

This would allow the Environment Agency to recommend the revocation or variation of licences that are causing long-term damage to the environment, either directly or in combination, but do not meet the current threshold of ‘serious damage’.”

Question 14: Should the Environment Agency be able to vary under used licences in the case of unsustainable abstraction to remove the underused portion, with suitable safeguards to protect necessary headroom? Please provide reasons, including possible safeguards you consider appropriate.

In total, one hundred and eighty-six (186) respondents replied to question 14. Individuals provided the highest number of those responses, with the second highest number of responses from environment / river groups.



Over half of respondents (114) supported the proposal, with thirty two (32) respondents against and forty (40) responding 'don't know'. The support for this proposal was strong from across environment / river groups and individuals. Most of the agriculture and food sector, some individuals and some from the water industry were against the proposal.

Environment / river groups agreed that the Environment Agency should be able to vary underused licences to prevent unused water being taken up and damaging the environment. However, a number of them warned against incentivising unnecessary use by abstractors seeking to avoid licence change. Many environmental groups stated there should be no safeguards for headroom if using that headroom would damage the environment.

Businesses who supported the proposal argued it was right if the removal of the underused portion protected the environment but all action should be taken in consultation with the abstractor, and evidence obtained over a number of years. Similarly to the environmental groups, there was concern that abstractors may overuse their licence to avoid the underused portion being removed. Additionally, the needs of the business and understanding of abstraction patterns must be taken into account by the Environment Agency. Those who opposed the proposal stated that businesses have underused licences for growth reasons and to meet fluctuations in demand.

Parts of the water industry who supported the proposal stated it could be used to boost competition in the sector. Others stated that they supported the proposal providing the Environment Agency had robust evidence that the underused portion would make the abstraction unsustainable; the economic impacts on the abstractor were assessed; there must be agreement on a reasonable level of headroom; and the reason for underuse must be taken into account. One water company stated that any licences relied upon by a company in their Water Resources Management Plan should not be considered underused, regardless of the actual volume used, as this might undermine the company's ability to manage their water resources, particularly in times of drought or prolonged dry weather.

Other water companies opposed the proposal, on the basis that it may undermine drought resilience and water company water resources management and drought management. Additionally, it provided flexibility to deal with supply interruptions and unforeseen issues and emergency situations. One company argued that water trading would be a safeguard.

Agriculture respondents who supported the proposal did so because they believed it was unfair that some abstractors have a licence for water they are not using, and denying other abstractors the opportunity to use it. Other groups were supportive in principle, but argued these decisions must be taken on a case by case basis and future potential use of the licence must be taken into account.

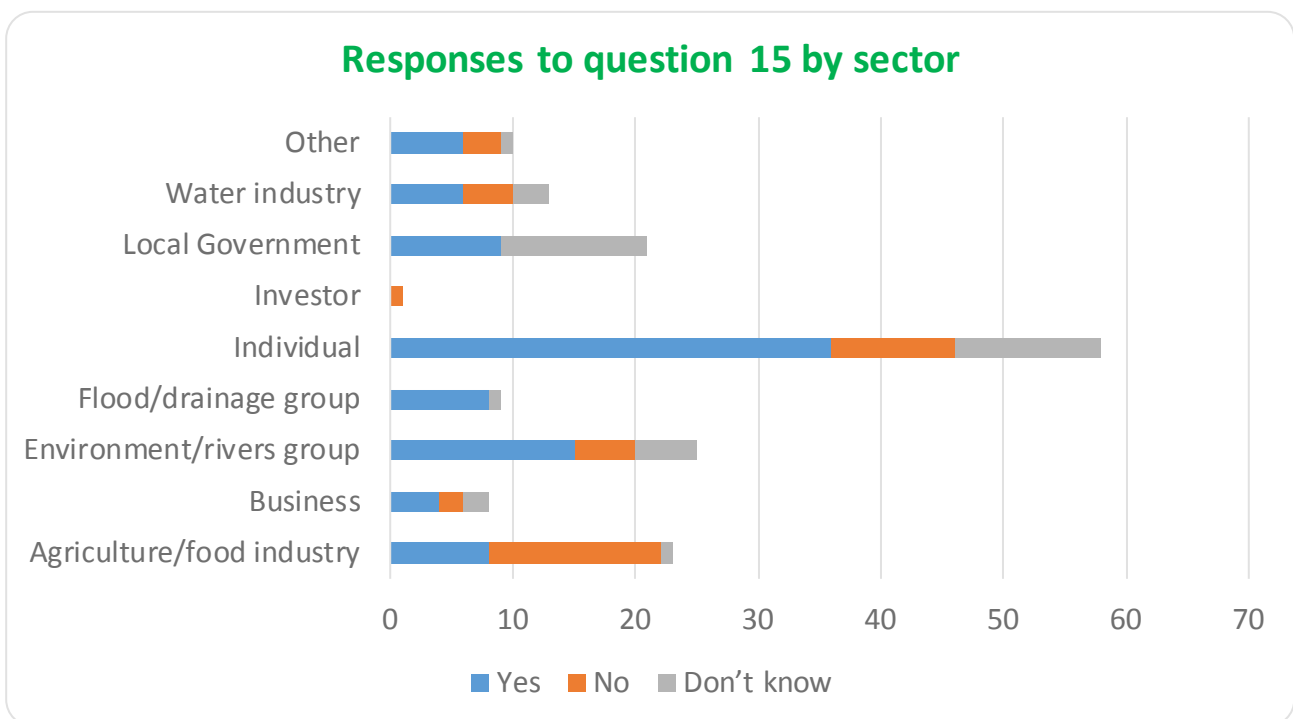
Agriculture and food groups who opposed the proposal argued that there are many justifiable reasons for holding on to underused portions for irrigation, crop change and dry years. Additionally, some argued they could not see how a fair and equitable system could be implemented as the need for holding onto an underused portion of a licence, as well as the time over which it is needed and the volume differed between abstractors. It was also argued that the licence, which was a right for the abstractor, was used commercially and underpins the farm operation within the supply chain regardless of whether the water is actually used. A number of respondents also said that it would affect the land value and could inhibit business growth. Aquaculture interests also argued that the proposal would

be unfair, and stated that as aquaculture was dependent on water it could compromise their operations.

There was general cross sector agreement between agriculture, the water industry and business that under use is justified in many cases. For example, resilience to drought, for crop rotations, business growth and business resilience. In these cases the licence should remain untouched.

Question 15: Should the Environment Agency also be able to vary under used licences where there is unmet need for additional water in the catchment, to remove the underused portion, with suitable safeguards to protect necessary headroom? Please provide reasons, including possible safeguards you consider appropriate.

In total, one hundred and sixty eight (168) respondents addressed question 15. The highest number of responses were received from individuals (fifty eight (58)) and environment / river groups (twenty five (25)).



The majority of responses, approximately three-fifths, supported the proposal. The support was largely from environmental groups, local government, flood and drainage groups and individual responses, although a small number of environmental groups were opposed.

Business respondents and the water industry were also split in terms of their support or disagreement with the proposals. The agriculture and food sector was mostly opposed, with some supportive.

While environmental groups were generally supportive, this support was caveated on the grounds that there would be no adverse impact on the environment if the underused portion of water was allocated and used by another abstractor. Additionally, the

Environment Agency should consider the future need for water by the environment with climate change and growing demand. A number of groups cautioned that in water stressed areas this would not be possible until other water resource solutions, such as reservoir storage, were developed. One environmental group argued that, although supportive of the principle, instead of the Environment Agency removing the underused portion it should facilitate and encourage licence trading. A number of groups suggested a safeguard could be an assessment window over a number of years to consider use patterns and needs.

A number of environmental groups opposed this proposal on the basis that allocating the underused portion to another abstractor would inevitably impact on the environment as the water would be taken from the environment by another abstractor where currently it would remain in the water system.

Natural England was broadly supportive of the proposal as it would allow the Environment Agency to achieve more efficient and sustainable distribution of water across a catchment, and argued that unmet need could also be applied to the environment as well as other abstractors.

Businesses that supported the proposal argued it was helpful to meet unmet need in a catchment but that this should be done in discussion with the licence holder, fluctuations in demand needed to be accommodated, and each licence should be taken on a case by case basis. Businesses that opposed the proposal suggested that licence trading would be a better way to meet unmet need.

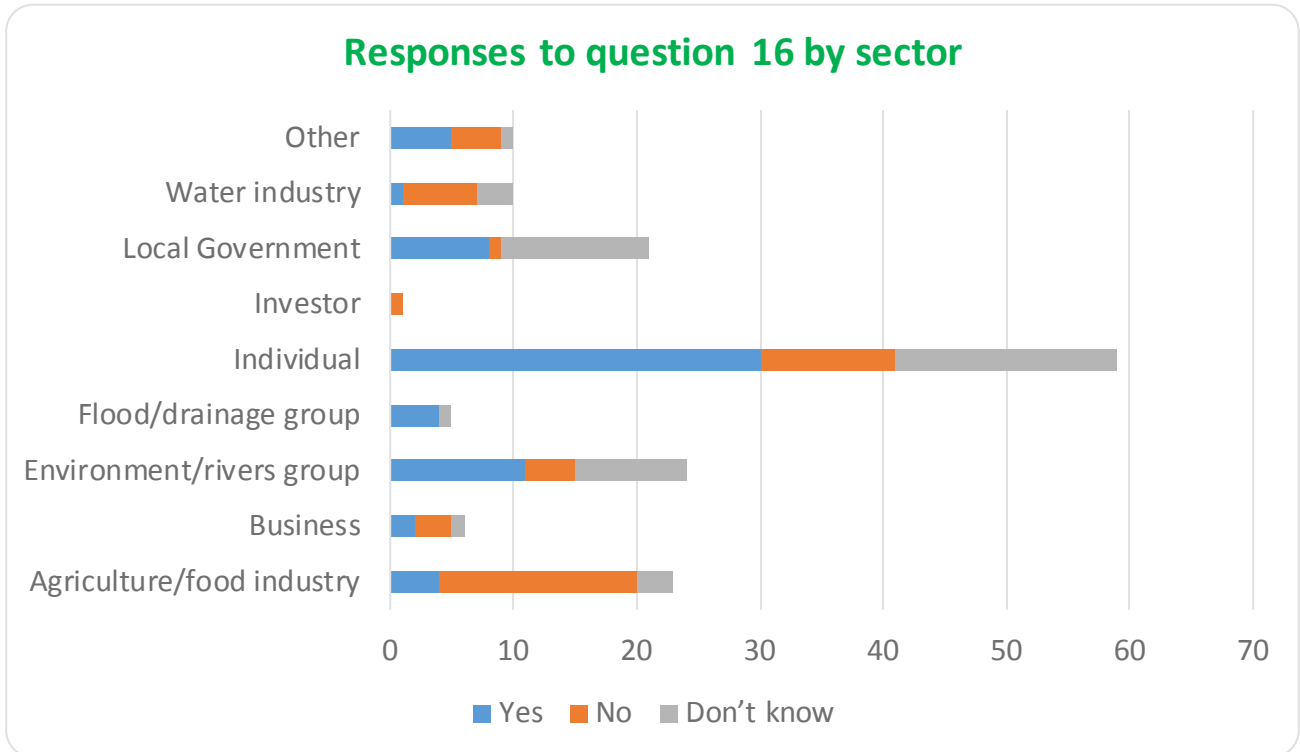
A number of respondents in the water industry supported the proposal, providing there were sufficient safeguards in place to ensure sufficient headroom. One water company suggested a market for excess abstraction rights would be preferable and would provide compensation for the current licence holder.

Other water companies opposed the proposal, on the basis that it may undermine drought resilience and water company water resource management and drought management. Additionally, maintaining headroom provided flexibility to deal with supply interruptions and unforeseen issues and emergency situations. It was also stated that there may be circumstances where some licence holders have to abstract significantly more than their current or potential future use.

Agriculture opposed the proposal on the basis that there may be a justifiable reason to having an underused portion on a licence, such as for dry weather, crop rotations and business growth and development. A large number of respondents argued that licence trading was preferable, and the system that exists currently is sufficient but needs greater publicity on how the process works and encouragement to use it. Others stated the Environment Agency should do more to facilitate and support licence trading. Additionally there were a number of respondents who stated there should be more incentives to support investment in winter storage and other alternative water sources. The NFU stated that the agriculture water quota should be protected.

Agriculture and food groups who supported the proposal welcomed the potential for extra water in a catchment. However, a number who were supportive argued that there must be flexibility to allow those who had lost a portion of the licence which was given to another abstractor to be able to use that volume if necessary.

Question 16: Should the Environment Agency be able to change any under used licence, once necessary headroom is taken into account, irrespective of proportion of underuse? If not, what proportion of under use is appropriate?



There was a mixed response to this proposal, with most support from individuals, local government and environmental groups. Agriculture, the water industry and business were strongly opposed.

A large number of environmental groups and individuals in support of the proposal proportions stated that licences being used at less than 75% of capacity should be eligible to be changed. Other responses stated that the proportion of underuse should be considered in relation to the usefulness of the underused proportion to the environment or other abstractors.

A small number of environmental groups were opposed. One of these argued that setting a defined threshold could lead to unintended consequences and attempts to game the system. Others suggested that it may lead to increased water use by abstractors so they could retain their full licence.

The water industry were largely opposed to the proposal. This was on the basis that it may undermine drought resilience and water company water resource management and drought management. Additionally, maintaining headroom provides flexibility to deal with supply interruptions and unforeseen issues and emergency situations. Therefore they deemed it inappropriate to set thresholds for licences which were for public water supply. It was also stated that it should be considered on a case by case basis as each catchment and abstraction was different, and justification of need must be taken into account.

Agriculture was strongly opposed to the proposal. A number of responses stated that unless safeguards were in place the proposal risked not allowing farmers flexibility in dry years and would impact upon crop rotations and crop patterns. It was also suggested that it would unfairly penalise businesses who used sustainable rotations in favour of those who used more concentrated and intensive farming practices. Many responses stated the need for this to be done on a case by case basis, with consideration given to the type of water use, the type of crop and farm, and the context of water resources available in the catchment. It was also stated that it was not possible to see how a fair and equitable system could be implemented, and that instead there should be more local water trading and incentives to support investment to allow farmers to find alternative sources of water.

Question 17: What do you consider is the appropriate length of time for a licence to be under used before the Environment Agency could use this power? Please provide reasons.

There were 146 respondents that addressed this question with some response provided from all sectors. Only eighty nine (89) of those respondents suggested a length of time for a licence to be under used before the Environment Agency could use the power. Table 1 below sets out the time periods suggested by sectors.

Table 1: Length of times suggested by Sector for a licence to be under used before the Environment Agency can amend it

	Total number of responses	Lowest	Highest	Mode
Individuals	31	30 days	25	10
Local government	7	1	5	5
Water Industry	2	5	12	N/A
Other	4	4	10	4
Flood/Drainage Groups	7	3	5	5
Environmental Groups	21	1	10	10
Business	4	1	10	1
Agriculture/Food	13	2	20	5

Please note all figures are in years unless otherwise stated.

There was no consensus as to a single, specific time period. The agriculture / food sector and individuals suggested the highest period of 25 years, but some of those respondents

suggested shorter periods of between 30 days and 2 years. The most common time period across other sectors was 10 years.

Fifty seven (57) respondents did not suggest a period of time for a variety of reasons. One environmental group suggested that a time period was not appropriate and decisions should instead be made collectively at catchment scale. Business respondents stated that it was not possible to set a time period as it depended on the business cycle of the licence.

Other agricultural respondents and water industry responses agreed that a time period was not appropriate as no one length of time was appropriate in all circumstances and decisions must be taken on a case by case basis.

Additionally, some agriculture responses suggested that instead of a time period there should be a link back to the most recent drought and dry weather period, and that water trading was a more appropriate way to address underuse. Another respondent stated that although a ten year period would cover most crop rotations it would not account for dry and wet weather fluctuations.

Question 18: Do you think anything more is needed in primary legislation to deliver the aims of the abstraction plan? Please provide reasons.

Overall, seventy three (73) respondents addressed question 18.

A number of environmental groups suggested that there should be a legal basis for the setting of environmental limits on abstraction at a sub-catchment level

Other responses did not suggest further primary legislation but said more time was needed for the implementation of the Abstraction Plan and the catchment based approach to see whether these had been effective.

Additionally, it was stated that with the Abstraction Plan and the move of abstraction licensing into the Environmental Permitting Regulations regime (EPR) there was too much change in the abstraction licensing system already without further primary legislation.

A small number of responses suggested more legislation was required to protect the environment and in particular chalk streams.

Government responses to questions 12 – 18

Overview

Following our consideration of the consultation responses, government will bring forward these proposals into legislation although the powers will only be available in relation to licences varied or revoked on or after 1 January 2028.

In terms of government's responses to some specific points raised in the consultation responses:

- **Water trading** - a large number of respondents, across sectors and the questions, raised the importance of water trading as a way of improving access to water and giving abstractors the flexibility to manage their water resources.

The government fully acknowledges and supports this ambition, and encourages local, voluntary solutions to unsustainable abstraction and unmet demand. The Environment Agency has been working to facilitate licence trading. During the prolonged dry weather in 2018, the Environment Agency trialled a number of flexible licensing approaches. The Environment Agency will look to build on these approaches where environmentally sustainable. The government encourages the Environment Agency and abstractors to find environmental sustainable solutions wherever possible.

- **Grants for farmers** - some responses also mentioned the need for more grants for farmers to invest in their own water resources and to reduce reliance on abstraction.

Government will consider this further.

- **Timing** – responses questioned when the proposals would be implemented if government were to go ahead with them.

We propose that these powers should only apply to licence variations or revocations made on or after 1 January 2028 to allow time for the catchment based approach to water resources to embed and produce results and solutions. These proposals aim to support the successful implementation of the 2017 Abstraction Plan, and incentivise abstractors to collaborate at a catchment level to find local solutions to unsustainable abstraction. This delay in the powers coming into effect would also give time for the Environment Agency to work with potentially affected licence holders. The delay will also allow for government to implement the move of abstraction licensing into the Environmental Permitting Regulations regime (EPR) and for the Environment Agency to license previously exempt abstractions.

- **Appeals mechanism** – some responses to the questions on the proposals emphasised the need for an appeals mechanism.

The government can confirm that the appeals mechanism which currently applies when the Environment Agency makes proposals to vary or revoke an abstraction licence will continue to apply when a licence is varied or revoked relying on these new powers. In line with current practice, the government would expect the Environment Agency to try to seek a voluntary solution with the licence holder. If change to the licence is required, the Environment Agency must give notice to the licence holder of its proposals to vary or revoke the licence. If the licence holder objects to the Environment Agency's proposals, the decision as to whether the licence is varied or revoked is referred to the Secretary of State. Before the Secretary of State makes a decision, a local inquiry or other form of hearing may be held and must be held if a request is made by either the licence holder or the Environment Agency.

- **Water Framework Directive (WFD) objectives** – some responses referred to the need to address abstraction issues in all types of water bodies.

Government confirms that these powers would apply to unsustainable abstraction issues in any type of WFD water body, including surface and groundwater bodies, heavily modified water bodies and artificial water bodies.

Questions 12 and 13: Unsustainable abstraction

12. Do you agree that the Environment Agency should be able to vary or revoke any licence that is causing unsustainable abstraction without paying compensation?

13. Do you agree with our proposal to link unsustainable abstraction to various environmental duties as set out in this consultation?

The government recognises that environmental harm due to unsustainable abstraction is an issue in a number of catchments throughout England, and that there is an inequity within the abstraction licensing system between permanent licences granted several decades ago and time limited licences granted more recently. We believe that these proposals go some way in addressing both of these concerns.

We expect the Environment Agency to provide data and evidence as to why a licence needs to be varied or revoked to protect the environment. We recognise that licence holders consider abstraction licences to be a business asset and a property right. We want to protect licence holders' ability to abstract where it is fair and right to do so. As such, these powers would only be used by the Environment Agency after other solutions have been exhausted; we expect the Environment Agency to work closely with the affected licence holder in these situations; and on a case by case basis.

We also expect the Environment Agency to consider the types of abstraction when making decisions, and to take a risk based approach. For example, non-consumptive abstraction and abstractions where much of the water is returned to the environment near the abstraction point are both low risk for the environment. Additionally, we expect the Environment Agency to consider what the abstraction is being used for. For example, an abstraction may support another water body and preventing that abstraction could damage the environmental health of the recipient water body.

A number of respondents argued that abstractors had been paying into an environment improvement compensation fund and access to this fund should not be blocked retrospectively. The environment improvement compensation fund was collected by the Environment Agency from 2008/09 to 2018/19 and has been used or is currently allocated to pay compensation to licence holders whose licence is changed as part of the Restoring Sustainable Abstraction (RSA) programme and a number of other historically exempt licences. This money is fully allocated to the Environment Agency's existing liabilities for the RSA programme and other historically exempt licences identified under the new authorisations programme. The Environment Agency has informed stakeholders that it will only use the compensation fund for these two circumstances. The Environment Agency is not collecting the environment improvement compensation fund in 2019/20 as it has sufficient funds to cover its forecast liabilities².

There was very strong support to align unsustainable abstraction with objectives in the Water Framework Directive and government will proceed with this.

² The compensation charge for the North West, South West (including Wessex) and Thames charging areas will be held in abeyance and not be levied pending further changes to the Abstraction Charges Scheme.

Some respondents noted that the Environmental Flow Indicator (EFI) should not be used alone to justify changes to abstraction licences. The Environment Agency uses a range of tools to identify environmental harm caused by abstraction. The EFI is used to identify water bodies where flows are below that expected for a healthy ecology. The Environment Agency will then undertake further investigations to identify whether abstraction is having an impact on the ecology of the water body.

We have taken on board responses which stated that definitions need to be clearer. We will continue to consider the proposed definitions and will work to ensure clarity in the drafting of the legislation.

Questions 14– 17: Licence under use

14. Should the Environment Agency be able to vary under used licences in the case of unsustainable abstraction to remove the underused portion, with suitable safeguards to protect necessary headroom?

15. Should the Environment Agency also be able to vary under used licences where there is unmet need for additional water in the catchment, to remove the underused portion, with suitable safeguards to protect necessary headroom?

16. Should the Environment Agency be able to change any under used licence, once necessary headroom is taken into account, irrespective of proportion of underuse?

17. What do you consider is the appropriate length of time for a licence to be under used before the Environment Agency could use this power?

Some respondents expressed concern that the under use proposal would create a perverse outcome: that abstractors would increase abstraction to avoid part of the licence being removed for non-use. We recognise that there is a risk that some abstractors could increase abstraction. However, we do not anticipate this would be a widespread problem as under a similar programme to remove unused licences the Environment Agency did not see any evidence of licence holders abstracting water to avoid having their licence removed or changed. The Environment Agency would investigate unexplained spikes in abstraction. As each abstraction licence is licensed for a specific purpose and if an abstractor is found to be abstracting water not for that purpose or wasting it in order to exceed the under use threshold, the Environment Agency would be able to take enforcement action as this contravenes the conditions on the licence.

Some responses from environmental groups suggested that to protect the environment there should be no safeguards for headroom. Government fully supports the protection of the environment but recognises that there are a number of scenarios where it is appropriate for headroom to be safeguarded, for example to manage higher demands during dry weather and droughts and planned future growth of the business. The Environment Agency will take justifiable needs into account in cases of underuse.

Any action taken by the Environment Agency for cases of underused licences will be done in consultation with the abstractor on a case by case basis, and any change proposed by the Environment Agency would take into account the need for the headroom and the total volume being varied or revoked.

Water companies are not eligible for compensation for any change made to their abstraction licences. The Environment Agency will continue to require water companies to assess and make changes to their licences as set out in the Water Industry National Environment Programme (WINEP), which is developed for the 5 yearly Ofwat price review and managed through the water companies' Water Resources Management Plans.

Government cannot commit to protecting an agricultural water quota at this time but will keep this proposal under consideration.

Following responses to questions 16 and 17 on possible thresholds and time periods of underuse, we propose applying a:

- threshold of less than 75% licence use (or greater than 25% underuse); and
- time period for consistent under use of the licence of twelve years.

Therefore, if an abstractor has abstracted less than 75% of their full licensed volume over a 12 year period, this licence would be in scope for the Environment Agency to propose variation of part or all of the under used portion of the licence without the payment of compensation.

Looking over a 12 year period allows for weather variations and crop rotations. It also fits with the current abstraction licensing strategy time frame and so allows the Environment Agency to identify where underuse is in a catchment and then work with the relevant abstractors.

Any abstraction which comes into scope will be assessed on a case by case basis by the Environment Agency. The Environment Agency would need to consider business needs for maintaining the underused portion, the context of the abstraction and what action is proportional. If there is a justifiable reason for maintaining the underused portion the Environment Agency will not look to vary the licence.

Question 18: Do you think anything more is needed in primary legislation to deliver the aims of the abstraction plan?

We welcome the responses to question 18 but will not be taking any of these proposals forward at this time.

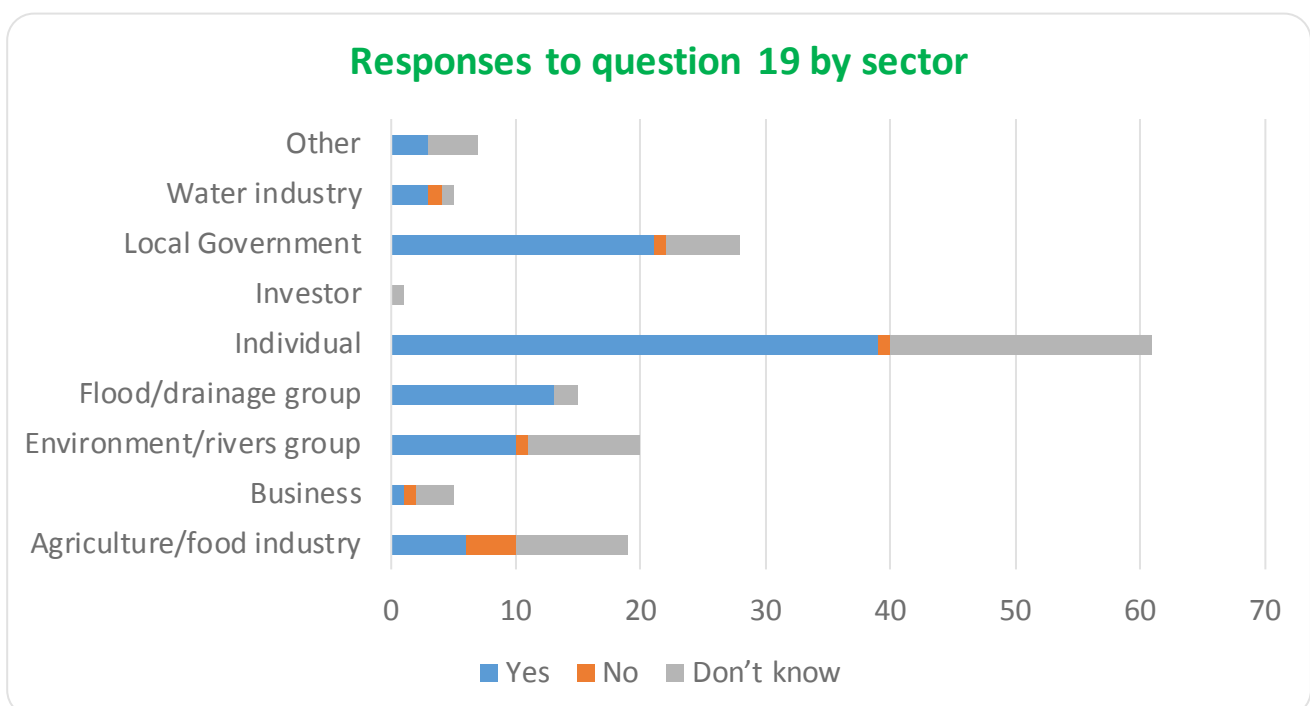
Land Drainage: Internal drainage board alternative charging methodology

Locally supported proposals for creating new, and to expand existing, internal drainage boards are currently unable to be taken forward due to missing ratings data. We sought views on proposals to amend the Land Drainage Act 1991 in order to change the valuation methodology by which internal drainage boards assess the value of non-agricultural land. This would allow the special levy (issued to district or unitary authorities) to be calculated using up to date council tax and business rates data.

We also sought views on further amendments to the Land Drainage Act 1991 that will allow for drainage rates (paid directly by agricultural landowners) to be similarly calculated using a new valuation methodology.

Question 19: Do you agree that the Land Drainage Act 1991 should be amended to enable a new charging methodology to determine special levies? Please provide reasons.

In total, one hundred and sixty one (161) respondents addressed question 19. Responses were from across all sectors except investors.



Over half of all respondents agreed with the proposal. Just under a third of respondents said that they did not know how to respond. Individuals, local government and flood / drainage groups provided most of the views in response to this question.

Many respondents provided comments about the reason for their response. The majority of the respondents agreed with the proposal on the basis that it would help:

- a) enable the creation of new, or expansion of existing, internal drainage boards where local support requires this
- b) allow for accurate apportionment of charges levied on landowners and local authorities using new or updated data sources
- c) support the 'beneficiary pays principle', as those who would benefit from an internal drainage board's activities would also be those paying for it

Some respondents noted that a mechanism for infrastructure providers to contribute to the costs of flood defence projects is missing from current charging options to support internal drainage board activities, and in some cases those outside of the internal drainage district may benefit from works undertaken by the internal drainage board but not necessarily contribute to the costs.

Some of the respondents who disagreed with the proposal were concerned that changing the data sources for land valuation might result in internal drainage boards raising their special levy charges. In addition, there was some concern expressed that urban residents benefit to the same extent as those in rural areas without contributing to the costs.

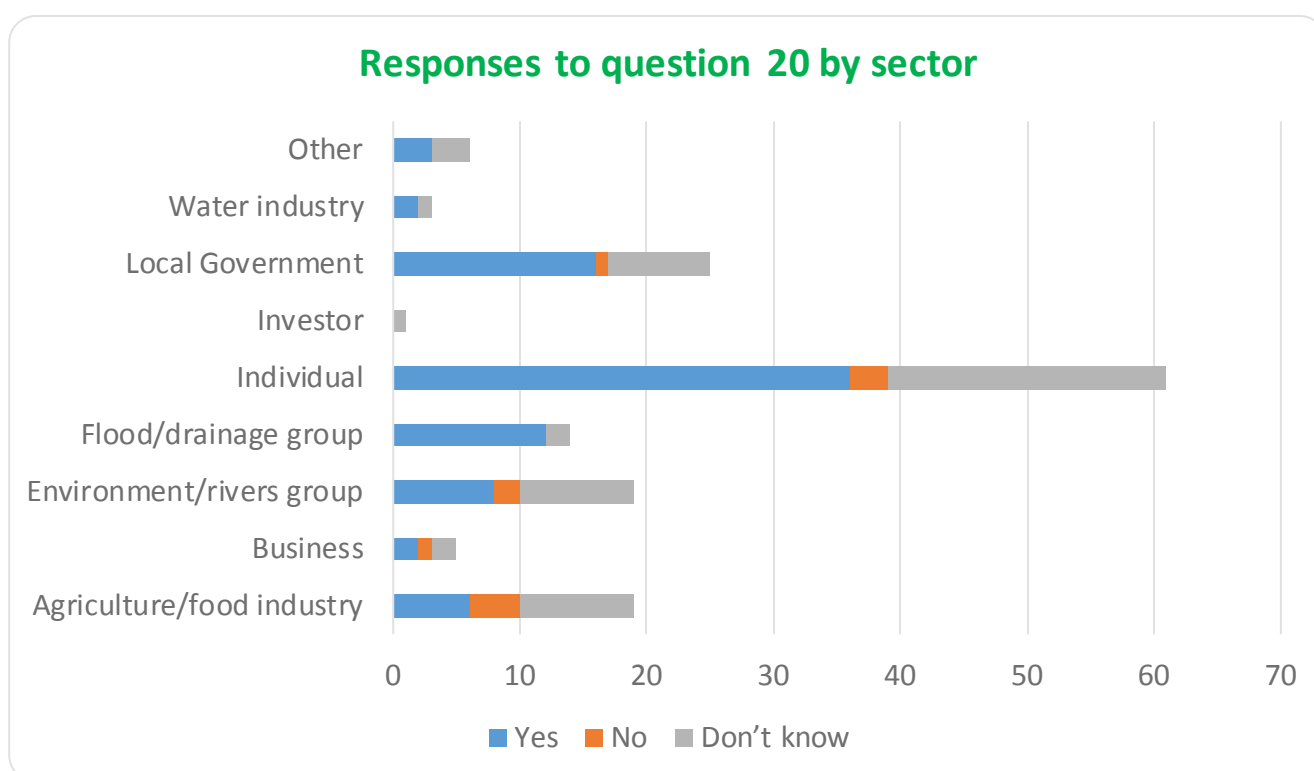
The Association of Drainage Authorities supported the proposal recognising that the current core data that is used by internal drainage boards to value the non-agricultural land is out of date and often unavailable. The Association supports the need for new and updated data to be consolidated to enable the creation, and expansion of existing internal drainage boards.

In the same way, Scarisbrick Parish Council (Lancashire) supported the proposal for the creation of new and expansion of existing internal drainage boards, particularly where a new or expanded internal drainage board can then takeover from works that have been paused or withdrawn by the Environment Agency.

Northumbrian Water disagreed with the proposal and expressed concern that "levies imposed would be an additional charge on top of other existing charges."

Question 20: Do you agree that the Land Drainage Act 1991 should be amended to enable a new charging methodology to determine drainage rates? Please provide reasons.

In total, there were one hundred and fifty three (153) respondents who addressed question 20. Responses were from across all sectors except investors.



Over half of all respondents supported the proposal. Flood drainage groups, individuals and local government provided most of the views in response to this question.

Most of the explanatory responses supported the proposal, and the narrative can be grouped into four main themes:

- a) Support for the formation of new, or expansion of existing, internal drainage boards where local support warrants this
- b) calls for consistency within an internal drainage board between its drainage rates and special levy charges
- c) to allow a 'beneficiary pays principle' where those who benefit from internal drainage board projects should also contribute to the costs of these projects

- d) to ensure that drainage rates and special levies are clear and transparent in the way they are established and issued

There were not many explanations from those disagreeing to the proposal, but where a narrative was given, concerns related to whether this proposal would create extra costs to local tax payers, the involvement and role of national bodies and whether change was needed in the first place.

Most who selected “don’t know” as an answer did not provide qualitative explanations. Of those who did, most cited insufficient knowledge or inexperience in the area.

The Association of Drainage Authorities, which supported the proposal, emphasised that changes need to ensure “a proportionate balance is retained between drainage rates and special levy contributions.”

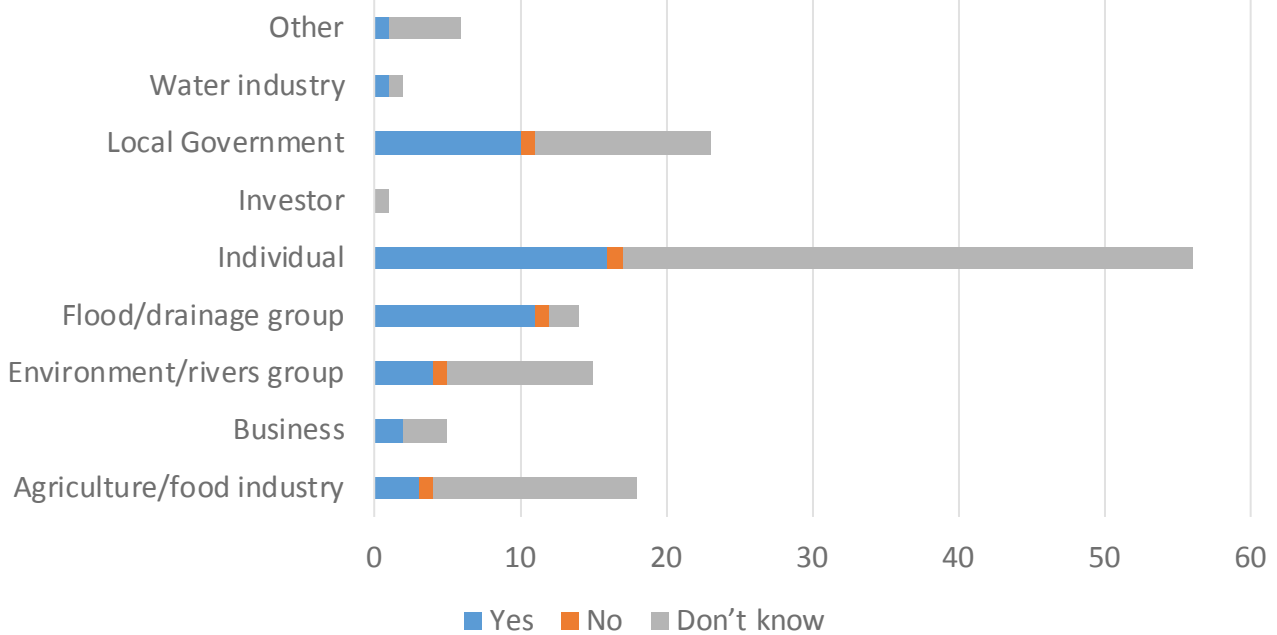
The Axe Brue & Parrett internal drainage boards (Somerset) agreed that the valuation of agricultural land in relation to drainage rates requires amending to be able to utilise current data and allow the ability to establish, or expand, internal drainage districts providing the new valuation methodology results in similar apportionment of special levies and land drainage rates as currently. One business did not agree with the proposal because they did not want what they perceived to be an added tax.

Question 21: Do you agree with the list of provisions that the alternative methodologies could include? Should anything else be taken into account? Please provide reasons.

In total, one hundred and forty (140) respondents addressed the first part of question 21. Just over half of respondents responded that they did not know how to respond to the question. Of those that did provide either a yes or no response, almost all respondents (48) responded yes and only 5 responded no.

Individuals, flood drainage groups and agriculture/food industry representatives provided most of the views in response to this question.

Responses to question 21 by sector



Those who agreed with the proposal commented that there was a need to:

- a) ensure that the proposals result in greater accountability and responsibility for the apportionment of charges; or
- b) secure improved transparency when developing and implementing these new proposals, particularly in relation to how annual property value is determined, explanations of cost recovery, and/or extending drainage districts.

Of those who disagreed, no alternative suggestions were offered. Instead, the Wyre Flood Forum and North West & North Wales Coastal Group think that the internal drainage board model is not the only model that would work because the multiple complexities of a catchment can be difficult for an internal drainage board to capture.

The Country Land and Business Association supported the proposed provisions. It further suggested that consideration be given to the ability to extend internal drainage districts to higher land and to apply variable drainage rates and special levies across the extended area on the basis that higher areas could still benefit from water and drainage management carried out downstream, but to a lesser extent.

Whilst the National Farmers Union supports the proposal, it would welcome the opportunity to be consulted on any development of the supporting regulations.

Question 22: With regards to both these methodologies what could the impact of provisions (a) how the annual value for land should be determined and (b) the basis for determining the annual value (e.g. estimates, assumptions or averages) of land be and are there any issues that government should take into account before making the regulations?

Environment/rivers groups, individuals, local authorities and flood/drainage groups provided most explanations in response to this question, and their views can be grouped into three main areas:

- a) economic concerns covering implementation costs, distribution of charges and changes in the amounts charged;
- b) the need to ensure appropriate consistency in the apportionment of expenses between special levies and drainage rates; and/or
- c) concerns about internal drainage board accountability.

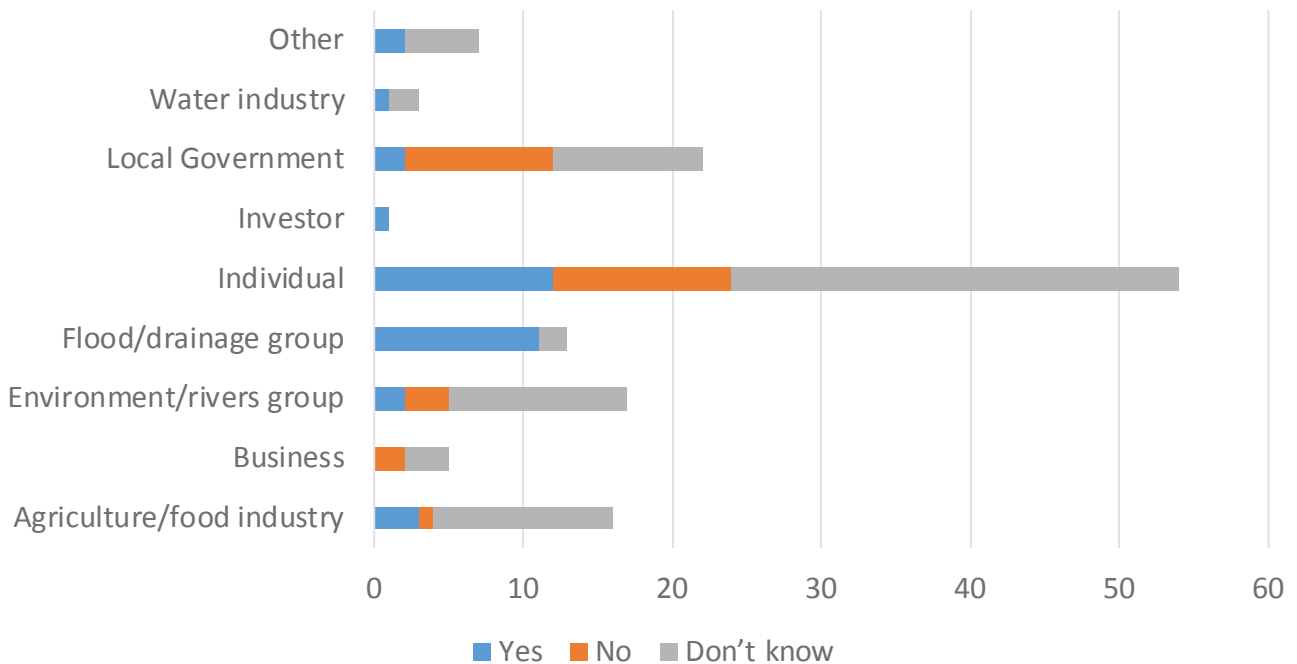
Flood/drainage groups including North East Lindsey internal drainage board, Upper Witham internal drainage board, Witham First District internal drainage board and Witham Third District internal drainage board emphasised that they would only support the proposed amendments if the resulting costs apportionment between special levies and drainage rates remained consistent.

The National Farmers Union, whilst agreeing with the need to update the valuation methodology, considered that in areas where an internal drainage board wishes to expand to include developed areas that are already benefitting from the water management work of the internal drainage boards, the evidence provided by the internal drainage board alone should be sufficient for an expansion to occur.

Question 23: Should the new charging methodologies include exemptions for existing Drainage Boards? For example, the new charging methodologies could apply automatically to all Drainage Boards, or existing Internal Drainage Boards could remain on the existing charging methodologies or could decide between the new or the old charging methodologies.

In total, one hundred and thirty eight (138) respondents addressed question 23. Over half of respondents did not know how to respond to the question.

Responses to question 23 by sector



Responses were mixed. Some agreed with existing internal drainage board exemptions for practical and cost reasons with a few internal drainage boards advocating a flexible approach to implementing the proposed new valuation methodology. A few internal drainage boards³ stated:

“Rather than a blanket approach to apply the new methodology to all internal drainage boards, it would be pragmatic to enable existing internal drainage boards to remain on the existing methodology and provide them with the flexibility to retain this or to transition on to the new methodology over an agreed period of time as the individual local impact is assessed. The Boards support a transition period of 5-10 years before any Ministerial direction.”

In contrast, the Local Government Association opposed the idea of exemptions for internal drainage boards, as they “consider that for transparency and consistency all internal drainage boards should operate using the same methodology.”

³ North East Lindsey internal drainage board, Upper Witham internal drainage board, Witham First District internal drainage board, Witham Third District internal drainage board

Whilst the National Farmers Union and The Wildlife Trust raised concerns for increased costs to members, should adoption of the new system be mandated, they request the opportunity to work with Defra in finalising the revised valuation methodology. Overall however the National Farmers Union supported a single approach for all Boards for consistency, simplicity and clarity.

Government response to questions 19-23

Amending existing legislation to enable a new valuation methodology for internal drainage boards

The government appreciates the support of respondents for the proposal to address the limitations within the Land Drainage Act 1991 that currently restrict the creation of new, or expansion of existing, internal drainage boards. The government agrees that this restriction should be addressed and welcomes the creation and expansion of internal drainage boards where there is clear local support within the community, including from local authorities and local landowners who contribute to the expenses of internal drainage boards via payment of the drainage rate and the special levy.

The government agrees there should be consistency, transparency and clarity for internal drainage boards' drainage rates and special levy charges and the way these charges are apportioned. However, the government is not currently minded to mandate that all internal drainage boards should automatically convert to any such new valuation methodology, as this could create an unnecessary cost burden. Instead, the government is minded to allow internal drainage boards the choice to adopt this where appropriate. This is because the government does not expect all existing internal drainage boards will want to expand, and therefore mandating that they adopt the new valuation methodology would be an unnecessary process for many internal drainage boards. In light of the consultation responses, the government will however keep this under review.

We will continue to engage and consult with key stakeholders as the final valuation methodology is established.

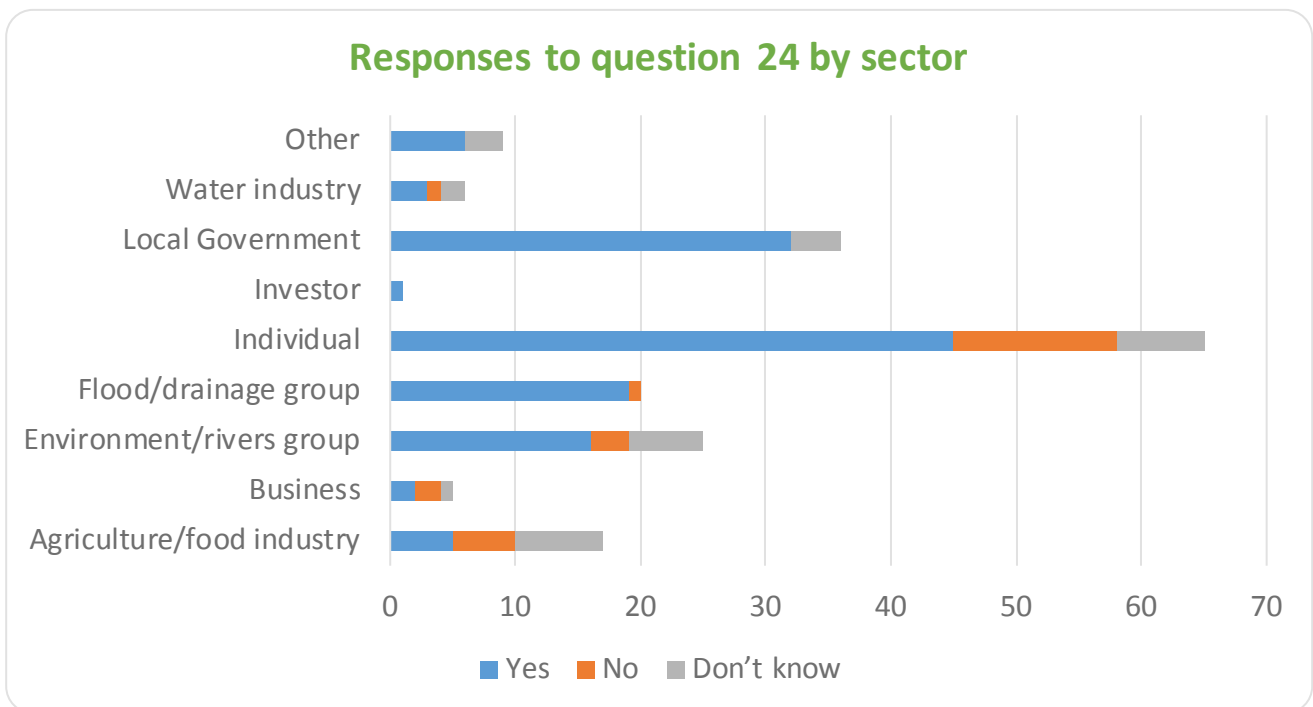
Where respondents also offered thoughts not directly relevant to the consultation questions, the government welcomes this engagement and will be considering these contributions as part of ongoing wider policy development.

Flood and coastal erosion risk management: raising local funds

The government is beginning a discussion on ways of enabling local communities to increase funding, alongside government investment and existing forms of local funding, to support flood and coastal erosion risk management. More specifically in Somerset this includes supporting the work of the Somerset Rivers Authority and enabling it to be formalised to secure its future.

Question 24: Do you agree that there is a need for new or modified powers or mechanisms to raise additional local funding to manage local flood and coastal erosion risk management risks? Please provide reasons.

In total one hundred and eighty four (184) respondents addressed question 24. Individuals, local government, environment/river group and flood/drainage groups provided most of the views for this question.



Over two thirds of respondents agreed there was a need to consider new or alternative options to raise additional local funding. From these responses, three main themes were noted:

- a) the importance of local funding, decision-making and knowledge
- b) concerns that changes to, and other pressures on, existing local authority funding were affecting the ability of local authorities to deliver local flood management

- c) the need for alternative and flexible funding methods, potentially including water company contributions and innovative funding.

The importance of local decision making was emphasised by the Association of Drainage Authorities who pushed for local knowledge to be recognised and used. Many, such as Sedgemoor District Council (Somerset), expressed that at national levels local problems are not fully understood or prioritised, and local choices are determined by the funding criteria applied.

Funding changes, in particular for local authorities, were highlighted by several respondents, including the Association of Drainage Authorities, as worsening the situation. Ideas for raising funds included water company contributions and innovative funding solutions for specific types of flooding including surface water and riparian⁴ flooding which does not rely solely on drainage. The need to have a flexible funding approach was also cited by a number of respondents such as the Association of Drainage Authorities as a crucial mechanism to enable funds to be raised by different individuals and organisations when existing channels are either unable to contribute or financially exhausted.

Some respondents expressed concern with the current use of partnership funding criteria. Whilst many recognised its potential in theory, many feel this has not delivered effective large scale investment in flood risk management schemes. Boston Borough Council (Lincolnshire) suggested that a funding mechanism to levy a charge on commercial properties would be beneficial, particularly if new ratings lists are obtained which could justify alternative taxation.

Of those who disagreed, few respondents submitted a written response to the question. Of those who did, there was a call for flexibility in the approach adopted and a request for policy makers to recognise that a one-size-fits-all approach will not work for all areas.

One water company, United Utilities, highlighted a potential issue of an unequal distribution of wealth and risk across the country. They shared a concern that use of local powers to increase funding may risk penalising deprived/low income areas at high risk of flooding or coastal erosion. Instead, they pushed for the costs of managing flood and coastal erosion to be shared more equitably through national funding routes that can then be allocated to local areas based on risk for locally coordinated action to be taken.

⁴ A riparian landowner is the owner of land that is next to a watercourse or has a watercourse running through or beneath it.

Question 25: Do you have any views on how best additional local funding can be raised fairly to better manage these risks and which existing public body is best placed to take on this function?

One hundred and thirty (130) respondents addressed question 25. Individuals, local government and environment/rivers groups provided most of the views expressed.

In respect of how best additional local funding could be raised fairly, respondents focussed on three main proposals:

- a) Local funding to be raised by local bodies using existing mechanisms
- b) introduction of new powers to raise local funding (i.e. precepts)
- c) water company, and other utility companies, contributions

Internal drainage boards, the Association of Drainage Authorities and Water Management Alliance suggested broadening the current power for levying a 'special drainage charge' to include any flood Risk Management Authority, extending existing internal drainage boards' drainage districts, creating new internal drainage boards and reform to the capital schemes funding mechanisms.

The Lune Valley Flood Forum suggested redirecting profit from land/development sales into managing the relevant site's particular additional risk to combat surface water flooding issues.

Greater collaborative working between flood Risk Management Authorities, including through public sector co-operation agreements, was a common theme, with many, including the Association of Drainage Authorities, recognising that flood Risk Management Authorities can collectively get more work done and that working in isolation can be less cost-efficient.

In suggesting which existing public bodies would be best placed to take on additional local funding functions, there were mixed views, but the majority suggested the following three options:

- a) an existing local body with local accountability and responsibility for the whole area such as the Lead Local Flood Authority or possibly the Regional Flood and Coastal Committee
- b) a new local body such as a rivers authority
- c) a collaborative approach between existing bodies

Dorset County Council, Taunton Deane Borough Council and West Somerset Council supported the work of the Somerset Rivers Authority, commending the authority's flexibility and ability to organise, raise funding and deliver collaborative working. They, and others, recognised this as a potential model for other areas.

Some respondents, including local authorities, members from the agriculture/food industry such as Proctor Bros (Long Sutton) Ltd, DK Evans, Medway Valley Countryside Partnership and the Country Land and Business Association suggested internal drainage boards, Regional Flood and Coastal Committees and/or local authorities were already in a strong position to raise and manage local funding.

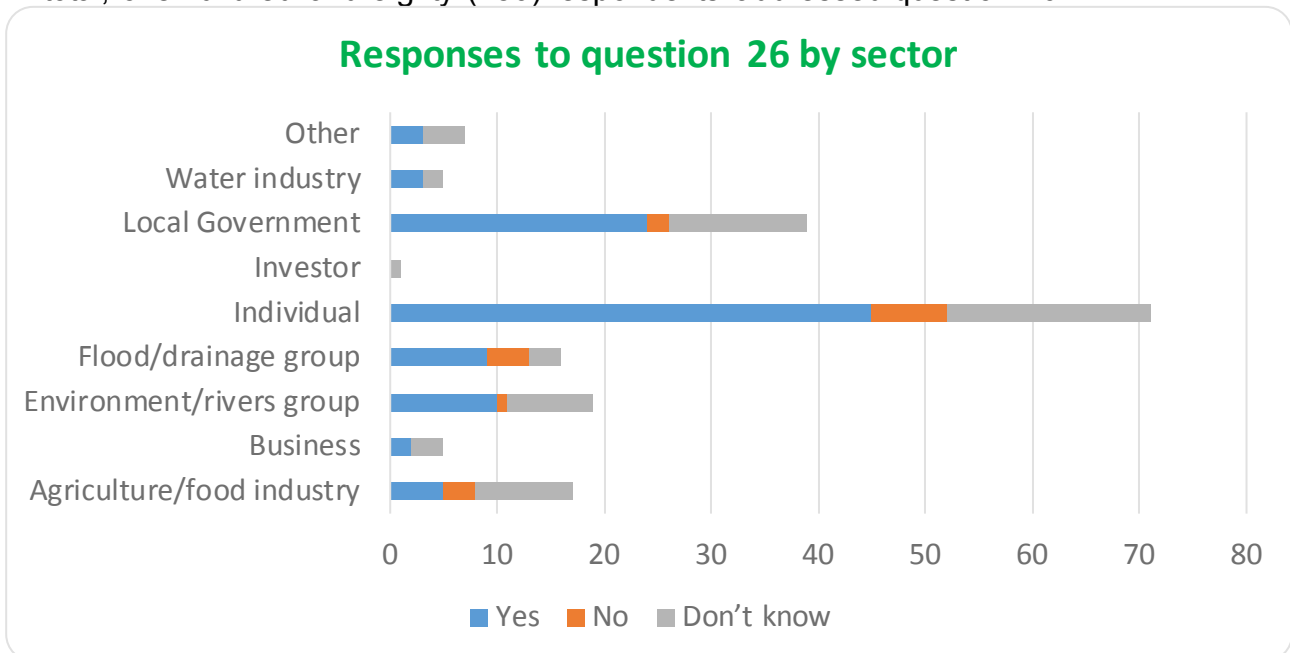
Government responses to questions 24 – 25

The government appreciates respondents contributing to this early discussion. This is the start of the conversation and we acknowledge that there is a long way to go to explore all potential options, secure local and national support and ensure everyone is aware of any potential unintended consequences. The government will continue to explore options and engage with stakeholders on this important matter.

Rivers authorities

Question 26: Do you support legislating to enable the Somerset Rivers Authority to be formalised (as a flood Risk Management Authority with precepting powers)?

In total, one hundred and eighty (180) respondents addressed question 26.



Over half of respondents (101) supported the proposal, with just over a quarter unsure of how to respond. The majority of those in agreement with the proposal were individuals, local government, environmental/rivers groups, and flood/drainage groups. Business, agriculture/food industry respondents and water sector investors largely responded that they did not know.

Some respondents supported flexibility that could enable other areas to create a rivers authority and to benefit, where there is local support. On this point the Local Government Association would like the legislation to provide sufficient flexibility to allow other areas to use a similar mechanism, subject to local support. Other respondents also provided supportive comments on the broader concept of rivers authorities within England, and offered suggestions on their governance and scope of responsibilities.

The Association of Drainage Authorities, Country Land and Business Association and Water Management Alliance supported formalising the position of the Somerset Rivers Authority, but suggested governance and membership needs to be further considered, including that any proposal to establish a rivers authority as a flood Risk Management Authority should have the support of existing flood Risk Management Authorities in the local area; existing flood Risk Management Authorities and Regional Flood and Coastal Committees should have fair and equal representation and influence on a rivers authority's board; and an independent Chair should be appointed. They would also expect a rivers authority to have clearly defined functions, agreed with other flood Risk Management Authorities.

The Axe Brue and Parrett internal drainage boards supported the proposal for the Somerset Rivers Authority to be a precepting body, with accountable and fair governance, coordinating and commissioning existing flood Risk Management Authorities to deliver local flood risk management functions. They were less supportive of the need for the Somerset Rivers Authority to become a flood Risk Management Authority, and raised concerns that this could increase costs if the Somerset Rivers Authority is a delivery body in its own right.

The Royal Society for the Protection of Birds did not support the proposal as they remained unconvinced that the rivers authority model is the best means of achieving strategic and environmentally sustainable flood and coastal erosion risk management on the Somerset Levels. They had concerns relating to the focus of the current body on dredging works, a potential lack of safeguards for environmental matters, and believed options for other future models should be kept open, including a catchment-based water management strategy delivered via the Environment Agency. If the Somerset Rivers Authority were to be formalised, they suggested they should publish and consult on a medium and long-term strategic plan which would inform the annual plan of works.

Government response to question 26

The government recognises that the Somerset Rivers Authority is unique and welcomes the support for formalising the Somerset Rivers Authority as a flood Risk Management Authority and as a major precepting authority. We also note the desire from others for a broader rivers authorities' measure that could provide the flexibility to create other rivers authorities.

The rivers authorities' model would enable additional flood and coastal erosion works to be undertaken, funded via a precept, but only where there is local support. This model does not seek to replace existing flood Risk Management Authorities or their funding mechanisms.

Adding rivers authorities to the list of flood Risk Management Authorities and major precepting authorities ensures essential duties and safeguards are in place. For example, all flood Risk Management Authorities must work together and, as a major precepting authority, all funds raised via the precept are ring-fenced solely for the purpose they were raised.

Creating a rivers authority, including incorporating the existing Somerset Rivers Authority, would require local support from tax payers and the other flood Risk Management Authorities, which must be demonstrated when an existing local flood Risk Management Authority develops and consults on its scheme to create a rivers authority.

The duty of a rivers authority is to deliver additional flood and coastal erosion risk management to better protect lives and properties within the area of operation. As a public authority there are additional duties, imposed by a range of existing legislation, which cover a wide remit e.g. managing public finances, the environment etc. The environment, for example, includes section 40 of the Natural Environment and Rural Communities Act 2006, which places a duty on all public authorities to have regard to the purpose of conserving biodiversity carrying out their functions. Furthermore when undertaking work on behalf of another flood Risk Management Authority, through a public sector co-operation agreement, a rivers authority would need to have the resources, skills and capacity to meet the conservation duties and environmental standards of the authorising party. With this in mind the government believe that rivers authorities have the correct duties and they are sufficiently prioritised.

Modernising the process for modifying water and sewerage company licence conditions

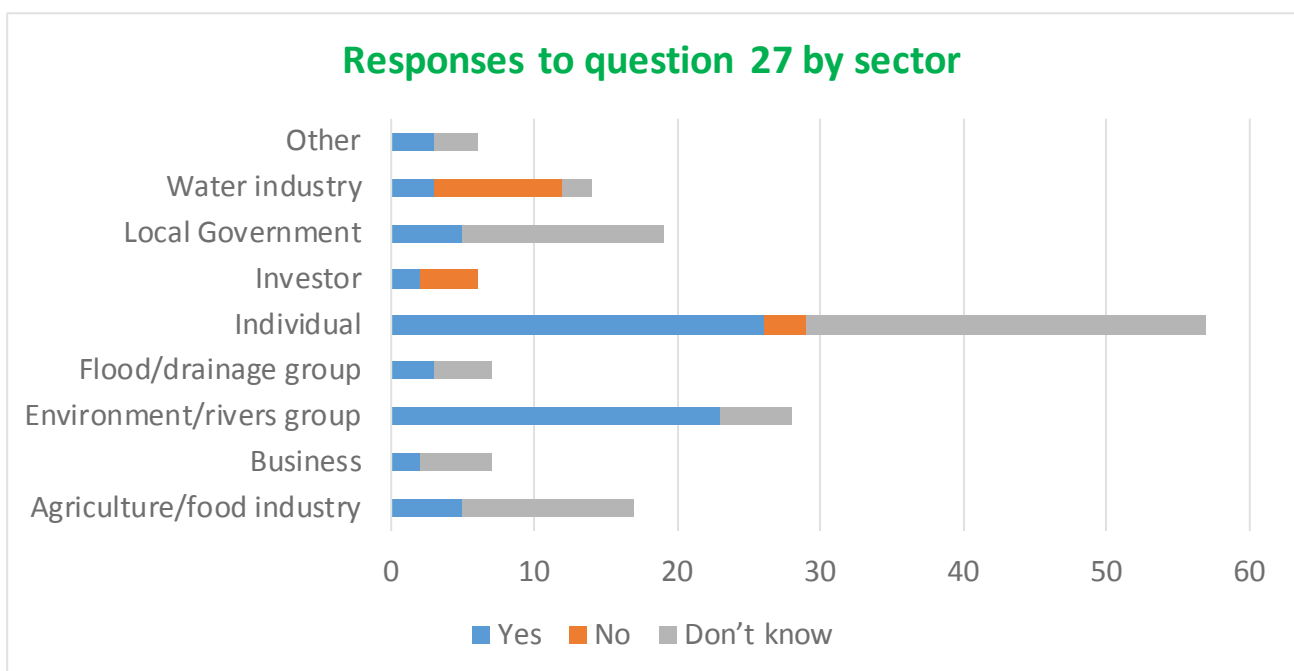
We sought your views on modernising the process for the way in which Ofwat, the economic regulator for the water industry, can modify English water and sewerage

company licence conditions⁵. The proposal was to base the new process on that used by the economic regulator Ofgem for amending energy companies' licence conditions.

We also sought views on proposals to modernise the way in which Ofwat and water and sewerage companies can send information to include provision for email; and to strengthen Ofwat's ability to obtain information from water and sewerage companies.

Question 27: Do you agree with the case for modernising the way in which Ofwat modifies licence conditions? Please provide reasons.

In total, one hundred and sixty one (161) respondents addressed question 27. Support for the case for modernising the way that licence conditions are modified was predominately from individuals and environment / river groups, although a small number of respondents from the water industry agreed that there was a case for modernisation.



Seventy two (72) respondents supported the proposal, with a further seventy-three (73) 'don't knows'. Sixteen (16) respondents, mostly from water industry and water investor respondents, disagreed with the proposal.

With the exception of the water industry respondents, those supporting the case for modernisation made little further comment, other than giving support for the case made in the consultation document.

One further comment that was provided by a number of environment / rivers groups was that the current approach effectively gave water companies a veto-like power over Ofwat's

⁵ "In the case of standard licence conditions in water supply licences and sewerage licences granted under sections 17A and 17BA (respectively) of the Water Industry Act 1991, licence conditions can be changed by collective licence modification with the agreement of more than 80% of relevant companies (by percentage of companies and also weighted by market share). Our proposal does not concern amending this collective licence modification process. We are also not proposing to make any changes to the process for the review of price control determinations under section 12 of the Water Industry Act 1991."

proposed changes and therefore hampered the efforts made by Ofwat to modernise the economic regulation of the water sector.

Some of these respondents believed also that with water companies increasingly becoming subject to international ownership, it had become more difficult for Ofwat to require changes to licences, although no further information was supplied in terms of what those difficulties might be.

One respondent suggested also that if the proposal went ahead, water company licences should be modified to include greater emphasis on sustainability / resilience, requiring water companies to restore and ensure the environmental resilience of aquatic ecosystems. They suggested also that this might foster responsibility and innovation with respect to safeguarding the environmental resilience on which water company businesses depend.

Two water companies (Severn Trent Water and South West Water) provided qualified support. South West Water supported the aspiration to create a licence modification process that was more responsive to the needs of customers, competition and the environment, but they suggested that changes to the process needed to reflect identified faults and be based on evidenced solutions designed to work in the water sector. They did not believe that the current process ought to be changed just because it was different to the process used in the energy sector, and that any reformed system needed to contain safeguards. They also did not believe that the regime for other utility sectors would necessarily be appropriate for the water industry, suggesting that more evidence was required on these points.

Severn Trent Water also understood the need for, and agreed with, modernising water company licences. They explained that they recognised government's wish to strengthen Ofwat's power even though the current system was seen by many to be effective, and that they were supportive of changes which would make it easier for modifications to be made without necessarily needing 100% support of the industry.

Two investors in the water industry also supported the proposal; however, one explained that they placed significant value on having a licence modification process that balanced the needs of consumers and regulators with the need to ensure the UK remained an attractive environment in which to invest. They suggested therefore that any update to the process:

- include a robust, merits-based appeal process at the Competition and Markets Authority or a similarly qualified body like the Competition Appeal Tribunal, and that modifications should not come into effect until the outcome of any appeal was known
- include a requirement on Ofwat to produce high quality impact assessments of any changes and that these be made available to the public
- allow companies to limit the scope of any appeal to those aspects of any modification which were in dispute, thereby streamlining the appeals process

Another investor suggested that Defra should also make the appeals process for price determinations more consistent with the energy sector.

Those water companies and investors against the proposal largely disagreed on the basis that the current system functioned effectively. They cited recent cooperation with Ofwat on

their licence condition standardisation process, and they did not believe that the current modification process had prevented changes being implemented.

Other water company investors who also disagreed with the proposal explained that they also believed the current system worked effectively and that considerable investment had been made in the industry because of the regulatory certainty that it provided. They suggested that an amended process would affect regulatory certainty.

These respondents were also not aware of any cases where Ofwat found it necessary to use the Competition and Markets Authority (or its predecessors) to compel any disputed changes to licences. They believed that all changes deemed as ultimately necessary by Ofwat to date had been achieved via the current consensual process and mechanisms.

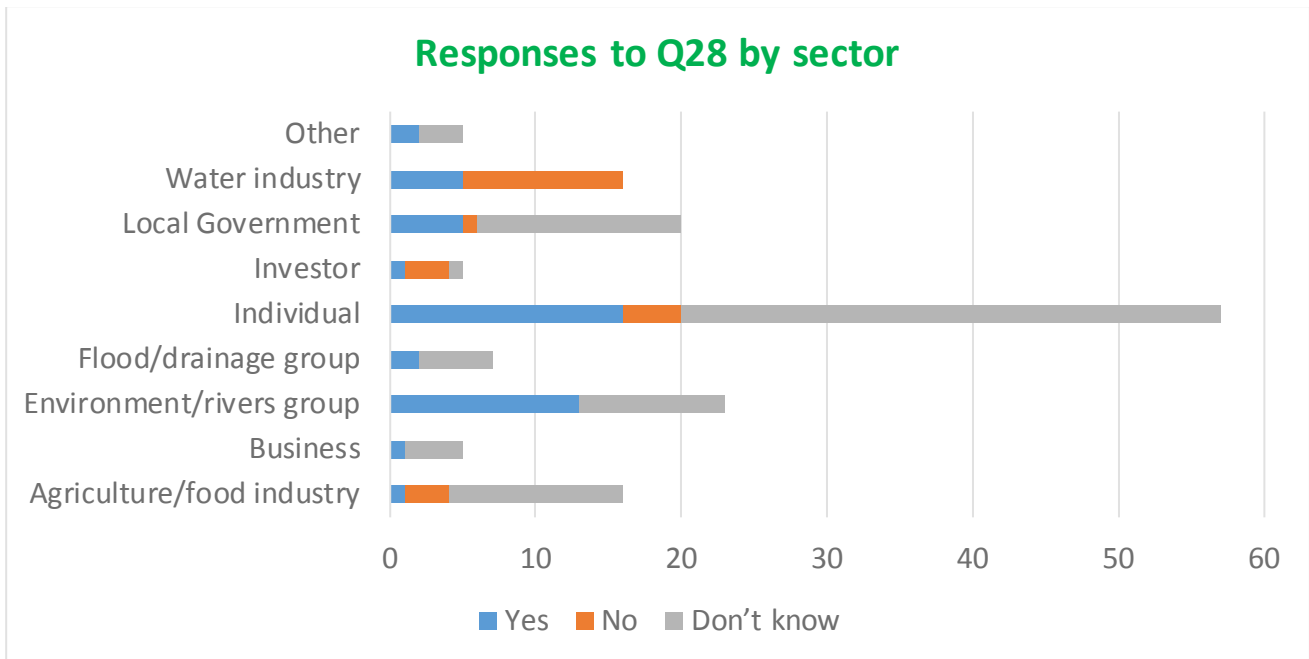
Investors also questioned the timing of making changes to the process and whether additional future changes might be made in this policy space. This was in light of the Competition and Markets Authority's letter⁶ to BEIS of 25 February 2019 which suggested possible proposals for the body's future strategic direction. These included the question of whether its role of reviewing economic regulatory decisions and appeals should be removed and moved to the courts, such as the Competition Appeal Tribunal.

In relation to the process of appealing to the Competition and Markets Authority, some observed that it was an 'extremely onerous process', both in relation to the burden of proof and costs for water companies, particularly for smaller water companies.

Question 28: Do you agree with the proposal to base a modernised model on that currently used within the energy sector? Please provide reasons.

In total, one hundred and fifty-four (154) respondents addressed question 28. However, the majority of those respondents provided the answer that they did not know how to respond. Many qualified this by explaining that they did not know enough about the issue or did not understand it sufficiently to provide an opinion.

⁶ <https://www.gov.uk/government/publications/letter-from-andrew-tyrie-to-the-secretary-of-state-for-business-energy-and-industrial-strategy>



Of those that did provide an opinion more than half of them, forty-six (46) agreed with basing a modernised model on that currently used within the energy sector and twenty-two (22) disagreed.

Respondents supporting the model were largely individuals or from the environment / river group sectors. They agreed that there should be some consistency of regulatory appeal mechanisms, and that it would make for a more consistent and transparent process for making licence modifications. CCWater felt that the proposed model was a start but needed to incorporate a commitment to make sure that the conditions and any proposed changes were clear, and that the process facilitated meaningful consultation to ensure Ofwat takes account of stakeholders including CCWater.

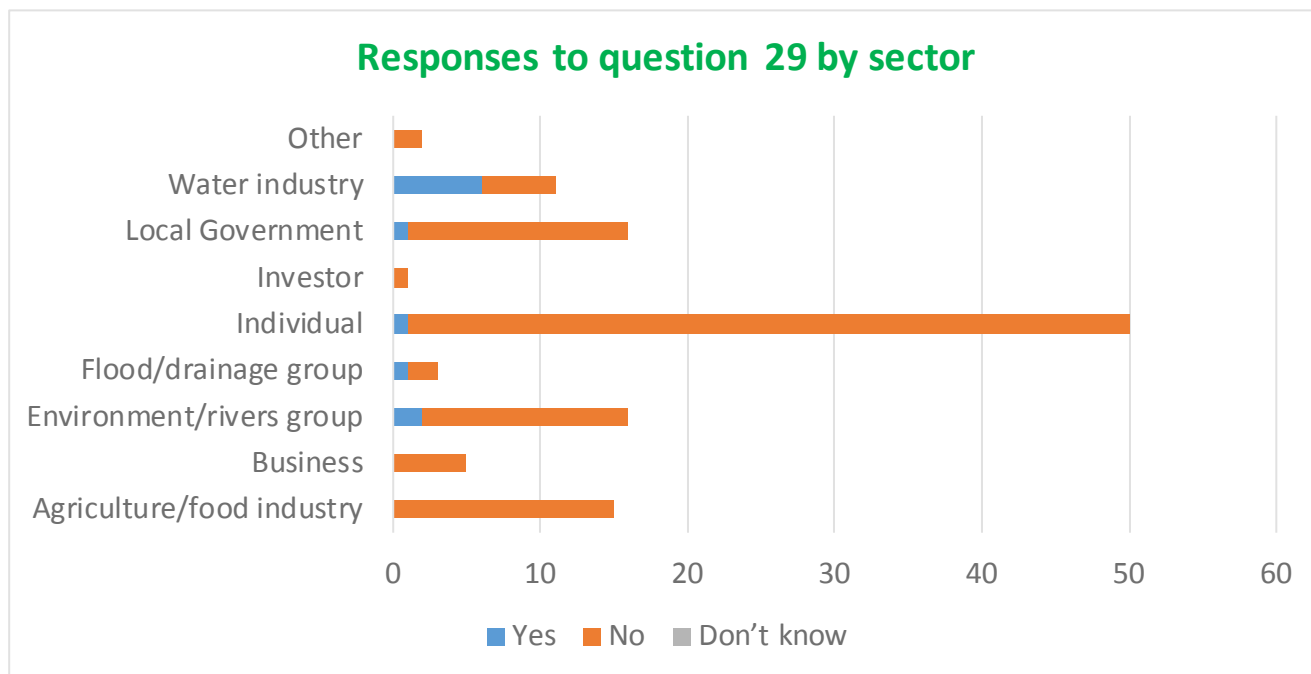
The respondents not supportive of the use of the model were mostly from the water sector and questioned the relevance and validity of comparing the water sector model with those of other utility sectors. They felt that the consultation assumed that licence arrangements in other utility sectors and regulatory frameworks were more effective than in the water sector. They questioned whether this was the case and suggested that the Ofgem model did not work that effectively.

Water sector respondents also suggested that the consultation generally, and the proposal to amend the current appeal model, ignored the fact that consumer trust in the water sector generally tended to be higher than for electricity, gas or telecoms. Some also felt that the energy sector model was changed to comply with EU regulation regarding European inter-connectivity issues, and that these issues not relevant to the water sector.

Those individuals and respondents from the agriculture / food and local government sectors that disagreed with the model questioned whether the energy sector model was a very good model to follow, and that constraints within the energy sector may not always mirror those within the water industry. While it might be a useful comparison, it did not provide a 'like-for-like emulation'.

Question 29: Have you any other suggestions for a different model for licence condition modification? Please provide reasons and explain what this could be.

In total, one hundred and nineteen (119) respondents addressed question 29. However, fewer than a tenth (11) provided other suggestions for a different licence condition modification model.



Of the eleven that did provide suggestions for a different approach, six respondents were from the water sector, two from environment / river groups, and one each respectively was from an individual, a local government organisation and a flood / drainage group.

Severn Trent Water suggested a number of actions that could be included in the appeals mechanism, including the change not taking effect:

- for at least 56 days from the date of Ofwat’s final decision on the consultation
- until after an appeal was considered (in line with the energy sector regime)

They explained also how a change in the communications sector in 2018 now required the Competition and Markets Authority to decide appeals against Ofcom decisions by applying the same principles as would be applied by a court in judicial review proceedings.

Water companies would generally prefer a merit-based appeal rather than a judicial review basis of appeal, which they perceived as uncertain. Severn Trent Water suggested exploring whether an interim step could be introduced into regulatory appeals in order to narrow the issues between the parties.

They also felt that the appeals process in the energy sector did not cater for a situation in which a water company simply wanted a neutral third party to offer an expert opinion. Severn Trent Water said that an energy appellant had to convince the Competition and Markets Authority that Ofgem was “wrong” in its original decision, which it was felt created a high hurdle for an appellant to overcome if they were to succeed in an appeal. They were also supportive of a collective licence modification process.

Yorkshire Water suggested that Defra should take the opportunity to explore the greater consistency of regulatory models regarding the process for appealing price determinations. They explained how the present water approach required a company to accept or reject Ofwat's entire determination, with the Competition and Markets Authority considering and making a new full price determination for the appellant company. They believe that the regulatory regime for the energy sector operated a more focused system where a company may appeal specific aspects of Ofgem price determinations, resulting in a more controlled and streamlined procedure for all parties. They added however that under the Competition and Markets Authority proposals to BEIS if the responsibility to review economic regulatory decisions were to move to the courts, in their view, the process for appealing price determinations may need to be subject to material change.

Bristol Water agreed with the broad approach suggested, in considering consistency of licence changes with other regulatory regimes, but suggested that if this were to be implemented, then there needed to be consistency with other aspects of the other regulatory regimes that are linked to the licence changes. They suggested that, without any changes, the proposals put Ofwat's regulatory independence at risk. They highlighted also issues about consultation periods and that some recent Ofwat consultations had been to short deadlines (2-6 weeks), where Ofwat believed the change to be non-contentious. This had resulted in the timings often falling outside of company Board meeting cycles, and that Boards needed to consider the proposals carefully. They felt that a minimum period of 8 weeks should be required for consultation to allow this.

Suggestions were also made about the stage at which the Secretary of State could veto any change (at the end of the consultation period and not during it, which might reduce the perception of Ofwat as an independent regulator), and that unless a majority of companies were in favour of a change, it should not be implemented until after any Competition and Markets Authority appeal had considered the issue.

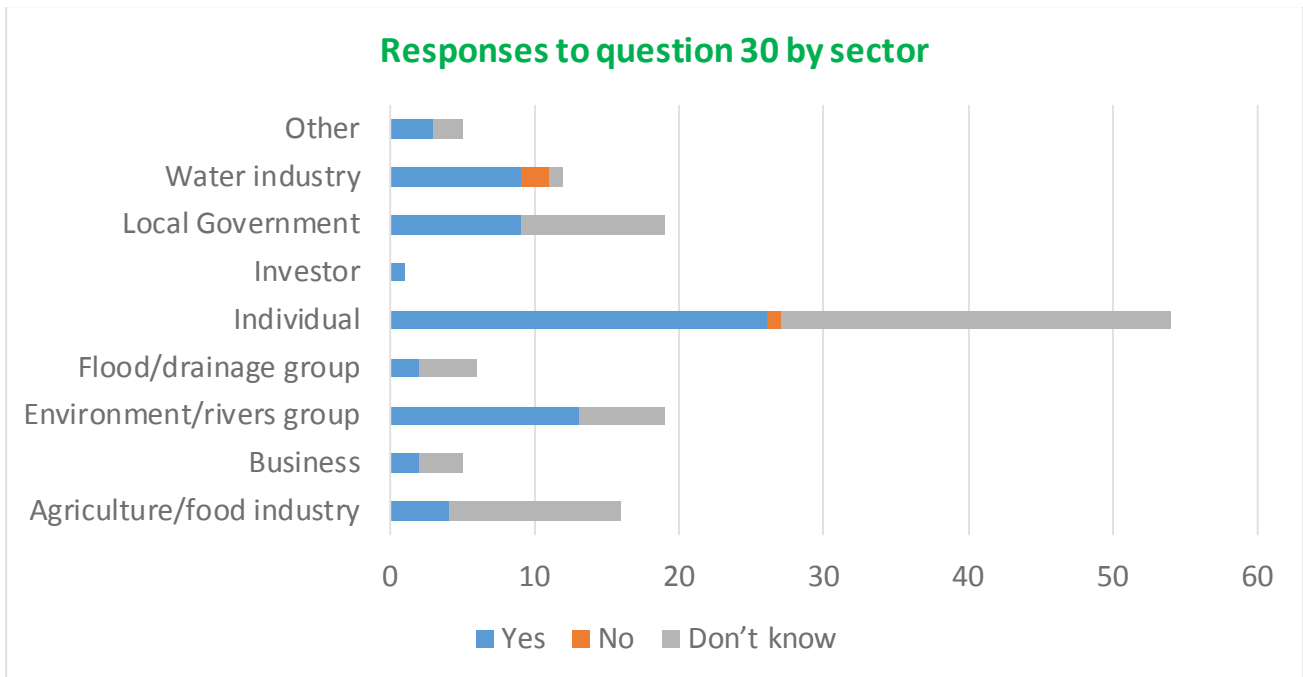
It was also suggested that there was an objective difference in the management of the water sector in comparison with the energy sector because of the government's use of its Strategic Policy Statement to Ofwat, and that Defra should not underplay that effectiveness.

It was suggested that more thought was needed about licence conditions for traditional water undertakers as opposed to new entrants to the market. Albion Water suggested that the current licence condition approach seeking to create a level playing field on conditions for all companies and some charging issues was harming competition, customer services, sustainability, innovation and resilience.

The flood / drainage group suggested that the licence modification process needed to enable incentives for good water management. The individual respondent felt any process needed to be uniquely suited to water.

Question 30: Do you agree with the proposal to modernise Ofwat's information gathering powers? Please provide reasons.

In total, one hundred and thirty-seven (137) respondents addressed question 30.



A small majority, just over half, of respondents agreed with the proposal, just under half did not know how to respond. Three (3) disagreed with the proposal.

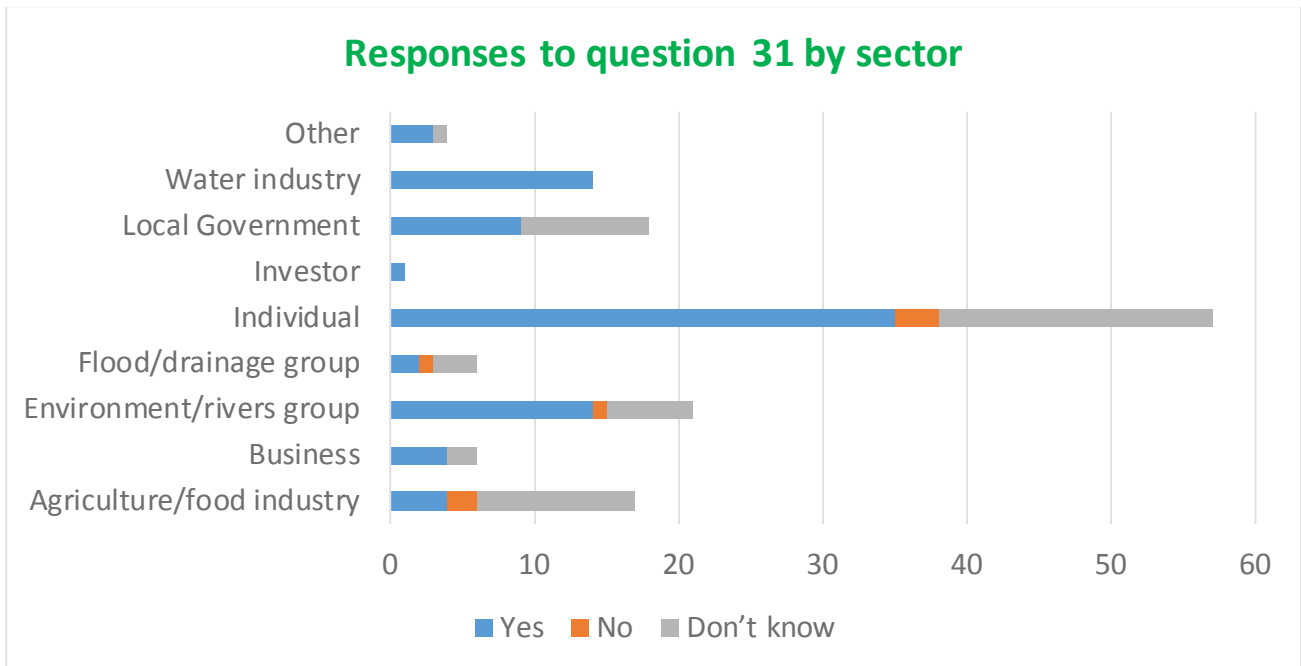
Agreement was from across all sectors. The main reasons provided for supporting the proposal were i) to ensure that companies were complying with their duties; and ii) in order for Ofwat to obtain information quickly.

There was a concern however that during an emergency incident, other organisations such as Defra may also be seeking information from the companies and respondents felt that some type of co-ordination and prioritisation of information requests during emergency incidents should be put into place.

Those that disagreed were all from the water sector and their disagreement with the proposal was on the grounds that they had always complied with information requests from Ofwat and therefore questioned the need for an additional power to request information.

Question 31: Do you agree with the proposal to modernise the way in which documents can be served, to include email? Please provide reasons, including any groups of people or type of documents for which email is not appropriate.

In total, one hundred and forty-four (144) respondents addressed question 31. Those responses were from across all sectors.



A majority, over two thirds (86), of respondents agreed with the proposal. Fifty-one (51) responded 'don't know' to the question, and 7 disagreed with it.

Some of those that agreed with the proposal qualified their responses explaining that:

- the elderly or those with sight problems may not have access to email
- emails could go in spam
- some people did not have access to emails at all or have problems with broadband connectivity
- emails should be sent with extra security e.g. password protected
- email should be by consent only and only to the email address provided by the recipient

The respondents not supportive of the proposal explained that emails could get overlooked or deleted by mistake, so correspondence should continue to be served by paper / post. They explained also that ensuring proof of email delivery could be difficult and might therefore lengthen any process to which the correspondence might relate.

Government response to questions 27-31

Licence condition modification process:

Question 27: Do you agree with the case for modernising the way in which Ofwat modifies licence conditions?

Question 28: Do you agree with the proposal to base a modernised model on that currently used within the energy sector?

Question 29: Have you any other suggestions for a different model for licence condition modification?

The case for modernisation: As we explained in the consultation document, the government has looked at the process by which water and sewerage company licence condition modifications are made on a number of occasions. It was first suggested that the process required change in 2010 following an independently led review⁷. The government believes that we have delayed change and modernisation for too long.

There was majority support for the case for modernising the process in the consultation, although we acknowledge that that was largely from sectors other than the water sector. The minority support from the water sector raised questions about whether now was the appropriate time for change considering the possible wider regulatory reform taking place (with specific reference to the possible future role of the Competition and Markets Authority and the current National Infrastructure Commission review concerning utility regulation). While this might result in further future changes, the outcome of the review cannot be pre-determined, and any changes could be some years away.

Those that disagreed with the case for change mentioned that Ofwat has, of course, since 2010 still been using the current process to simplify and modernise licence conditions, and we note also that Ofwat has not made any appeals to the Competition and Markets Authority. However, the licence condition modifications that have been made have been largely either to simplify or to modernise conditions to enable reform of the sector, such as to enable non-household competition.

The status quo means that the regulator is potentially constrained from making modifications that it considers necessary, without making a reference to the Competition and Markets Authority: this is not a regulatory model that we believe should continue.

We acknowledge the water sector's concern about regulatory stability and the importance of continued investability in the sector. We are of course keen to maintain and increase that investment and will take account of the requests for safeguards around a modernised process that some investors supportive of the case made in their responses.

The challenges that we are facing from a changing climate and population growth requires us to have processes which allow the regulator to regulate effectively, and we believe that we should take this opportunity to ensure Ofwat has the right tools in respect of licence condition modification.

⁷ UK and Welsh government 2010 review of Ofwat to ensure that it was fit to meet the challenges of the sector - www.gov.uk/government/publications/review-of-ofwat-and-consumer-representation-in-the-water-sector.

Modernised model: government will base the modernised process on that used in the energy sector. However we will take account of the needs of the water sector, and comments provided in consultation responses.

The Ofgem model contains many of the elements which are already in our current model and which we will intend to replicate in the new process. For example, Ofwat will need to continue to engage and consult on proposed licence condition modifications. We note the comments made about the length of consultation periods and will consider these when finalising the minimum period.

In practice, Ofwat will be expected to have a robust business case for proposing to modify licence conditions, which consider any economic impacts. Any proposals for licence condition changes should be consistent with Ofwat's duties and reflect Defra's strategic priorities for the sector.

As with the current Ofgem process, we propose that if a water or sewerage company wished to appeal a licence condition modification decision, they could apply for the Ofwat decision not to be implemented until after the Competition and Markets Authority had given its decision on the appeal.

Question 30: Do you agree with the proposal to modernise Ofwat's information gathering powers?

We proposed to improve Ofwat's information gathering powers, modelling a new provision on Ofgem's information gathering power which allows them to compel water companies to provide information. We proposed that a company's failure to provide the information requested could result in a fine.

There was broad support from across all sectors for the strengthening of Ofwat's currently limited information gathering powers, and the government intends to proceed with this proposal. The power will be exercisable in relation to water and sewerage undertakers and licensees.

Some concern was expressed in responses about conflicting information requests during emergency situations where, for example, Defra often makes daily information requests of companies to enable us to monitor the national position on water demand and supply. We will endeavour at such times to communicate with Ofwat about the information requests we are making. This should help to avoid conflicting requests being made at a time when companies are generally stretched in terms of seeking to maintain or resolve supply issues which means that their capacity to provide information to short deadlines may be affected.

Question 31: Do you agree with the proposal to modernise the way in which documents can be served, to include email? Please provide reasons, including any groups of people or type of documents for which email is not appropriate.

The government proposed that the electronic service of documents be an alternative way in which the service of documents under the Water Industry Act 1991 could be effected. The Water Industry Act 1991 as enacted only provided for the methods of service available

at that time. In 1991 of course, email communication was not a daily method of communication as it is today.

We believe that it is appropriate that methods of service be updated to allow for email service. However, service does not have to be made electronically.

We acknowledge also that there was some concern raised about the capacity of some individuals, particularly older customers, to receive information electronically. We intend therefore to make provision that such service could only take place with the consent of individual customers and only to an email address stipulated by them.

The government understands that electronic service may assist some people with sight impairments because of the software available to read documents for the user. Consent will not be required in order to serve documents electronically on water and sewerage undertakers and licensees.

Next steps

As we have explained in the government response sections of this document covering each of the different policy proposals, the government wishes to take forward the majority of the proposals on which we consulted in the Environment Bill or other primary legislation. Measures concerning the internal drainage board methodology and rivers authorities are currently being progressed through the Rivers Authorities and Land Drainage Private Members' Bill.

Our assessment of impacts of these measures will be published when we introduce the legislation into Parliament.

Devolved Administrations and geographical extent of proposed policies

All policy areas in the consultation cover policy areas which are devolved to the Devolved Administrations.

Both the Scottish Government's and Northern Ireland Executive's policy and legislative frameworks on these issues have developed independently of England, and these Devolved Administrations are not therefore affected by the consultation proposals.

The UK Government's and Welsh Government's policy frameworks on these policy areas are closely linked and we share much of the same legislative framework also. We are therefore working closely with the Welsh Government on these proposals and investigating the scope to which they wish to follow these policy and legislative approaches.

Annex A – Organisations that submitted responses

Association of Drainage Authorities (ADA)

Affinity Water

Albion Water

Amwell Magna Fishery

Anglian Water

Angling Trust

Axe Brue & Parrett internal drainage boards

BALI

Barrington Parish Council

Bedford Group of internal drainage boards

Blueprint for Water

Boston Borough Council

Bradford on Tone Parish Council

Bristol Water

British Aggregates Association

British Hydropower Association

British Trout Association

Broadland & South Norfolk District Councils

Broxtead Estate

Bury St Austens Fard

Calthorpe Farm Ltd

Canal & River Trust

Cannington Parish Council

CBI Minerals Group

Chiltern Society Rivers and Wetlands Group

Churchtown & St Michaels Flood Action Group
CIWEM
CK Infrastructure Holdings Limited
Clan Farms Limited
Clean Rivers Trust
Coast to Capital
Coastal Group Network of England and Wales
Confederation of Paper Industries
Consumer Council for Water (CCWater)
Cornwall Council
Country Land and Business Association (CLA)
Cumbria River Authority Governance Group/ Cumbria Farmer Flood Group
Curry Rivel Parish Council
Cumbria Farmer Flood Group
Darent River Preservation Society
Datchet Parish Council
District Council's Network
DKEvans
Dorset County Council
Dunster Parish Council
East Suffolk Water Abstractors Group
East Sussex County Council
EDF Energy
E H Holdstock & Son
Envireau Water
Essex County Council
Farming and Wildlife Advisory Group SouthWest
Food and Drink Federation

Friends of the Lake District
Gloucestershire County Council (Officer level response only)
Greater London Authority
Goose Meadow Farming Limited
Hampshire County Council
Hartlepool County Council
Hedsor House / Hedsor Park / Hedsor Events
The Heritage Alliance
Historic England
Hobson's Conduit Trust
Home Farm (Nacton) Ltd
HR Wallingford
HRL Morrison & Co.
iCON Infrastructure
Illman Young / CIC Flood Mitigation and Resilience Panel
Irriplan
Isle Abbots Parish Council
Joseph Rochford Gardens Ltd
Kent County Council
Keswick Flood Action Group
Kerr Farms
Kingston University (as part of the Hogsmill Catchment Partnership)
Kingston upon Hull City Council
Langport Town Council
Lark Angling and Preservation Society
L F Papworth Ltd
Lechlade Trout Farm
Lincolnshire County Council

Local Government Association
Local Government Association Coastal Special Interest Group (SIG)
Lune Valley Flood Forum
Lyth Valley County Council
Martock Parish Council, Somerset
Mendip District Council
Medway Valley Countryside Partnership
Mere Rivers Group Wiltshire
Mere Town Council
Monksilver Parish Council
MPA
National Association of Drainage Contractors (NADC)
National Farmers' Union (NFU)
National Flood Prevention Party
Natural England
National Hydration Council
Newburgh Parish Council
NFU Watercress Association
North East Lindsey internal drainage board
North Norfolk District Council
Northumbrian Water
Old Cleeve Parish Council
OMERS (Canadian Pension Plan)
Partnership for Urban South Hampshire (PUSH) Water Quality Working Group (WQWG)
Potato Processors' Association Ltd
Proctor Bros (Long Sutton) Ltd
Radcliffe and Redvale Flood Action Group
River Nene Regional Park CIC

The Royal Borough of Kensington and Chelsea
Royal Society for the Protection of Birds (RSPB)
The River Thet catchment Water Resources Group
The Rivers Trust
Salmon and Trout Conservation
Scarisbrick Parish Council
Sedgemoor District Council
Selworthy and Minehead without Parish Council
Severn Trent Water
Soil Moisture Retention LTD SOMELCO
Somerset County Council
Somerset Rivers Authority
South Chilterns Catchment Partnership
South East Coastal Group (SECG)
South East Rivers Trust
South East Water
South Lakeland D C
South Somerset District Council
South Staffs Water
South West Rivers Association
South West Water
SR & A Tatersall
Stantec UK
Surrey County Council
Surrey Wildlife Trust, and on behalf of Surrey Nature Partnership
Taunton Deane Borough Council and West Somerset Council
Thames Water
Tideway

UK Irrigation Association

United Utilities

Upper Witham internal drainage board

Vantage Infrastructure

Ver Valley Society

Wakefield Council

Warwickshire County Council Flood Risk Management Team

Waterwise

Water Management Alliance

Water Resources Coalition

Water Resources East

Water Resources in the South East

Water Resources North (core members)

Water UK

Welsh Water

West Cumbria Rivers Trust

West Monkton Parish Council

West Somerset Flood Group (Towns and Parishes)

Wessex Water

Westonzoyland Parish Council

Wheatley Solutions

Wild Trout Trust

Wildlife & Countryside Link

The Wildlife Trusts

William Notcutt Estates

Williton Parish Council

Wiltshire Council

Witham First District internal drainage board

Witham Third District internal drainage board

Witham Fourth District internal drainage board

WSP

WWF-UK

Wyre Flood Forum and North West & North Wales Coastal Group

Yeovil Rivers Community Trust

Yorkshire Water