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My ref:

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NSPm

26 March 1986

Jim Nick,

WATER PRIVATISATION: ENVIRONMENTAL PROTECTION

As you know, John Patten and I have all along seen protection of the water environment as a matter of the highest importance in the context of water privatisation.

This is partly because transferring a regulatory system to the custody of private companies is unusual, and raises genuine concern to ensure that they operate their powers fairly, and in the public interest. It is partly because of genuine concern that private bodies may not have sufficient regard to the conservation of the environment. It is also because there will be a number of other concerns, justified or otherwise, which the increasingly powerful environmental lobby will bring to the fore as our proposals go forward.

That was why we devoted a whole section of our White Paper to the subject. There has been a muted response to this so far. A recent Times leader questioned whether private bodies ought to be exercising regulatory functions, and there has been a limited amount of press and other public comment in the same vein. There are signs that we can expect more criticism of this kind unless we can show convincingly that our intention to protect the water environment will be given good effect. In the White Paper we promised to produce a consultation paper on this subject and I attach a draft.

This has been produced following very helpful discussions at official level with your own and other Departments. We have tried to reflect a wide variety of departmental concerns and I very much hope that you and colleagues will agree that this has been done. The draft of course builds on section 5 of the White Paper. Its most important recommendations are:

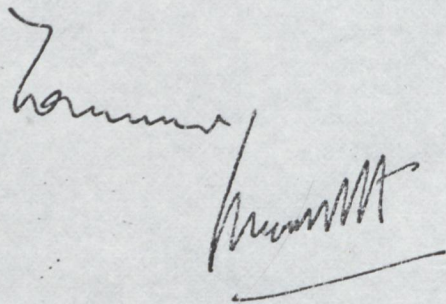
- a. retention by Ministers and privatised water authorities of their essential responsibilities, with some development of these where essential;
- b. river quality objectives to be given statutory force;
- c. greater protection for sensitive areas from which water resources are derived (this would be derived from present legislation);
- d. stronger safeguards against accidental pollution;

- e. development of the "polluter pays" principle;
- f. simplification of effluent discharge consent procedures.

In my view, this set of proposals will provide a much needed measure of improvement in our arrangements for environmental protection. It should go some way to settling the environmentalist's concern, whilst at the same time not imposing any unreasonable burdens - and indeed producing some benefits - for those who use our river system for discharging effluent.

Could I please have any comments by Friday 11 April? I will need to issue it by mid April if we are to take account of public comments in the drafting of legislation.

I am sending a copy of this letter to the Prime Minister, Michael Jopling, Malcolm Rifkind, Paul Channon, David Young, John Moore and Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to read 'Kenneth Baker', written over a horizontal line.

KENNETH BAKER

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N BPT

Private Secretaries' Office

PS MR EDWARDS,

WATER PRIVATISATION:
ENVIRONMENTAL PROTECTION.

THE CONSULTATION PAPER
REFERRED TO IN THE ABOVE
LETTER WAS OMITTED WHEN
SENT. PLEASE ACCEPT THIS
COPY OF THE PAPER AND
MY APOLOGIES FOR THIS
OMMISSION.

COPIES OF THIS PAPER
GO AS BEFORE.

A. J. Swan
27-3-86.

THE WATER ENVIRONMENT: THE NEXT STEPS

The Government's Consultative Proposals for Environmental Protection under a Privatised Water Industry.

C O N T E N T S

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INTRODUCTION

1.1 On 5 February 1986, the Government announced its intention to transfer to the private sector the ten water authorities in England and Wales. The proposals are set out in a White Paper 'Privatisation of the Water Authorities in England and Wales', HMSO, CMND 9734.

1.2 The main elements of the White Paper are as follows:

(a) River basin management of the water cycle will be maintained.

(b) The Water authorities will be converted, with their present boundaries, into Water Services Public Limited Companies (WSPLCs) which will be responsible for all functions of the present authorities with the single exception of flood protection and land drainage.

(c) Financing and co-ordination of flood protection and land drainage will become the responsibility of special bodies which will have close links with the water authorities.

(d) A Director General of Water Services will be appointed to regulate the main services of WSPLCs through a licensing system. Licences will specify price, and service standard controls for the utility services, and can include other requirements, giving them legal force.

(e) The Director General will appoint committees to represent the interests of customers of each WSPLC.

(f) There will be new and strong safeguards for the water environment. Existing statutory duties relating to recreation, conservation, navigation and fisheries will continue.

(g) A Bill will be introduced to give effect to these proposals at the earliest opportunity.

(h) WSPLCs will be transferred to private ownership at intervals thereafter.

1.3 This paper develops the proposals in chapter 5 of the White Paper for the strengthening of safeguards for the water environment.

1.4 An important aspect of unified river catchment management

is that a single body is responsible for protecting rivers and other sources of water supply, including ground water, as well as for supplying to customers water which must reach rigorous standards of wholesomeness. This provides a strong incentive for ensuring that all water resources are properly protected from pollution. The ability to develop the fisheries and recreational potential of rivers and other inland waters, also provides an incentive to effective pollution control and water resource management. Retention of unified river basin management therefore will help to ensure that, under privatisation, the environmental responsibilities of WSPLCs will be properly discharged. This paper considers whether the companies will have adequate powers to discharge that responsibility, and also considers changes which privatisation will itself make desirable.

1.5 The Government has already taken important steps to safeguard and strengthen protection of the water environment. It has implemented Part II of the Control of Pollution Act 1974, which provides for more effective protection of inland surface and underground water, the extension of controls to coastal waters, and public involvement in the control system. It has launched and put its weight behind the initiative to tackle the severe pollution of the Mersey river system on a firm timetable. In co-operation with its partners in the European Community it is giving increasing attention to protection of the marine environment.

1.6 Since their establishment in 1973 the ten water authorities have had the executive responsibility for conserving the water environment in England and Wales. In that period, the quality of rivers has been protected in spite of increasing demands upon them. Plans are in place for the improvement of the main industrial estuaries, and maintenance of current investment levels over the next ten or fifteen years would enable the main sources of sewage contamination of coastal waters to be remedied.

At the same time authorities have reflected, and contributed to, the widening interest in the conservation of landscape, flora and fauna. They have considerably extended the consultation they carry out before undertaking works with a major environmental impact. River corridor surveys have been carried out, conservation officers have been appointed and codes of conservation practice have been written and brought into effect. The Government believes that through integrated river basin management the authorities have succeeded in reconciling these objectives with wider provision for amenity and recreation. The table below and associated map indicate the extent of the commitment which the authorities now make in this area.

Recreational Activities at Water Authority Reservoirs in England and Wales 1985.

Total Number of Reservoirs	530
Number with provision for:	
Fishing	474
Sailing	91
Sailboarding	68
Canoeing	45
Sub-aqua	42
Bird Watching	275
Horse riding	40

1.7 Privatisation means that new measures will be required to ensure that the water industry continues to attach due weight to environmental protection. It also provides an opportunity to consolidate and extend the environmental gains achieved in recent years. In deciding its approach the Government has had the following main objectives in mind:

- (a) the need for a clearer framework of national environmental policy within which local decisions and local action on matters such as the protection of particular stretches of river can be taken;

(b) the need for regulatory systems to be simple, clear, justifiable and affordable, with firm safeguards against abuse;

(c) the need for the public to have adequate access to information;

(d) the need for financing and charging systems to allocate costs effectively to those whose actions give rise to those costs.

1.8 This consultation paper is written against that background, to set out in more detail the proposals in chapter 5 of the White Paper. Section 2 describes how the general framework for environmental protection can be improved. The following sections deal with separate elements of the system. The Government invites views from organisations and from members of the public with an interest. Comments should be sent to Mr Adrian Straw, Room A434, Romney House, 43 Marsham Street, London SW1. Comments on aspects of the proposals which may be of special significance in Wales should be copied to the Welsh Office: Mr. L. Pavelin, Welsh Office, Cathay's Park, Cardiff, CF1 3NQ. Comments should arrive no later than 20 June 1986.

ENVIRONMENTAL PROTECTION: RESPONSIBILITIES AND A NEW FRAMEWORK

2.1 Privatisation will make a fundamental difference to the constitution of the Water Industry in England and Wales, and the Government is concerned that when it happens the arrangements for safeguarding the environment and for promoting amenity should be consolidated and strengthened. Changes in these arrangements are in any case necessary because since the Water Act 1973 was enacted there have been important developments in environmental policy: it has had to respond to European Community legislation and it has been necessary to define more clearly a national framework of policies and priorities within which regional policies can be set.

2.2 This section describes new arrangements which the Government proposes to introduce with privatisation. It considers in particular the part to be played by the Secretary of State, the WSPLCs and the Director General of Water Services, and it has these principal objectives:

- i. to provide for national environmental policies to be clearly identified.
- ii. to ensure that adequate powers exist to give effect to these policies and
- iii. to ensure that WSPLCs act in conformity with national policies and the public interest.

Responsibilities of the Secretary of State: Establishing National Policies

2.3 After privatisation, overall policy for the environment and for setting general objectives and priorities will remain, as it must, the responsibility of ministers answerable to Parliament. It will be their duty to ensure that national policy requirements are met including directives of the European Community. It must therefore ultimately be for ministers to ensure that WSPLCs give due weight to environmental considerations. At present, the Secretary of State's responsibilities are defined by section 1 of the Water Act

1973 under which the Secretary of State for the Environment, the Secretary of State for Wales and the Minister of Agriculture, Fisheries and Food are under a duty 'to promote jointly a national policy for water in England and Wales' and it is the duty of the different ministers to secure the effective execution of that policy in relation to their respective functions. Under privatisation, where Ministers will no longer be responsible for appointing members of water authorities and WSPLCs will be outside the public sector, relationships between Ministers and WSPLCs will need to be more clearly defined, and Parliament will expect that the Secretary of State's own obligations should be more precisely formulated.

2.4 There are two main areas in which this will be necessary. The first is the availability and quality of water resources. At present the duty to initiate and carry through surveys of future demand for water, and surveys of water resources, is placed by section 24 of the Water Act 1973 on the water authorities. Assessments undertaken after the 1973 reorganisation identified regional deficiencies then foreseeable up to the end of the century, and the water authorities have promoted schemes to meet these deficiencies. As the demand for water has increased less steeply than was forecast in the early 1970s, it has not yet been generally necessary to extend water resource planning and to secure further supplies for the future. But this may become necessary from time to time, and the Government must be in a position to see that necessary assessments should be carried out as the need arises. It is therefore proposed that there should be a duty on the Secretary of State to require this to be done as and when it appears to him to be necessary, so that the implications can be fully considered.

2.5 The second main area is the setting of quality objectives and standards to which main surface waters - ie rivers, lakes, streams and other natural water resources - should be maintained or improved. These objectives are at present imposed upon themselves, voluntarily, by the water authorities. They are fundamental to the health of our rivers and therefore

to the entire basis of water protection policy. Imposition by the Secretary of State will ensure that his overall responsibility for the water environment is given direct statutory force, in the area where it matters most. Chapter 3 sets out more fully the background to this proposal and what it would entail.

Powers of the Secretary of State

2.6 If environmental quality objectives are to be clarified and given greater statutory force, it is essential that there are adequate powers to ensure that they can be given effect.

Such powers must lie primarily with the Secretary of State, in view of his central responsibility for policy, though adequate powers must also be available to the WSPLCs to enable them to carry out their responsibilities.

2.7 The Secretary of State will require a number of specific powers to discharge his remit. These will include

- (a) A power to ensure, subject to Parliamentary procedure, that WSPLCs implement specific national environmental policies:

Inevitably new requirements of national, including European Community environmental policy will from time to time arise. Ministers should have powers, subject to Parliamentary procedure, to require that these policies are given effect by WSPLCs.

- (b) Powers to prescribe precautions to be taken by anyone with custody or control of substances likely to pollute or impair water resources; and to designate zones within which any activities likely to damage water resources can be regulated;

Maintenance of river water quality can be jeopardised not only by regular discharges but also by accidental spillages and the unintended consequences of normal activities. Adequate powers to control such risks are increasingly important.

Section 5 describes how existing powers in section 31 of the Control of Pollution Act 1974 might be adapted and used to this effect.

- (c) A power to establish inquiries on any matter relevant to maintaining the quality of natural waters;

There are already powers for the Secretary of State to establish local inquiries on individual abstractions and discharges and the local application of regulations. These should extend to quality objectives and standards when the arrangements described in section 3 are in place. When executive operation of environmental protection is the responsibility of private bodies the Secretary of State should also have powers to establish inquiries on any matters relevant to maintaining the quality of natural waters to ensure that the public interest can be properly taken into account.

- (d) A power to require WSPLCs to furnish such information as Ministers may reasonably need to fulfil their duties.

While water authorities are within the public sector and the members of /^{authorities} are appointed by Ministers, exchanges of information with Government are continuous, with little need for formal arrangements. Once the authorities are privatised it will be appropriate that there be formal powers to require WSPLCs to furnish information on environmental matters to the Secretary of State. Existing information requirements will be reviewed with a view to simplification, avoidance of duplication and ensuring that they can be discharged by WSPLCs as cost effectively as possible.

Responsibilities of the WSPLCs

2.8 Historically, the principal means of ensuring water quality has been control over discharges of trade and sewage effluent to rivers, lakes, streams and other natural water courses, a control exercised to a system of formal consents.

No such discharge is allowed unless it complies with the conditions set by the water authority (or formerly by the

river authority), and these conditions limit the amount of polluting material emitted from pipe or sewer. This system of controlling individual emissions is vital to protection of the water environment and will continue when the water authorities are privatised. Section 4 describes more fully the current system, the role of the Secretary of State in ensuring that it is operated fairly, and proposals for improvement.

2.9 As part of their general responsibility for river basin management water authorities also discharge a wide range of other responsibilities for the protection of water quality. They undertake systematic monitoring of water quality and develop plans for improvement. Their pollution control staff play the principal role in the enforcement of section 31 of the Control of Pollution Act which forbids the entry of polluting matter to water, by policing water areas and undertaking prosecutions when necessary. They handle pollution emergencies and take appropriate remedial measures when they occur. Water authorities have major responsibilities in the field of conservation. Subsequent sections will explain how all these responsibilities will remain following privatisation, and how in some cases they will be developed.

Monitoring and Enforcement

2.10 The Secretary of State will need adequate powers to ensure that WSPLCs discharge their own duties in relation to pollution control. It will be important to ensure that the monitoring by WSPLCs of rivers and estuaries is carried out adequately and on a broadly consistent basis as to the number of sampling points and frequency of sampling. Sampling of discharges must also be carried out with regard to the requirements of particular areas, but also with regard to sound and broadly consistent criteria.

2.11 Water authority inspectors undertake general supervision and policing of water areas to enforce the controls on dumping, spillages and other entries of polluting matter. This extends to the general planning and management of natural waters. These activities are difficult to quantify or express in terms of output measures, but they are central to the general

management of water areas. WSPLCs will have a continuing interest in and responsibility for undertaking them. While the Government does not see a need for any substantial changes in current practice, its importance to environmental protection means that the Secretary of State should be in a position to impose requirements of a general character as to its scale and nature.

2.12 The Government has a wide range of powers on which it can rely in exceptional emergencies but in most incidents it will be the water authorities on which the obligations will fall. They operate, and review periodically, standard guidelines for dealing with emergencies. The Government will wish to ensure that this continues after privatisation, and to be able to satisfy itself from time to time that the procedures operated are sound. Proposals in a consultation paper 'Water and Sewerage Law' published on 21 March 1986 review certain of the powers of water authorities in relation to their functions for controlling others' operations (eg powers of entry) and these are relevant.

2.13 The above proposals for ensuring that monitoring and sampling are carried out adequately and consistently may most appropriately be implemented through regulations, statutory codes or as conditions of the operating licences under which WSPLCs will be regulated by the Director General of Water Services. Such approaches will allow greater detail and flexibility to be achieved. It will be for the Secretary of State to oversee and support WSPLCs in their role as pollution control authorities. To provide guidance on these matters, and in particular to monitor their own performance as abstractors of water and dischargers of effluent, a small inspectorate will be established within the Department of the Environment and Welsh Office. This will be an important new development.

Expenditure and Charges

2.14 As at present, it will not for the most part be possible for WSPLC's pollution control and environmental service functions to be undertaken on a profit-making basis. Some aspects of pollution control are susceptible of direct charges

(see section 6) and in some areas of recreation there will be greater scope for enterprise activities. Nevertheless a deficit on these activities may need to be accepted in the public interest and it is right that this should be recoverable by WSPLCs from the charges raised from customers of water and sewerage services.

2.15 It is therefore important that investors in the new companies, as well as those who enjoy the non-profit-making services, should be aware of their financial implications. The figures below are extracted from the authorities' 1984/85 accounts. They show how much the 10 water authorities spent on the five environmental services, what income they received from each, and how much support these activities had from environmental services charges - ie from the bills of water customers and users of sewerage services.

	Water Quality Regulation	Pollution Alleviation	Recreation & amenity	Fisheries	Navigation	£000s TOTAL
Expenditure	17,328	4,445	6,961	8,296	4,346	41,376
Income	115	91	2,630	4,290	1,859	8,985
Support from the Environ- mental Services Charge	17,213	4,354	4,331	4,006	2,487	32,391

Thus for all environmental services, the extent of support from the Environmental Services Charge in 1984/85 was a little over £32m. The Government is committed to the principle that the costs of these activities should be recovered to the fullest possible extent from those who benefit from them. However the Government also considers it right that they should receive a reasonable measure of support from the main services. At present this support amounts to less than 2 per cent of the authorities' gross turnover. The Government considers this to be a ^{small} ~~reasonable~~ burden on the consumers of the main services, and intends that the WSPLC's licences should provide for support of this order to be continued.

2.16 The Director General will have a general interest in WSPLC's exercise of environmental functions, but will in particular be concerned with matters of finance and consumer representation. As explained in the White Paper (paragraph 75), he will be given the responsibility of determining from time to time the extent to which the environmental services should be supported from charges raised from customers for water and sewerage services. In this task he will need to take account of obligations WSPLCs may be required to fill by changing national or EC environmental policies and have regard for the interests both of consumers and shareholders. In striking this balance he will be assisted by the decision announced in the White Paper that he should in future appoint the members of Consumer Consultative Committees, including those responsible for environmental matters.

SECTION 3

ENVIRONMENTAL QUALITY OBJECTIVES AND STANDARDS

3.1 When the water authorities are converted into Water Service Public Limited Companies, they will continue to be the agencies responsible for protecting the water environment - as they must be if the benefits of integrated river basin management are to be preserved. As now, they will be the agents of national policy for the environment, and their efforts in that direction will be governed by a system of environmental quality objectives which, henceforth, will be set on a statutory basis by the Secretary of State.

3.2 The water authorities established under the Water Act 1973 inherited a situation in which many discharges were subjected to standard conditions set by their predecessors unrelated to the effects of the discharges on the receiving waters. Some of the conditions were unnecessarily stringent while others were not stringent enough. Water authorities in carrying out the Secretary of State's duties to restore and maintain its wholesomeness of rivers were not required to produce programmes for improvement of these rivers. This situation led to the National Water Council (NWC), after extensive work and consultation, issuing in 1978 the policy statement "River Water Quality: The Next Stage." The NWC recommended amongst other things that river quality objectives to provide a better basis for setting consents and for planning investment to improve water quality should be determined by water authorities as far as practicable for rivers, canals and major streams. The then Government endorsed the NWC's statement.

3.3 All water authorities have set quality objectives for individual stretches of watercourse directly related to the use or potential use of the water, for example abstraction of drinking water, support of fisheries, recreation, amenity value. They may be short term reflecting current use, or long term representing a target use. The objective for each stretch of river can be expressed in terms of a quality classification, stating broad categories of use which can then be further expressed in terms of limiting quality criteria for such things as biochemical oxygen demand and ammonia content. The NWC produced a classification of river quality in which the highest classification, for example, is Class 1 which applies to water of high amenity value and high quality suitable for abstraction for drinking water and game fisheries. The quality criteria for this class includes a biochemical oxygen demand not greater than 5 milligrammes per litre and an ammonia content not greater than 0.9 mg/l.

3.4 River classification criteria alone however were not sufficiently precise to form a basis for protection of rivers. Water authorities therefore also set quality standards which generally represented the maximum quantity of a substance, for example metals, which could be present in the water if its current or future use has to be maintained or achieved. Discharge consent conditions were then set individually in the light of levels of substances already in the water. This system of limiting the amount of a substance in the water itself rather than applying an across the board limit on the amount permitted in any discharge has added importance in that it can also be used to give effect to the requirements of EEC Directives on water quality.

3.5 As part of the need to restore and maintain the wholesomeness of rivers, water authorities have thus used three mechanisms - the setting of water quality objectives and the complementary water quality standards plus detailed control over discharges through individual consents. Consents are discussed in ~~chapter~~ ^{section} 4 and the remainder of this ~~chapter~~ ^{section} considers how the existing procedures for objectives and standards should be adopted and built upon in the future.

3.6 Environmental quality objectives and standards have three main functions:

- a. they provide a basis for the planning and investment necessary to maintain and improve water quality;
- b. they provide an ^{explicit} ~~(scientific)~~ framework for controlling discharges of effluent, through discharge consents;
- c. if published, they inform the community at large about goals for water quality and permit informed discussion about their adequacy.

Under the present voluntary arrangements they have proved helpful at a regional level. The Government considers that they could also play an important role nationally. If they were laid down centrally, they could help to establish national priorities, such as the Mersey Basin Campaign, for environmental improvement and control. The Government also believes that they could be usefully extended beyond their present application almost solely to inland waters to cover all types of water protected under Part II of the Control of Pollution Act 1974. The Government therefore proposes that the Secretary of State should be empowered to set objectives and quality standards, initially for all significant

inland waters, and subsequently for estuarial, coastal and underground waters, and to specify a timetable within which they are to be achieved. WSPLCs will be required to assess applications for discharge consents in the light of the objectives and standards. Objectives and standards will also be one of the matters which the Secretary of State will take into account in considering the WSPLCs' own applications for discharge consents, and in determining appeals by third parties against their decisions. WSPLCs would, however, be able to set more stringent objectives and standards in the light of local circumstances.

3.7 In order to launch this new system quickly and on a firmly established clear basis the Government proposes to use initially the objectives which the water authorities have already adopted. These objectives are widely understood, have been the subject of local consultation, and can be related to the classifications used as a basis for water quality measurement in the 1980 River Quality Survey. These classifications will again be used in this way in the 1985 Survey due to be published in 1986. Using them at the outset will ensure continuity and provide a good basis for comparison between progress in different WSPLC areas, and between the present situation and any future review.

3.8 Quality objectives for a stretch of river may not be appropriate on a once and for all basis. They will need to be amended to reflect changed circumstances. The Secretary of State will therefore have a power to review objectives at intervals of not less than 5 years. Quality standards will also need to be reviewed, particularly to take account of the requirements of EEC Directives. No restriction on the frequency of reviews of standards is proposed.

3.9 Public participation, backed up by adequate access to information, provides a major stimulus to effective environmental protection. There will therefore be publicity for the reviews of objectives carried out by the Secretary of State. One possibility might be to consult local authorities, WSPLCs and other bodies with a particular interest during the early stages of a review, and then to allow general public comment on a published set of proposals. An alternative might be to consult a specified, but wide, group of environmental, local government and industrial interests. In either case, the Secretary of State would be empowered to hold a public inquiry in connection with any or all of the revised proposals.

3.10 Clearly the relevant information on quality objectives and existing water quality must be publicly available. This could be achieved either by the publication of a special report open to inspection at specified locations, or by the extension of the existing public registers to accommodate this information. The same applies to availability to the public of information on quality standards.

3.11 Thus under the government's proposals the principal day-to-day tasks involved in the protection of the water environment will continue after privatisation to fall to the present authorities, as they must if the benefits of integrated river basis management are to be preserved. But the lynch-pin of arrangements for safeguarding the environment will be the system of environmental quality objectives set, on a statutory basis, by the Secretary of State.

3.12 In summary, such objectives will ensure a consistent basis for national policies and allow the Government's objective of maintaining or improving the quality of river and estuarial waters to be carried forward. They will provide guidelines for WSPLCs in discharging their operational functions and benchmarks against which their performance can be measured. They will provide a clear basis for informal public discussion of water environment policies and resources.

SECTION 4
REGULATION OF DISCHARGES

4.1 Water authorities are charged by statute with exercising a number of responsibilities of a regulatory nature, involving the granting of licences and consents which determine the rights of others to use or enjoy natural waters. These include abstraction licences and fishing permits, but the most important for environmental water quality are the comprehensive controls they exercise on discharges of trade and sewage effluent. They are also of great importance to industry in relation to their ability to dispose effectively and economically of their wastes and effluents.

4.2 The major controls over effluent discharges are contained in Part II of the Control of Pollution Act 1974 which reenacted and extended previous legislation to cover virtually all waters. The 1974 Act also provided for public involvement in pollution control: applications for consent are advertised and comments invited; public registers containing details about water quality and discharge consents have been opened. This ensures that decisions reached and action taken must be publicly defensible. In addition the Secretary of State consents water authorities' own discharges, can call in any application for his own determination and there is a right of appeal to him by third parties against the decisions of water authorities; these three features of the system ensure evenhandedness.

4.3 The new powers discussed in the preceding chapters, particularly the Secretary of State's power to set objectives and standards, will build on the 1974 Act provisions to provide a firmer framework of control, also open to public comment capable of safeguarding water quality after privatisation.

4.4 It is desirable for effective environmental management that the granting of consents and the conditions to be attached to them should lie with the bodies responsible for integrated river basin management, but some concern has been expressed that it is inappropriate that such jurisdiction should fall to a private body answerable to shareholders in view of the conflicts of interest that could arise. There could moreover be concern that WSPLCs might be inclined to require higher standards of other discharges than they attain for their own discharges. WSPLCs could thus shift some expenditure elsewhere. The Government has therefore considered alternative arrangements. One possibility would be to transfer formal statutory responsibility to the Secretary of State and permit the WSPLCs to operate the controls as his agents and subject to the terms of an agency agreement. While this might allay anxieties its practical effect in ensuring equity and even-handedness

would be less than the very considerable safeguards against abuse which have recently been built into the effluent discharge consent system and which will continue after privatisation. In particular the key safeguard - the right of appeal direct to the Secretary of State - would not be exercisable if the body granting the initial consent did so as his agent.

4.5 The Government concludes therefore that it is safer to rely on the present comprehensive safeguards - the power to call-in and the obligation to include all relevant documents in public registers as well as the appeal provision - rather than effect a formal transfer of responsibility which would be of little practical effect.

4.6 There is a case, however, for seeking so far as practicable to simplify and streamline existing procedures so that they are easier to understand and to operate. The rest of this section consider ways in which this might be done.

Special Provisions as to Discharge Consents

4.7 Section 32 of the 1974 Act extended discharge consent requirements inter alia to:

- a. discharges of trade and sewage effluent from buildings and fixed plant to land and land-locked ponds and lakes; and
- b. discharges of other matter from a drain or sewer to waters controlled by the Act.

The purpose of these provisions was to enable every kind of discharge which might conceivably pollute water to be controlled. In practice however controls in the first category apply to many harmless discharges while controls in the second category apply almost exclusively to rainwater. Control of discharges which do not cause pollution consumes time and resources which could be more effectively used. It is therefore proposed to remove the compulsory control over these discharges and to substitute a discretionary control which could be used in the rare cases where pollution could occur. The Government is considering whether published guidance on the use of the discretionary controls would be helpful.

4.8 Water authorities already have a discretionary control over highway drainage. This would be continued with the new discretionary controls. In both cases WSPLCs would have the power to serve a notice applying the 1974 controls to any specified discharge. There would be the normal right of appeal to the Secretary of State against the refusal of consent or the terms and conditions of any consent given.

4.9 Under EEC directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances (17 September 1979) significant discharges of certain dangerous substances (eg cadmium and lead) must be controlled even if made indirectly to underground water. It is therefore proposed that the Secretary of State should have power should circumstances prove necessary to prescribe substances the discharge of which, if made into the ground without WSPLC consent, would constitute an offence. Anyone wishing to discharge such a substance would need to apply for consent (unless the discharge were the subject of a waste disposal licence issued under Part I of the 1974 Act) and normal procedures would apply.

4.10 The Secretary of State has the power (under section 37(2) of the 1974 Act) to direct that any consent should be varied or revoked. This power is linked with a duty of water authorities to review consents. Neither the Secretary of State nor the authorities can vary or revoke a consent within a specified period unless the discharger agrees.

4.11 Part of section 38 of the Act which has not yet been brought into force provides for a water authority or the Secretary of State to vary consents early if it is considered necessary to do so for the protection of people likely to be affected by discharges. Where consents are varied early compensation is payable unless the variation is needed as a consequence of a change, which could not have been reasonably foreseen when the consent was granted, in the information available relating to the discharge. Compensation would not be payable, for example, where it was discovered that one discharge was reacting with another to produce a harmful effect if the reaction could not reasonably have been predicted.

4.12 The Government is considering whether to bring this provision into force or whether to limit the power to direct early variation solely to those circumstances where compensation would not be payable under the 1974 Act. The right of appeal to the Secretary of State against the terms and conditions of a varied consent would remain. Another possibility would be to provide that only the Secretary of State could direct an early variation, restricting the grounds for such a variation to the protection of public health or the implementation of essential national policy (for example to give effect to international agreements). In this case also the payment of compensation would not be appropriate.

4.13 Water authorities may also vary consents early when aquatic flora and fauna have been harmed by discharges of effluent (Section 46(1)-(3), also not yet in force). The Government considers that more effective protection for aquatic life can be provided on the basis of the measures described in Chapter 7 below rather than within the framework of the discharge control system. In particular those measures are addressed to preventative as opposed to remedial action. It is therefore proposed to repeal section 46(1)-(3). WSPLCs would however retain the power provided by section 46(4)-(7) to undertake operations to protect or restore flora and fauna. As an additional safeguard the Secretary of State would be empowered to direct the early variation of a consent governing a discharge found to be seriously damaging to aquatic flora and fauna. WSPLCs will inherit the water authorities' duty to take account of the effects of discharge proposals on flora and fauna before setting consent conditions. Early variation is likely only in cases where damage to aquatic life could not have been reasonably foreseen. A question for consideration is whether there should be any provision for compensation in these circumstances.

4.14 There are cases where a discharger wishes to make a discharge for a period less than two years and there is some doubt whether temporary consents can be issued in view of the minimum period specified in the Act. If necessary, there will be provision for consents of less than two years, with the discharger's agreement.

Publicity

4.15 Section 36 of the 1974 Act requires water authorities to advertise applications for discharge consent. An authority may, however, waive the requirement to advertise an application if it intends to give consent and is satisfied that the proposed discharge will have no appreciable effect on the receiving water. If the proposals outlined in paragraphs 4.3 to 4.5 above are adopted most discharges of this nature will no longer be the subject of applications. It is doubtful that any discharge for which an application must be made could be classified as having so slight an effect as to merit exclusion from advertising. It is therefore proposed that all applications should be advertised with the exception of those which are the subject of an exemption certificate issued by the Secretary of State under section 42 of the Act. Dischargers are already required to pay for the advertisement of consent applications. Since all applications would have to be advertised under these proposals it would minimize delays if the discharger placed the advertisement before making a formal application to ^{the} WSPLC. Evidence that the proposed discharge had been publicised would then need to be submitted when the application was made. This would be in line with procedures for planning applications.

4.16 At present advertisements must be placed in the London Gazette as well as local newspapers. It has been suggested that this involves additional expense for the discharger which is not warranted by a comparable increase in the audience reached. While it is true that applications for discharge consents will be of most interest to local people who are likely to consult local papers it is also the case that many national organisations, particularly environmental bodies, will wish to be aware of proposed discharges. It is doubtful however if this amounts to a sufficient justification for the requirement to advertise in the London Gazette, and it is proposed that this should be discontinued.

Public Registers

4.17 Since July 1985, when the water authorities instituted registers under the Control of Pollution Act, 1974, records have been available for public inspection of discharge consents and their conditions - ie what water authorities or others are permitted to discharge into rivers and other controlled waters; and the results of monitoring each discharge for compliance with consent conditions. Thus these registers enable the public to keep an informed eye on the way in which dischargers are complying with what is required of them. The Government's aim is that registers should make a substantial contribution to protecting water quality. There have been suggestions, from various quarters, that extra information should also be recorded in registers; eg particulars of aquatic flora and fauna, or data on river flows, or factual records of incidents giving rise to pollution. The Government would like at this stage to consider seriously the possibilities for improving the value of registers; and before moving to make the registration of further information obligatory, the Government would wish to satisfy itself that the extra information fulfilled a valuable purpose, and that this value was not outweighed by considerations of practicality or cost. The Government would welcome proposals which helped it to take these various considerations into account.

Minor Amendments

4.18 The Government is also considering revision of the following matters:

Specified underground water: the existing definition requires a water authority to specify the use to which underground water are being or will be put. This has proved a practical difficulty and it does not fit well with the requirements of EEC Directives. The type of map required by the Act has also proved restrictive and less useful and informative to the public

than expected. The current definition may therefore be inadequate to identify the underground water which needs protection. One possibility might be to redefine it in terms of water in underground strata as in the Water Resources Act 1963. This however might be too wide a definition in cases of casual pollution covered by section 31 of the 1974 Act. The Government would welcome advice from water authorities and others on the best approach.

Restricted waters: these are defined as waters in tidal rivers designated by regulations and water in other areas prescribed by the Secretary of State where vessels are moored in close proximity to one another; no regulations or prescriptions have yet been made. Restricted waters appear in Part II of the 1974 Act in two contexts. People are prohibited from dumping solid waste in restricted waters, and there are controls on wastes discharged from vessels. The former controls seem of little real value, since there is adequate protection in the Food and Environment Protection Act 1985 and private harbour legislation. For the latter it would be possible to apply the powers to make byelaws controlling vessels (section 33) automatically to tidal rivers thus obviating the need for regulations. References to restricted waters would be repealed.

Solid refuse from mines and quarries: section 31(3) of the 1974 Act provides a defence against the charge of causing or permitting pollution if the offence charged results from the entry of mine or quarry waste deposited on land with the consent of the water authority. It is unclear whether this provision is still of relevance and the Government would welcome information about the number of consents issued for this practice and the need for the defence to be continued.

Controlled waters: portions of certain estuaries fall outside the present definition of controlled waters and therefore cannot be protected under the 1974 Act. The Government intends to remedy this by extending the Secretary of State's power to prescribe additional parts of the sea as controlled waters.

Sewage effluent: the definition of sewage effluent covers all effluent from the sewerage works of a water authority and thus includes surface water discharges. Other surface water discharges are not classed as sewage effluent. The Government is considering whether this should be amended to place water authorities' surface water discharges under the same controls as other surface water discharges.

Water authorities' areas: the definition contained in section 56(4) taken with provisions in the Thames Water Authority Constitution Order 1973 means that the greater part of the Thames estuary falls within the areas of three water authorities. Amending legislation will be necessary to restore pollution control in the estuary to the sole jurisdiction of the Thames Water Authority. All discharges to the estuary made by WSPLCs will continue to be controlled by the Secretary of State.

SECTION 5

REDUCING POLLUTION RISKS

5.1 Whilst there are effective systems to control regular effluent discharges, there have until recently been few comparable arrangements to prevent damage from pollution incidents arising from other sources. There has been a steady rise, for some years, in pollution from occasional spillages and other accidents and these can do serious damage to surface and ground water sources. The Government has considered that this is the most important area in which to strengthen water pollution policy and therefore brought into force last year a number of powers within the Control of Pollution Act relevant to these problems. This section explains how the Government expects them to be used after privatisation.

Increase in pollution Incidents

5.2 Pollution incidents represent a continuing risk to surface and underground waters:

- The number arising from industrial sources continues to show some increase. In Severn Trent WA area there were 2014 in 1984-5 - the highest number yet recorded. While the great majority were minor, incidents such as those recently on the River Dee in Wales show the continuing risks of widespread pollution of supplies, especially since 30% of water supplies still come from river abstraction, often direct without bankside storage;
- The rate of growth of significant incidents from agricultural sources has been even more marked - to nearly 3000 last year. While the increase may partly reflect increased water authority vigilance and changes in reporting practices there is widespread recognition, both within the agricultural community and more widely of the need to reduce pollution from such sources.

- These problems have their cost. They consume a rising proportion of water authority pollution control resources - now about 30%. Although in absolute terms the costs may not be large, it is desirable to reduce them if that can be achieved in ways which are cost effective both for the authorities and the community at large.

5.3 Until recently water authorities have had to depend largely on informal and voluntary arrangements to protect their resources. Some have prepared valuable Aquifer Protection Policies but these rely ultimately on persuasion and voluntary co-operation. Others have been led to purchase extensive tracts of the gathering grounds they consider need protection. Others have relied heavily on local by-laws: while effective, it is doubtful if in the longer term they will represent the best way of tackling what are often general rather than local problems.

5.4 The Government has already taken a number of measures recently to reduce pollution incidents. In particular, the Code of Good Agricultural Practice, made under Part II of the Control of Pollution Act 1974 recommends practices relating to the use of fertilizers, manures, farm wastes, silage and pesticides, which, if followed, would largely avoid water pollution arising from these sources. Additionally the Ministry of Agriculture, Fisheries and Food has introduced new provisions for capital grants on various environmentally attractive investments and arrangements whereby water authorities are consulted at an early stage in respect of those investments that have a high pollution potential, for example silage storage facilities. Beyond this the Agricultural Development and Advisory Service continues to provide advice through a wide range of scientific, technical and business management services including ways of minimising the risks of pollution.

5.5 Nevertheless the Government considers that especially after privatisation, there should be enforceable powers addressed specifically to the avoidance of pollution incidents. Below are set out the ways in which the Government envisages using three of the 1974 Act powers brought into force last

year: section 31(4) which provides for the making of regulations dealing with precautions people must take to prevent harmful material from polluting waters; section 31(5) which provides for the prohibition or restriction of potentially polluting activities in designated areas; and section 46(4) to (7) which empowers a water authority to remedy or forstall the entry of poisonous, noxious or polluting matter into water.

General Precautions

5.6 Section 31(4) is an important general power. While some Planning and Health and Safety legislation can reduce pollution risks, this is the only provision for general precautions specifically against water pollution. It should provide a major instrument of water environment policy after privatisation, and the Government will consider whether any amendment or widening of its terms is appropriate.

5.7 The precautions must be specified in regulations. These should be relevant generally rather than to particular kinds of area. While there is no restriction on what the regulations can cover, so long as the purpose is to protect the water environment, the Government considers that they will primarily be applicable to the location, construction and maintenance of storage facilities. This might include provision for adequate bunding, or an impermeable base, for such substances as fuel, oil, liquid and solid chemicals and biocides. Regulations may also be relevant to the disposal of surplus chemicals and their containers to the extent that other statutory provisions are not relevant. On a number of these matters the Government has published advisory codes in recent years. The most important is the Code of Good Agricultural Practice, which, amongst other things, makes provision for storage of silage and slurries. In view of this code it is unlikely to be necessary to make regulations to cover silage and slurries but the Government will be prepared to consider making regulations on these if it is clear that advisory codes are not proving successful in reducing pollution risks.

Water Source Protection Zones

5.8 In the Government's view section 31(5) - which allows regulation of specified activities in designated areas - will mainly be useful for the protection of sensitive water resources, for example underground water used for abstraction, from the indirect pollution which can be caused by normal, everyday practices.

5.9 At present the power can be applied only in specified locations, and there is provision for a local inquiry to be held when a new location is proposed. The power could be useful but there is at present no power to apply controls on a more generic basis for the protection of particular kinds of water source. Aquifers, stretches of major rivers from which there is direct abstraction and the gathering of grounds of reservoirs are cases in point. General powers of designation of this kind could largely supersede existing by-laws, make existing informal policies for resource protection more effective and provide a common and simplified regime for key areas at risk. This would be helpful both to environmental protection generally and to WSPLCs in maintaining protection of the resources on which they depend.

5.10 Since Parliament enacted the Control of Pollution Act a good deal of research by water authorities and others has been done on common causes of pollution, the routes which polluting substances take through water courses and aquifers, and the areas over which controls may need to operate to be effective. Most authorities have identified about three rivers where major stretches may merit particular attention. One authority, particularly dependent on aquifers for supply has about $\lfloor X \rfloor$ boreholes of major importance where special precautions against pollution risks may be justified within a radius of perhaps 1 km or 50 day's travelling time for polluting substances. Only in the upland gathering grounds of major reservoirs might extensive areas of control appear necessary. Controls may be necessary on storage of oils and chemicals; mining; oil and gas drilling; and the location of farm waste storage, for example silage effluent tanks and slurry stores.

5.11 In the circumstances the Government considers that it may be desirable to amend section 31(5) to facilitate designation of protection zones for major water sources on a standard and simplified basis. The two main features would be:

- (a) a power to designate areas without individual local inquiries; and
- (b) the application of common regulatory regimes, including a requirement for the consent of the WSPLC to specified activities.

5.12 At present the Act requires that any regulations proposed under section 31(5) should be advertised and objections considered. If objections are not withdrawn the Secretary of State must hold a local inquiry. Once regulations are made the consent of the water authority must be obtained and any reasonable conditions observed if the activities specified in the regulations are to be undertaken. There is a right of appeal to the Secretary of State and until the appeal is determined the consent conditions are not binding. Either a further local inquiry or a hearing must be held if the appellant requests.

5.13 The requirement to hold an inquiry if there are objections to the regulations is necessary where proposals are purely local in effect and raise issues peculiar to a specific location. Water Source Protection Zones would, however, be designated on a generic basis covering kinds of activities known to cause pollution and types of area known to be at risk. Local inquiries would be inappropriate because uniquely local issues would not arise. There remains, however, the need to protect individuals whose livelihood may be affected by excessively stringent use of controls on activities which would otherwise be unrestricted. This is provided by the requirement that consent to undertake or continue an activity must not be withheld unreasonably and by the right of appeal to the Secretary of State. The appellant's right to require a hearing or inquiry will also remain.

5.14 An effective protection zone policy would be a major advance in water pollution control policy. It would be a discriminating control over particular water sources and particular risks, without the need for cumbersome and repetitive local designations. Protection zone policies are widely used in our EEC partner countries and experience there will be helpful in the detailed planning if, in the light of comments, the Government concludes that it would be sensible to extend use of section 31(5) in the way proposed.

Tackling Emergencies

5.15 The provisions of section 46(4) to (7) are of great importance and are already proving their worth. They provide authorities with the power to undertake any operations necessary to prevent polluting matter from entering inland, underground and coastal waters or to clear up and dispose of such matter if it is already in the water. The power includes operations to restore water and the flora and fauna in it. The cost can be recovered from the person who was likely to cause or who caused the pollution to occur. While these are wide ranging powers for private bodies to possess, they must be available to WSPLCs after privatisation. The Act requires that any costs should be incurred necessarily and unnecessary costs can be challenged so there is protection against abuse.

SECTION 6

INCENTIVES AND CHARGING

6.1 In line with Council Recommendations of the OECD in 1972 and of the European Community in 1975, successive governments have for some years been committed to the Polluter Pays Principle, that is that those who cause pollution or whose activities make protective or remedial measures necessary should bear the resulting costs. That is the only fair approach; and gives actual or potential polluters the incentive to find ways to minimize the harm or damage they cause; thus it also promotes responsible practice. This section describes how the Government proposes to introduce charging, where practical, to the main areas of pollution control. Charges will apply both to authorised regular discharges and to pollution incidents.

Charging for Sewage and Trade Effluent Discharges

6.2 Water authorities at present levy charges to cover the costs of trade effluent discharges to sewer. The primary purpose of this is to cover the costs of treatment within the authority's sewage treatment system. No corresponding service is provided by the authority in the case of direct discharges to rivers and estuaries, and for this reason any proposal to charge for direct discharges has been unpopular with industry. Section 52 of the Control of Pollution Act 1974 empowers authorities to levy charges in respect of discharges to rivers but has not hitherto been implemented.

6.3 Effluent discharges to water nevertheless impose appreciable costs on pollution control authorities. These extend beyond the administrative costs of processing consent applications to include in particular the costs of monitoring the discharge and its impact on the receiving waters; and any survey costs which may be entailed by the initial consideration of the consent application.

6.4 Some member countries of the EEC have wide-ranging systems of charging direct dischargers and following a recommendation in the Tenth Report of the House of Lords Select Committee on the European Communities (1982/3 Session) to do so, the Government has reviewed arrangements in other member states and their possible implication for Britain. (The research report considered during this review can be obtained at cost from Environmental Resources Ltd, 106 Gloucester Place, London W1H 3DB).

There are 3 main options:

a. Incentive charges: make the polluter pay towards any damage his effluent may cause to the environment. This applies even where such effluent is within existing consent conditions. The aim is to give the polluter an incentive to reduce his effluent further where it is cost-effective to do so. Such charges would be based on the amount of harmful substances in effluents, and if possible also on the vulnerability of the local environment. To be fair they would have to be levied on all direct discharges, including those from WSPLC sewage treatment works.

b. Distributive charges: are the same as incentive charges in most respects except for what happens to the charges. These are collected by a central agency and returned to dischargers as subsidies for improved pollution control, typically as a percentage subsidy on investment in new control equipment.

c. Cost recovery charges: remove from direct dischargers only the costs directly attributable to the control of water quality, such as costs of:

- granting and administering discharge consents
- monitoring compliance with consents
- preventing or cleaning up after pollution incidents where direct dischargers accidentally or otherwise greatly exceed their consents.

6.6 The first two options depend on some assessment of the relative costs imposed by the toxicity or other harmful effects of the various substances discharged. This is complex and requires much work in estimating the relative polluting effects of different substances and the degree to which concentrations and quantities of substances should be taken into account in the charging formula, while some experience in Europe suggests that acceptable and practicable formulae can be established, it is doubtful whether early conclusions could be reached which would command general confidence.

6.7 Although distributive charges may appear the more acceptable course given their more direct contribution to reducing water pollution, both incentive or distributive charges might be seen as a tax on direct dischargers' uses of the water environment which until now have been regarded as a right granted free of

charge, within the consent conditions laid down by the water authorities. It will not be appropriate for WSPLCs to levy charges of this nature both because they will be privately owned companies and because they would be liable to pay the charges on their own discharges. The Government does not propose to adopt either of these options at present.

6.8 The third option, which the Government proposes to adopt, has the merit of relating charges directly and clearly to costs incurred by the water authority or WSPLC. It is much simpler and less controversial than incentive or distributive charges, although these also have advantages. Where a discharge is particularly noxious, particularly large, or not effectively controlled, this will be partly reflected in the WSPLC's costs which will be passed on to the discharger under the proposed cost recovery system. It will provide an incentive for improvement.

6.9 In the light of the responses to this consultation paper, the Government will develop and discuss with water authorities, and other interested parties, detailed criteria and scales of charges which are fair, equitable and can be properly audited.

6.10 It has also been suggested that pollution control authorities (ie Government Departments in respect of discharges by WSPLCs, and the WSPLCs in respect of all other discharges) should be required to levy penalty charges where effluent discharge consents are exceeded. Imposition of penalties could not be discretionary and penalties would have to be at a relatively high level if they were to be effective. So this would be a major innovation.

6.11 There are practical difficulties in such a system. Sampling and monitoring arrangements would have to be standardised and relatively inflexible, and any penalties imposed would have to be subject to challenge in the courts. It could nevertheless be an effective deterrent and the Government will therefore consider the issues further. At this stage, however, it seems doubtful if such powers would be appropriate to pollution control authorities and it is difficult to see how they could be made to relate satisfactorily to existing remedies through the courts against non-compliance with consents.

Costs of Pollution Incidents

6.12 As described in Chapter 5 the number of pollution incidents, from industrial and agricultural sources, has risen rapidly in recent years and now accounts for about 30% of pollution control costs. In July last year the Government brought

into force section 46(5) of the Control of Pollution Act 1974 to enable water authorities to recover from those responsible the costs of preventing pollution incidents or of remedying their effects. These cost recovery powers must be used in a fair and reasonable manner and the Act requires that the Authority be able to show that costs were not incurred unnecessarily. In view of this protection there is no reason why the powers should not be retained by WSPLCs after privatisation.

Other Costs

6.13 Much of the work on pollution control, inspection and sampling is concerned with the general condition of rivers and estuaries and does not relate to individual discharges. The costs involved could be apportioned amongst industrial dischargers, but this would be unfair in that they are incurred for the benefit of the whole community. They should instead be covered by main service charges, along with any other pollution control costs which cannot be allocated to particular polluters. As described in Section 2, the Director General will be able to take such costs into account in reviewing the price formula in the operating licence.

SECTION 7

THE PROGRESS IN CONSERVATION

7.1 All the measures discussed in the earlier sections of this paper are relevant to conservation. This reflects its essential character. It cannot be confined to a particular set of actions or policies. With utility services in particular it is an attitude or approach which must influence all its operations. Recognising this the Government in the Wildlife and Countryside Act 1981 extended water authorities' obligations under the Water Act 1973 to have regard to the desirability of conserving the natural environment to a wider duty to perform all their functions so as to further conservation. The Government continues to support this approach - not only for habitats, but also for landscapes and the archaeological and historical heritage - and therefore proposes to ensure existing statutory duties continue after privatisation.

7.2 While such general obligations can be valuable, arrangements in four particular areas will be critical for ensuring further progress in conservation. The key questions are:

- Will controls on polluting discharges harmful to aquatic life be under full and effective control?
- Will good practices be followed in regulating conflicting recreational and other uses likely to hinder conservation?
- Will there be adequate powers for the special protection of particular habitats and landscapes?
- How can good conservation practice be ensured in water supply, sewerage, drainage and other functions of WSPLCs?

The Government's proposals to ensure continuing progress in each of these areas are summarised below.

Protection from Pollution

7.3 With the withdrawal of COPA exemptions announced by the Environment Minister on there will be comprehensive control of polluting discharges and section 4 described how their effectiveness would be maintained. In particular Ministers will be provided with effective means to ensure that polluting discharges to beaches and coastal waters can now be brought progressively under control.

7.4 The Government recognises however that controls on casual entries of polluting matter - spillages and dumping - are not quite complete. In particular, water which is land-locked and does not discharge into other water - ponds and some lakes - have generally been excluded from pollution controls. Part II of COPA only protects such enclosed waters from discharges of trade and sewage effluent made from buildings or fixed plant, although individual ponds and lakes and enclosed waters of a specified type could be protected by means of regulations made under section 56(3). Ponds and lakes constitute a valuable habitat and source of food for a rich and varied range of animal and plant life, and there is some evidence that this environment may be under increasing threat from pollution. The Government therefore proposes to consider, in the light of responses to this consultation, whether section 31 of the 1974 Act should be extended to make it an offence to cause or permit any poisonous, noxious or polluting matter to enter any enclosed water.

Conflicting Uses

7.5 As indicated earlier the Government believes that water authorities have a good, and steadily improving, record in managing conflicting recreational and other uses of water and reconciling them with conservation. The decision to privatise authorities on their present integrated basis - allied with their general duty to further conservation - will enable this to continue, but the Government has considered whether it could be assisted by any further specific measures.

7.6 On balance recent experience of the difficult problems associated with anti-fouling paints on boats suggest that existing powers for regulations and by-laws, for exceptional problems of this kind, may be adequate. It is however for consideration whether there are adequate powers for the general control of the boats and pleasure craft now drawn in increasing numbers to attractive areas of water, including tidal waters which are rich in flora and fauna. Controlling boats, and in particular discharges of sewage ^{effluent} /from them, is important to conservation.

7.7 Sections 33,47 and 48 of COPA, which deal with those matters, have not so far been brought into force. They provide:

- (a) a power for water authorities to make by-laws prohibiting or regulating the use on non-tidal rivers of boats with sanitary appliances which discharge into water;
- (b) a prohibition, originally to take effect after 1978, on all boats with sanitary appliances discharging into non-tidal rivers;
- (c) a power for Ministers, by order, to extend the prohibition to tidal waters and areas where vessels are moored in close proximity;
- (d) a duty for water authorities to arrange for the collection of waste from vessels prohibited from discharging into water and to provide washing out facilities for such vessels;
- (e) a power for water authorities to provide sanitary and washing facilities for boat users;
- (f) a power for water authorities to make by-laws prohibiting non-registered boats from specified inland waterways;
- (g) a right for people on registered vessels to use facilities provided by water authorities free of charge.

7.8 During the 10 years that these provisions have remained unimplemented, little evidence has been drawn to the Government's attention of the need for them. Many of them

would apply in areas where they are not needed, and would require a cumbersome procedure to ensure that they are applied in areas where they are needed. Enforcement would be very difficult. WSPLCs would have to provide facilities, the costs of which could only be recovered by punitive charges and this would discourage observance of the controls. In the end the costs would come back to all those paying water charges. In the absence of clear need, the Government considers on balance, that these provisions can be repealed with the exception of the by-law provision ((a above) in section 33(1) which is valuable and should now be implemented.

7.9 This by-law making power could ensure proper regulation in places where it was needed. It could be consolidated with other by-law making powers to provide a general power dealing with the regulation of activities likely to cause pollution. It should also be extended to cover the tidal reaches of rivers. If a WSPLC failed to make by-laws where these were clearly necessary, the Secretary of State could designate a water protection zone.

Areas for Special Protection

7.10 Some water areas are of exceptional importance for conservation because of their special landscapes, flora or fauna, and the Government will continue to ensure they receive exceptional treatment. For instance, it proposes to introduce at the earliest possible opportunity a Bill to provide a strengthened Broards Authority for better conservation of this unique area.

7.11 But smaller areas are also important. Here there are the existing procedures for Sites of Special Scientific Interest, but the Government proposes that there should be scope for further protection, where necessary, by use of the recently implemented powers of section 31(5) of the Control of Pollution Act. In effect these make possible, inter alia, designation of the Water Environment Protection Zones where activities likely to pollute water -- and hence damage the flora and fauna dependent upon it -- can be regulated

by a requirement that they be undertaken only with the consent of the water authority. The controls can be applied to activities conducted either on the water or on the banks and associated land, so it is a measure of considerable potential significance for conservation.

7.12 Designation under this provision is by the Secretary of State, on his own initiative or after representations from WSPLCs, the Nature Conservancy Council, the Countryside Commission or other interested bodies. Operating the controls would impose some limited costs on WSPLCs which would, like some of the other environmental protection activities, be recovered through main service charges.

Promoting Good Practice

7.13 Effective conservation of the water environment depends not only upon how WSPLCs can continue to regulate the actions of other users of water space, but also upon how they conduct their own operations of water supply, sewerage and drainage.

7.14 A number of water authorities have in recent years developed codes of practice on conservation, in consultation with the Nature Conservancy Council, the Countryside Commission and other conservation bodies. Privatisation provides an opportunity to consolidate and extend progress in this area. The Government proposes to invite the water authorities, the NCC and the Countryside Commission to review these codes and so to develop a model which could be imposed on all WSPLCs. This might be done on a statutory basis or through the operating licence. The code will have to follow the best of current practice and to focus (without unnecessary detail) on matters important to environmental protection in general and to special flora, fauna and natural habitats in particular. It should provide for consultation with a broad range of conservation interests on matters of general concern and with the NCC and other relevant bodies on detailed matters affecting particular species or habitats.

7.15 The Government recognises the important and positive role played by the various conservation bodies, both nationally

and local, in helping to safeguard the environment, and recognises that this has in many cases already involved working closely with the Water Authorities. The proposals above should enable this partnership to continue and develop. The views of conservation bodies will be of particular interest both on developing the code of practice mentioned above, and also more generally on the matters canvassed in this consultation document.

7.16 While the Government will stand ready to take such further measures as may prove necessary, action in the four areas described above should provide a firm basis for ensuring that recent progress in conservation of the aquatic environment is maintained.