C

MR BARCLAY 25 July 1984

AGRICULTURE AND CONSERVATION

The Department of Environment paper is long and unfocussed. It bears all the hallmarks of a muddled compromise amongst Departments and is not a basis for positive decisions.

The Problem

The Wildlife and Countryside Act is leading to huge handouts for farmers to do nothing at great cost to the taxpayer. The Act is in urgent need of revision both to close loopholes and to revise the basis of compensation.

Consider some recent examples:

- At Swale in Kent the tenant farmer is likely to be paid £340,000 pa for at least 20 years not to drain 1,800 acres of wetland. Furthermore, because negotiations have been drawn out, he will also receive a back payment of £500,000.

- At Kings Sedgemoor in Somerset, 88 acres were purchased from the farmer for £183,000 because he would not agree to a Management Agreement.

- In Dorset, Lord Cranbourne will be paid £20,000 pa for 65 years for not replacing deciduous trees with conifers in a patch of woodland.

- Lord Thurso has been paid £250,000 for not draining 6,000 acres of desolate Scottish peat bog (although not strictly under the 1981 Act, the principle is the same).

We cannot preserve the principle of full compensation and expect to achieve the amount of conservation which will satisfy the millions of people who care about the landscape at a reasonable cost. We are, in effect, fighting the CAP and its many hundreds of millions which induce the ploughing up of land which was once never considered to be suitable for arable cultivation. In other words, we are subsidising farmers under the 1981 Act for not being subsidised under the CAP.

Great stress is laid in the paper on the voluntary approach. But the point is that this approach has broken down as our recent sorry experiences with the Halvergate Marshes have shown. We should try and maintain a voluntary approach if possible but not at the high price being demanded. Our current policy would be unthinkable in any other context than farming.

DAWAAN

The paper estimates that the cost of management agreements will rise to £15-20 million pa over the next 3 years. In most cases these will be annual payments lasting for 20 years.

Furthermore, our commitments are unlikely to stop at even £20 million pa. We do not know the real potential volume of applications which could materialise once farmers find that farm incomes are being squeezed as the CAP is gradually being brought under control. Although compensation payments would also fall, the farmer would have an added incentive to opt for a quiet life and receive a steady stream of income for doing nothing.

Compensation for grants foregone is fundamentally objectionable. The fact that the savings might be modest, as is argued in the paper, is beside the point.

We are also sceptical about the value of headage payments which are proposed for the Broads. These would be paid per animal, award intensive producers most, and would be difficult to limit once they were introduced outside the less favoured areas. They would encourage farmers to acquire animals with a view to applying for compensation.

What To Do

Our first priority is to block the loophole in Section 28 of the Wildlife and Countryside Act by eliminating the 3 months' period in which farmers can destroy important features of designated sites. Patrick Jenkin has already announced his intention to close this loophole and this should be pursued as quickly as possible.

Secondly, we must introduce a back-up stop power in order that we can protect sites where the farmer will not consider a management agreement or threatens to hold us to ransom. Two further stop mechanisms could also be considered:

- disallowing drainage grants for designated areas;
- extending the Town and Country Planning General Development Order 1977 to include ploughing as "development".

The logical corollary of having a long-stop is that farmers should have some right of appeal, as do the rest of us if we object to a planning order. This would help to defuse the agricultural objections to departing from the voluntary principle enshrined in the 1981 Act.

DAWAAN

We must also revise the basis of compensation. Why not bring our approach into line with that adopted for the conservation of buildings, ie a regulatory approach rather than a compensation principle.

If we do wish to continue with the compensation principle, this should be a one-off payment related to net income foregone over, perhaps, 3 years. There is no reason why this should undermine the voluntary approach. Many farmers have followed a voluntary approach to conservation without being paid any compensation.

Recommendations

We recommend that the Prime Minister should reply to Patrick Jenkin:

- Recognising that the Wildlife and Countryside Act is not working satisfactorily.

- Endorsing the need to block the 3 month loophole in the Act. (This is already Government policy but the Prime Minister's support would introduce a sense of urgency.)

- Noting that compensation is already costing far more than originally envisaged and supporting an urgent review of the compensation principle. This should include the removal of compensation for grants foregone and consideration of the possibilities for a one-off payment related to net income foregone over 3 years.

  Most farmers are concerned about conservation and sensible revisions to the compensation arrangements need not affect the voluntary approach in the majority of cases.

- Supporting back-up stop powers to preserve threatened sites in those cases where the voluntary approach breaks down. This should be coupled with a right of appeal.

We suggest that the Prime Minister should request a revised paper along these lines for discussion in September.

Agreed - but please amplify indent (1) by including the examples mentioned at the p.1. mtg

DLP.

DAVID PASCALL

DAWAAN

BEmABH

BK

CEDP

10 DOWNING STREET

From the Private Secretary

30 July 1984

AGRICULTURE AND CONSERVATION

The Prime Minister considered over the weekend your Secretary of State's minute of 20 July, to which was attached a paper by officials on agriculture and conservation. The Prime Minister has also seen the Minister of Agriculture's minute of 23 July on this subject.

The Prime Minister believes that the present operation of the Wildlife and Countryside Act 1981 is not by any means satisfactory. As a first step, she endorses the need to block the loophole in Section 28 of the Act by limiting the three months period in which the owner or occupier of a proposed SSSI can destroy important features of the site. In addition, however, the Prime Minister believes that there is a need for a fundamental review of the compensation principle on which grants are presently paid. The cost of such compensation is already far greater than originally envisaged, and several recent examples have highlighted both the size of payments to farmers and the number of years for which they continue. The Prime Minister understands that these examples include the following:

i) Probable payments of £340,000 a year for at least 20 years to a farmer at Swale in Kent for not draining 1,800 acres of wet land. Moreover, the same farmer is due to receive a back payment of £500,000.

ii) Purchase of 88 acres at Kings Sedgemoor in Somerset at a cost of £183,000, because the farmer would not agree to a Management Agreement.

iii) Payment of £20,000 a year for 65 years to Viscount Cranborne for not replacing deciduous trees with conifers.

iv) A payment to Lord Thurso of £250,000 (not made under the 1981 Act, but involving the same principle) for not disturbing 6,000 acres of peat bog in Scotland.

NR

The Prime Minister would be grateful if your Secretary of State, in consultation with the Secretaries of State for Scotland and Wales, the Minister of Agriculture and the Chief Secretary, could now set in hand a review of the compensation principle. This should consider specifically the possibility of removal of compensation for grants foregone, and also the possibility of replacing the present periodic payments with a one-off payment related to net income foregone over, say, the following three years. In addition, the Prime Minister supports the suggestion in your Secretary of State's minute for introducing back up "stop" powers to be used where an owner or occupier either will not consider a Management Agreement, or threatens to hold the Government to ransom for an excessive cost. She would be grateful if further work could be done to define such a power, which might be coupled with a right of appeal for the farmer or land-owner.

It has not, unfortunately, proved possible to arrange a discussion of these issues before the summer holidays. The Prime Minister would be grateful if your Secretary of State could circulate a further note in September reporting on the work commissioned by this letter.

I am sending copies of this letter to Janet Lewis-Jones (Lord President's Office), Colin Budd (Foreign and Commonwealth Office), Michael Reidy (Department of Energy), John Graham (Scottish Office), Colin Jones (Welsh Office), Callum McCarthy (Department of Trade and Industry), David Normington (Department of Employment), Ivor Llewelyn (Ministry of Agriculture, Fisheries and Food), John Gieve (Chief Secretary's Office), Dinah Nichols (Department of Transport) and to Richard Hatfield (Cabinet Office).

(David Barclay)

John Ballard, Esq.,
Department of the Environment

Agree but bilt for meeting when arranged.
17/8

PRIME MINISTER

Agriculture and Conservation

I have seen the correspondence about the operations of the compensation arrangements under the Wildlife and Countryside Act.

I am sure that a review of these arrangements must be carried out. Nevertheless, I think it right to stress at this stage that any amending legislation will take up a very great deal of Parliamentary time. There can be no question of slipping in some small amendments to the Act; any changes would need to be considered carefully in the context of our legislation programme as a whole.

I am sending copies of this minute to Geoffrey Howe, Peter Walker, George Younger, Nicholas Edwards, Patrick Jenkin, John Biffen, Norman Tebbit, Tom King, Nicholas Ridley, Peter Rees and to Sir Robert Armstrong.

Privy Council Office
15 August 1984

JMS

cc NO

RESTRICTED

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434
My ref: J/PSO/15878/84

Your ref:

9 August 1984

Dear David

AGRICULTURE AND CONSERVATION

Thank you for your letter of 30 July to John Ballard in which you set out the Prime Minister's request for a review of the compensation principle, together with the need to consider back up "stop" powers.

Officials here, together with those from MAFF, Scotland, Wales and Treasury will be looking further into the detail of these matters with the intention of producing material. Thereafter, my Secretary of State will circulate a further note as requested in September.

I am copying this letter to the recipients of yours of 30 July.

Yours Andrew

A C ALLBERRY
Private Secretary

RESTRICTED

David Barclay Esq

Env Affairs : Pollution Pt 2

RESTRICTED

CC NO

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

Await Colleagues

PRIME MINISTER

I have seen a copy of your Private Secretary's letter of 30 July about agriculture and conservation. I have also seen Peter Rees' minute of 27 July on the same subject.

I shall of course ensure that my officials play a full part in the review of the compensation arrangements under the Wildlife and Countryside Act which you have commissioned. I hope that it will be possible to establish from the outset the basis on which the review is to take place, which I believe must be the maintenance of the voluntary principle as the general approach, with compulsion only in extreme cases. The Government defended this principle stoutly against Opposition attacks in the bitter debates during the passing of the Wildlife and Countryside Bill, and it would be a great mistake for us to re-open the issue. Departure from the general principle would cause severe problems for the operation of our countryside policies as both Patrick Jenkin and I have frequently emphasised, and as Sir Derek Barber and Mr William Wilkinson Chairman of the Countryside Commission and the NCC respectively, have endorsed.

Moreover, the introduction of compulsory arrangements which have the effect of reducing the value of a farmer's property without adequate compensation would be quite contrary to our Party's philosophy. As a Party we have been the champions of the principle of the rights of private property owners and have opposed State interference and bureaucratic controls favoured by our opponents .

To depart from this tradition would seriously weaken our credibility as upholders of freedom and enterprise. It would furthermore be bound to undermine our ability to resist attempts by the Labour Party, if ever they were in a position to do so, either to impose rigid planning controls over the countryside or to seize other private property without adequate compensation.

I hope therefore that whatever decisions are eventually taken on these important matters we shall avoid offending the voluntary principles which not only are crucial to our conservation objectives but are also rooted deeply in our Party's philosophy.

I should add that whilst we must pay due regard to the costs of our policies, I do not believe we should be unduly swayed by

/isolated ....

isolated examples of high compensation payments, which are not representative of the generality of agreements. The four examples given in your Private Secretary's letter are the ones that are always trotted out by our opponents to "prove" that our policy does not work. They never make the point that these examples are quite atypical, and that our policy is securing considerable environmental benefits at relatively modest cost.

I am copying this minute to Willie Whitelaw, Geoffrey Howe, Patrick Jenkin, Peter Rees, Peter Walker, George Younger, Nick Edwards, Norman Tebbit, Tom King, Nicholas Ridley and to Sir Robert Armstrong.

MICHAEL JOPLING
6 August 1984

Acid Rain: ENV. AFFAIRS Pt 2.

FILE

cc DP

10 DOWNING STREET

From the Private Secretary

31 July, 1984

Agriculture and Conservation

The Prime Minister has now seen the Chief Secretary's minute of 27 July commenting on the minute from the Secretary of State for the Environment dated 20 July about agriculture and conservation.

The Prime Minister would be grateful if the points made by the Chief Secretary could be taken into account in the review for which she has asked of the compensation principle underlying the Wildlife and Countryside Act (my letter of 30 July to John Ballard refers).

I am sending copies of this letter to Janet Lewis-Jones (Lord President's Office), Colin Budd (Foreign and Commonwealth Office), John Ballard (Department of the Environment), Michael Reidy (Department of Energy), John Graham (Scottish Office), Colin Jones (Welsh Office), Callum McCarthy (Department of Trade and Industry), David Normington (Department of Employment), Ivor Llewelyn (Ministry of Agriculture, Fisheries and Food), Dinah Nichols (Department of Transport) and Richard Hatfield (Cabinet Office).

DAVID BARCLAY

John Gieve, Esq.,
Chief Secretary's Office

FROM: CHIEF SECRETARY
DATE: 27 July 1984

Prime Minister (1)

Agree to ask Mr Jenkin and colleagues to take these points into account in the review of compensation arrangements for which you have asked?

30/7

PRIME MINISTER

AGRICULTURE AND CONSERVATION

Patrick Jenkin's minute of 20 July forwarded the report by officials on the Wildlife and Countryside Act, which you asked to be prepared at the environmental pollution discussion on 17 May. I have also seen Michael Jopling's minute of 23 July. In summing up that discussion you commented that compensation was excessive, and that the case for paying it at all was questionable in some circumstances. I was, therefore, disappointed to see that Patrick's immediate recommendations would entail more expenditure not less.

When the Bill was being considered in 1981, the Explanatory and Financial Memorandum said that expenditure by the Nature Conservancy Council on management agreements might be of the order of £600,000 to £700,000 on average per year and that the provisions relating to the Countryside Commission, national parks and management agreements required no additional public expenditure. The paper by officials now concludes that expenditure will rise from a baseline of less than £1 million to between £15 million and £20 million p.a. by 1987-88. Over £12 million of this will be spent by the Nature Conservancy Council on management agreements.

On present policies the cost will escalate further beyond the PES period. The pressures on farmers and landowners to rationalise the landscape for economic reasons are bound to

continue and the scope for destruction is vast. Pressure for conservation will, therefore, grow.

I am sure we should take steps immediately to rein back this increase in costs. First, as Patrick proposes, we should look hard at the financial regime for management agreements themselves. I am sure we should exclude compensation payments in respect of farm improvement grants foregone. More fundamentally, I think we should look carefully at the possibility of limiting the number of Sites of Special Scientific Interest. I have no objection, either, to Patrick's suggestion that the principle of compensation for profits foregone should be reexamined although I could not agree to the main alternative identified in the paper of making capital payments of £200m or more over the next 3 or 4 years.

We need also to ensure that our agricultural and environmental policies work together. It is a nonsense for the Government to provide extravagant levels of public support through the CAP and capital grants to encourage farmers to invest in their land, for example by draining grasslands for arable crops, while at the same time offering them full compensation for agreeing not to do so on environmental grounds. Reforming the CAP is bound to be a long haul but we should take what action we can on our domestic agriculture programme to stop encouraging farmers to do things which would damage the environment. For example, before introducing yet another form of public subsidy for farmers by way of grazing grants in the Norfolk Broads we should surely remove the capital grants which help and encourage farmers to plough up grazing lands.

While these measures would restrain the rate of increase in expenditure, they would leave a dangerously open-ended commitment to future public expenditure. As environmental and conservation concerns increase, there will be growing pressure for better compensation and for more categories of objects to be preserved. Before the view that owners have a right to cash compensation becomes utterly entrenched, I think we should consider most carefully the argument for moving

from the present voluntary approach, which is quite different from that which is applied in urban planning decisions, to a regime relying less on compensation and more on compulsion.

I am copying this to Willie Whitelaw, Geoffrey Howe, Patrick Jenkin, Peter Walker, George Younger, Nick Edwards, Norman

Tebbit, Tom King, Michael Jopling, Nicholas Ridley, and to Sir Robert Armstrong.

PR.

PETER REES

PRIME MINISTER (4)

mb

Agriculture and Conservation

Attached is the third set of papers commissioned at your meeting on environmental pollution. Earlier papers have dealt with acid rain and Sellafield. This set covers agriculture and conservation, and in particular, the workings of the Wildlife and Countryside Act.

You will wish to read the Environment Secretary's minute at Flat A, the Minister of Agriculture's minute at Flag B and the Policy Unit advice at Flag C.

Everyone agrees that the voluntary approach is best, if it can be made to work. But it is costing a good deal of money; and it is ineffective if the farmer is uncooperative.

The Policy Unit therefore suggest a review of the principles on which compensation is based and the introduction of compulsory "stop" powers coupled with a right of appeal.

A discussion of these contentious issues is unlikely to be possible before the holidays. Agree a letter, as recommended in the last paragraph of the Policy Unit note, with a view to discussion in the early autumn?

DMB

DAVID BARCLAY
26 July, 1984

B cc DP

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

Await Pblicy Unit

RESTRICTED

PRIME MINISTER

attached

AGRICULTURE AND CONSERVATION

Patrick Jenkin minuted you on 20th July about the Wildlife and Countryside Act and made a number of proposals for strengthening the measures for countryside conservation.

I fully endorse Patrick's affirmation of the voluntary principle as the basis of our policies for conservation. During the passage of the Wildlife and Countryside Bill and subsequently we gave many assurances to the farming community about our commitment to the voluntary approach and it would look ill to many of our supporters if we were to go back on these so soon. With agriculture representing the principal land use over nearly 80% of the area of the United Kingdom, farmers inevitably carry the primary responsibility for managing the rural environment. Their goodwill and co-operation is vital to the continuing sympathetic management of the countryside. I am in no doubt that the farming community generally has responded impressively to the challenge which the 1981 Act set them.

I welcome Patrick's support for my proposed initiative on conservation in the context of the EC Agricultural Structures legislation. Our agricultural policies should be more supportive of conservation objectives and the political benefits of this initiative will be substantial. Moreover, it would form an integral part of an updated policy for the countryside.

The losses of wildlife habitat since the war, to which Patrick refers, have been widely quoted, but I suspect that the rate of loss has been considerably less since 1981 and we really must give the Act a reasonable time to prove itself fully. I can,

/however, support ....

however, support the three proposals for immediate action which he has suggested. On the first of these it is of course not for me to comment on the level of support to the Nature Conservancy Council or the Countryside Commission; but if we are to ensure that the voluntary approach is sustained, we must not starve these bodies of the necessary resources.

As to action in the longer term, I would be happy for officials to examine the possibility of changes in the financial arrangements for Management Agreements provided that we constrain this examination to changes which are consistent with the voluntary approach. Although I am less enthusiastic about the proposal for new "stop" powers, I can see advantage in asking officials to look carefully at the scope for extending the concept of Nature Conservation Orders to other appropriate parts of the countryside.

I am copying this minute to Willie Whitelaw, Geoffrey Howe, Peter Walker, George Younger, Nick Edwards, Patrick Jenkin, Norman Tebbit, Tom King, Peter Rees and Nicholas Ridley, and to Sir Robert Armstrong.

MICHAEL JOPLING
23 July 1984

RESTRICTED

Prime Minister

ENVIRONMENTAL POLLUTION: AGRICULTURE AND CONSERVATION

The attached paper by officials follows the meeting you chaired on 17 May.

The pace of change in the countryside has quickened in recent decades. Since 1940 about 80% of the plant-rich lowland grasslands, half of the ancient lowland woods and the fens, and one third of semi-natural upland grasslands and heaths have been transformed by modern agriculture and forestry. Responsible bodies like the Nature Conservancy Council now argue that there is so little of the most vulnerable and important traditional types of countryside left that virtually all the remnants have to be safeguarded.

The 1981 Wildlife and Countryside Act was a major step forward, and has brought some real successes. But the present balance is a fragile one, and there have been mounting pressures for tighter legislative controls. If we fail to maintain the balanced principle of voluntary co-operation between farmers and conservationists the political costs could be very high.

In the past, the Common Agricultural Policy has provided substantial incentives, for example, to convert grazing land into arable and to drain wetlands to grow surplus cereals. This pressure has fuelled the changes in the countryside to which many people (there are over 3m members of voluntary conservation organisations) now object, and has led to increased costs of management agreements, which can now amount to hundreds of pounds per acre in compensation for lost profits.

I am therefore immensely encouraged by Michael Jopling's proposals for changes in the EEC Agricultural Structures Regulations which would broaden the basis for support and allow us to pay grant to encourage farming of a type which fits in with the interests of conservation, rather than the simple pursuit of increased agricultural production. As a long term shift in policy I am convinced that presentationally and politically this must be right: and would be infinitely preferable to being forced towards a general regime of detailed planning controls in the countryside which would be impossible to police and immensely unpopular with many of our supporters.

I believe that we should press strongly in Brussels for these changes. But in the short term we also need to take some actions to ensure that the implementation of the Wildlife and Countryside Act does not break down. In my view we must:

a) ensure that the Nature Conservancy Council and the Countryside Commission have enough money and staff to press ahead with SSSI renotification and the completion of management agreements on threatened sites. Denial of these resources would undermine our present policy, and involve losing a number of major sites every year, with repeated public condemnation. We estimate that the extra costs here would rise to £20m a year over the next three years (paras 13-15 of paper);

b) support an experimental scheme to grant-aid livestock farmers who agree to maintain traditional farming on the Broads, where there have been real problems (paras 16-17 and 34 of paper);

c) support a Private Member's measure to block the loophole in Section 28 of the Act by eliminating the three months period in which the owner or occupier of a proposed SSSI can destroy important features of the site (para 11(i)).

In preparation for possible action on a somewhat longer timescale, I consider we should ask officials to examine the scope for:

a) changing the financial regime for management agreements, possibly by removing compensation payments for Farm Improvement Grant and profits foregone (paras 26-7);

b) introducing a back up "stop" power, to be used exceptionally where an owner or occupier either will not consider a management agreement, or threatens to hold us to ransom for an excessive cost (para 28(1)).

I would be grateful if we could discuss these issues at the earliest opportunity.

/ I am copying to Willie Whitelaw, Geoffrey Howe, Peter Walker, George Younger, Nick Edwards, Norman Tebbit, Tom King, Michael Jopling, Peter Rees and Nicholas Ridley, and to Sir Robert Armstrong.

Andrew Turnbull

for P.J.
20 July 1984

(agreed by the Secretary of State, and signed in his absence).

ENVIRONMENTAL POLLUTION:
AGRICULTURE AND CONSERVATION:
PAPER BY DOE

INTRODUCTION

1. This paper has been prepared in consultation with other Departments following the meeting chaired by the Prime Minister on 17 May. At this meeting concern was expressed that there were deficiencies in the provisions of the Wildlife and Countryside Act for reconciling agriculture and conservation and that compensation provided under management agreements was excessive.

2. The paper describes the background to the present situation and:

(1) discusses the cost of future implementation of the Act and possible ways of reducing it;

(2) considers ways of remedying other alleged defects;

and (3) concludes by outlining the broad options for change.

3. Although the paper is addressed to "agriculture" and the environment, it is also relevant to forestry and other productive uses of open land which are affected by the provisions of the Wildlife and Countryside Act.

BACKGROUND

THE ACT AS IT STANDS

4. Part II of the 1981 Act is designed to give enhanced protection for important wildlife and countryside features whilst at the same time having regard for other interests in the countryside. It provides a framework for action to conserve areas of countryside important either for nature conservation or as landscape. The authorities primarily responsible for such action are the Nature Conservancy Council (NCC), which can "notify" Areas of Special Scientific Interest under the Act (SSSIs), and the National Park Authorities. The Act also gives local authorities new powers to further conservation and it extends the duties of the Agriculture Departments in conservation.

5. The underlying philosophy of Part II was that, in all but extreme circumstances, conservation should be pursued by agreement rather than by compulsory measures. The voluntary approach was justified on the following grounds:

(i) a major problem prior to the 1981 Act was ignorance of the existence and nature of SSSIs; if this were rectified, the farming community in general would voluntarily take a responsible attitude towards conservation;

(ii) change in the countryside was inevitable and not necessarily undesirable; what we needed was a system to facilitate its management, not its prevention;

(iii) compulsory measures would add to administrative costs and bureaucracy, and necessitate complex procedures;

(iv) most importantly effective conservation normally required some form of continuing positive management; this required the goodwill and participation of farmers and landowners.

6. To fulfil this approach the Act provides a framework within which conflicts in sensitive areas can be resolved. In general, this involves temporary restrictions to allow time for management agreements to be made whereby owners and occupiers of land forego the benefit of particular operations and improvements in return for being fully compensated. Once an SSSI has been notified under Section 28, owners and occupiers must give a three month period of notice during which operations cannot be carried out without the agreement of the NCC. This period can effectively be extended to as much as 12 months by a Nature Conservation Order (NCO) made by the Secretary of State under Section 29. No directly analagous provisions apply to landscape conservation, but Ministers have power under Section 42 to make orders relating to areas of moor or heath in National Parks. Such orders require notification of proposals to plough or otherwise convert the land to agricultural use and can have the effect of imposing a moratorium of up to 12 months on the proposed operation. Assurances were given during and after passage of the Bill that there was no intention of making any section 42 orders provided that the voluntary notification system subsisted and none has so far been necessary. In addition, in SSSIs, areas covered by NCOs, National Parks and other areas designated under the Act, farmers are obliged to give notice of applications

for farm capital grant and the Agriculture Minister must take into account any objections made by the conservation bodies before giving grant. In the event of refusal, a management agreement has to be offered. Should the offer of a management agreement be refused, the Nature Conservancy Council has powers under the legislation to compulsorily purchase the land as a nature reserve, but there are no similar powers available to local planning authorities for landscape conservation although they may seek an Article 4 Direction to withdraw permitted development rights under the Town and Country Planning General Development Order 1977 - such a Direction cannot however be used to prevent ploughing which does not constituent development ie planning permission for ploughing land is not required.

7. Analagous arrangements apply in relation to forestry grants and applications for felling permissions in SSSIs.

IMPLEMENTATION

Nature Conservation

8. The main action has been in the NCC's field. They have the task of renotifying under the Act all SSSIs, as well as notifying any new ones, in order to activate the conservation provisions applying to them. This process of notification has in turn led to the making of an increasing number of management agreements. Since the Act was passed 220 new SSSIs have been notified, and 880 renotified (some 20% of the total) and in all, about 6.3% of Great Britain is now so designated. Renotification will be substantially complete in 1986.

Landscape Conservation

9. There has been no similar need for extensive designation of landscape areas. The National Parks are well established, and limited additions only are contemplated to designated Areas of Outstanding Natural Beauty (although the Order designating the North Pennines and Clwydian AONB remain unconfirmed). There has in general been little pressure for management agreements in these areas. But a striking exception has been the Broads (neither a National Park nor an AONB) where there have been controversial proposals to drain grazing marshland and convert it to arable farming.

CRITICISMS OF THE ACT

10. Criticisms have come from two directions. Some see the approach via compensation for foregoing a damaging activity as inherently wrong, alleging that it is bound to encourage farmers to threaten to do things which they might not otherwise do. Others accept that this risk is inherent in the voluntary approach, but focus on both the collective and individual cost of management agreements; and express fears that sufficient resources will not be made available to maintain the principle of compensation so that we may fall between two stools: we may run up a considerable and recurring annual bill for compensation, then find the resources are not available and be forced, in time, to withhold the wherewithal so that authorities are obliged to refuse management agreement Such an abandonment of the policy half way through would clearly create general acrimony.

11. Those who support the approach enshrined in the present Act make a number of further specific criticisms of its working, in particular:

(i) people can and so spoil existing and prospective SSSIs in the period of 3 months provided for discussion of a proposal to re-notify or notify them as such (11 cases have so far been identified, although only about half involved farming operations so that other land users are equally at fault - one celebrated case involved a golf club);

(ii) similar action can be taken while Ministers are considering whether to make NCO's (although no cases have so far been reported);

(iii) the procedures allow insufficient time to conclude management agreements: there is no sufficient sanction in the events of owners and occupiers being unwilling to conclude management agreements, or when unreasonably high prices are asked as eg on the Broads.

12. On the other hand, there has been criticism from farming interests that the procedure for SSSI notification affords no right of appeal and that the resulting restrictions can be onerous.

THE COSTS OF IMPLEMENTATION

13. Annex A assess the total future costs of implementing the Act assuming no constraint on financing of management agreements and no other change which would greatly alter the compensation payable under them. It is estimated that expenditure will rise from a baseline of less than £1m to between £15m and £20m p.a. over 3 years. Over £12m of this will be spent by the NCC on management agreements following notification and renotification of SSSIs.

14. These estimates assume no substantial changes in real prices. Agreements can cost anything from less than £20 an acre per year to over £200. In one or two cases the total sums paid annually in profits foregone have been in hundreds of thousands.

15. The principal elements which give the incentive to changing farm operations (and which are reflected in compensation payments) are the patterns of relative prices and costs and developments in technology. For most major commodities there are market support guarantees under CAP, and in the absence of further changes in price relativities CAP will continue to encourage changes which are damaging to conservation. Lower prices may also induce attempts to increase output. The effect, of farm capital grant may likewise be damaging to conservation in some cases but in this respect its significance is dwarfed by CAP. The NCC calculate that exclusion of allowance for farm capital grant would reduce their compensation bill by only some 15%.

THE OPTIONS FOR REDUCING COSTS
AND/OR GETTING BETTER VALUE FOR MONEY

16. The UK has for years been in the forefront of efforts to restrain CAP price increases in products in surplus. However, it would be unrealistic to rely on future modifications of CAP for removal of price incentives to changes conflicting with conservation and attempts to increase farm output to nullify the effects of lower prices could be damaging. What does seem worthwhile is to explore the possibilities of making aid available to agriculture in ways which support conservation eg through conditional livestock headage payments. An experiment in an arrangement of this kind has been suggested for the Broads by a MAFF/DOE/Countryside Commission/Broads Authority working party. Such an approach would also develop further the conservation incentives to farmers which are currently a feature of capital grant schemes, and which were reinforced by changes to the schemes last year.

17. A rechannelling of aid on these lines would get better value for money and would help to reduce tension between conservationists and farmers. But there would be no net savings in public expenditure, and Community endorsement and involvement would be essential to any wider application. It is not therefore a short term option beyond setting up an experimental scheme.

POSSIBILITY OF RESTRAINING EXPENDITURE
INCREASES BY CASH LIMITS

18. Expenditure by the NCC and local authorities on management agreements could be contained at present baseline levels by cash limiting resources. This would represent a sharp change of policy from the embodied in the Act, which is effectively a demand - led policy: Ministers made clear during and after passage of the Act that where nature or landscape conservation considerations made it right to see a management agreement, those considerations and not a cash limit would be the deciding factor - that Parliament having willed the ends, the Government would provide the means. A price of a cash limit would be loss of good landscape particularly on the Broads. However, the more serious situation would be that the NCC would either be unable to go further with notifying or renotifying SSSIs or, if it did, to make management agreements in them. Thus of a total of 4,000 sites identified as meriting protection some 80% would be at risk, and a contination could be expected, through loss of habitats, in the long term decline of native species of flora and fauna. While the extent of this decline in the past has been a matter of argument, there is no doubt that there has been a very marked one, especially in species dependent on lowland grasslands, heather, and wetlands.

19. A less severe cash limit, would mitigate the effect. Landscape on the Broads might be saved, but the decline in flora and fauna through loss of SSSIs would continue, though more slowly. It is unrealistic if this trend of decline is to be halted, to think in terms of half measures nor can the NCC with a current annual grant aid of the order of £15m be expected to find the cost of offsetting savings.

20. Any cash limit would signal, to farmers and to conservationists, the beginning of the end of the voluntary approach. There would be fears in the one camp of the introduction of planning controls without compensation (on the lines of listed buildings) and this could well induce farmers to destroy valuable conservation features in the meantime before such new legislation could be brought into effect. This would create a storm: the policital costs in the short term would be high and pressure for a new policy very great.

POSSIBILITIES FOR REDUCING COMPENSATION PAYMENTS

21. The remaining possibilities for reducing expenditure all depend on reducing the compensation payable in individual cases. The main possibilities are as follows.

Introduction of Compulsion

22. The voluntary principle is itself liable to inflate compensation payments and the introduction of compulsory conservation measures would curb this effect. This is because some owners and occupiers may be unwilling to enter into management agreements unless paid well above the appropriate figure under the Financial Guidelines, and there is a risk of a ratchet effect in that the highest price negotiated in an area may become the going rate for later cases. (Compulsory arbitration on compensation only applies to disputed amounts where an agreement has to be offered following refusal of farm capital grant).

23. Although there is as yet no general evidence of inflated prices, and high prices per acre are inevitable in many lowland areas some form of compulsory back up powers to ensure conservation would curb excessive demands in individual cases. The reduction in liability would not be dramatic but might in the long term amount of say a 5-10% reduction in average prices and hence total public expenditure on management agreements.

Alteration of Compensation Code

24. A more dramatic alternative is to reduce compensation entitlements payable under management agreements. This can be done without new legislation by Ministers publishing fresh guidance under the terms of Section 50(2) of the Act: no Parliamentary procedure is involved. General points to be borne in mind in contemplating such changes are:

(1) they would breach undertakings given during Bill proceedings, and reflected in the present Financial Guidelines to compensate fully for any financial disadvantages arising from conservation restrictions;

(2) a reduction in compensation would necessitate backing up the voluntary approach with compulsion as few people will forego the benefit of changes without corresponding compensation;

(3) there would be a major loss of goodwill and cooperation, and problems of evasion;

(4) low income farmers would in some cases suffer hardship and even go out of business.

25. The individual possibilities for reducing compensation entitlements are set out in Annex B with comment and estimated savings. Dramatic savings could be achieved without legislation only by setting standard amounts per acre well below a full compensation rate. Even more drastic measures such as abolishing compensation altogether or abolishing it outside the Less Favoured Areas would need a new Bill.

26. Significant but not dramatic savings (of the order of 15%) might be achieved by excluding from compensation payments allowance for any farm capital grant which might have been payable for the improvement foregone. This would be associated with removing the statutory obligation to offer a management agreement following a refusal of grant on compensation grounds.

27. The option of annual compensation payments on the basis of profits for gone could be removed by revision of the Financial Guidelines without legislation but no significant savings would be expected. A considerable drawback would be a build up of commitments to capital payments of the order of £200m or more over the next 3 to 4 years. Such a change would, however, remove the present criticism of agreements running for 20 years with an open-ended financial commitment and would be more defensible to the public.

OPTIONS FOR AMENDING THE ACT

28. Apart from the options for reducing compensation entitlements, there are issues of legislative change which fall to be considered in their own right. There is an obvious connection in these between introduction of more compulsory powers and reductions in cost. Two principal packages as options are:

(1) measures that (a) impose a "stop" notice on potentially damaging operations from the moment the NCC informs an owner or occupier of prospective notification or re-notification of an area of scientific interest; (b) likewise apply a "stop" notice procedure where a Nature Conservation Order is under consideration; and (c) slightly lengthen the period of application of the latter;

(2) in addition to the above a full-blooded compulsory procedure to be used as a long-stop for conserving sites by way of nature or landscape conservation orders which imposed permanent restrictions on notifiable operations (with Compensation); this could be supplemented by a power of compulsory purchase in landscape as well as nature conservation cases where such an order appeared inadequate to ensure conservation. This might enable costs to be somewhat lower than under option (1);

(3) to refine option (2) by removing the requirement for payment of Compensation so reducing costs to the minimum.

29. The first package of changes would not in itself raise the general issue of departure from the voluntary approach and could be represented as no more than tightening up the existing regime. However, farmers' objections to absence of appeal against notification of SSSIs would be reinforced, and others might seize the occasion to press for more drastic changes.

30. The second package would represent a major departure from the voluntary approach and would be controversial. There could be demands for a right to appeal against refusals of consent under conservation orders. However, if understood as a last resort procedure in important cases whether either the owner had no interest in a management agreement or where an authority were being asked an excessive price, it would be easier to justify a conservation order procedure of this kind. A power of compulsory purchase might also be justified for key sites which need to be acquired to ensure positive management to preserve their quality.

31. The controversiality of the second package would be greatly increased if associated with reduction in compensation, even more so if there were to be no Compensation as in the third package.

SUMMATION OF OPTIONS

32. It is first necessary to consider whether a future total compensation bill of £15m to £20m a year is of an order to warrant drastic action to abate it. If it is so concluded the possibilities lie in either or both of the following options:

(1) effective abandonment of present policy by way of severe cash limiting of funds for conservation and acceptance of the vociferous and sustained public opposition to loss of SSSIs and some good landscape with its implications;

and (2) substantial curtailment of compensation entitlements with a resulting need to a resort to compulsion to ensure conservation of SSSIs etc.

33. If it is concluded that the total bill is not so serious as to warrant drastic action, it is appropriate to consider whether it would be right to:

(1) provide a back up power of compulsion to discourage excessive demands for compensation (possible benefit a reduction of 5-10% in average amounts payable);

and/ or (2) eliminating farm capital grant as an element in calculating compensation (possible benefit a reduction of 15% in average amounts payable).

It must however be emphasised that these estimates of savings (some 20% plus in all) are tentative in character.

34. In addition, there is an immediate need to launch on the Broads an experimental scheme of rechannelling funds into a form of positive aid to conservation oriented farming. This will introduce headage payments which will have the effect of reducing the Compensation payable under management agreements (with some savings in total costs likely if the experiment is successful and extended to cover a 20 year period). This approach has much to commend it and will enable the effects of designation as a Less Favoured Area to be tested. This must be done urgently if the present fragile and temporary holding operation in the Halvergate area is to subsist for more than a few weeks longer.

ANNEX A

ASSESSMENT OF POTENTIAL COST
OF IMPLEMENTING THE ACT

1. The process of notification and renotification of SSSIs is liable to trigger off negotiations for management agreements, usually in the form of agreements for annual payments for 20 years. Thus assuming availability of funds and no change in the present arrangements a continual stepping up of the total volume of annual payments can be expected over the next 3/4 years as the remaining 80% of SSSI areas are renotified (and certain new ones are notified). Already agreements made or in prospect entail commitments of the order of £2m a year, and on the basis of the NCC's Corporate Plan it is assessed that these by 1987/8 will exceed £12m given the 5 times wider coverage of SSSIs which will have been achieved by then. This contrasts with a current baseline allocation of less than £0.5m.

2. The prospects relating to National Parks and other areas of landscape value are less serious. Few management agreements have so far been made, though this may be due in part to the reluctance of authorities to incur commitments (Park authorities pay 25% of cost except in Exmoor where the authority pays only 10%; the rest is Government money). Last year the Countryside Commission were allocated some £200,000 for grant aiding the first year's cost of management agreements, but under £60,000 was spent. However, there are an increasing number of agreements in the pipeline and in the case of the Broads commitments are being made which are likely to rise in 3 years to a total of £0.5m per year. There is no financial provision for any such increase.

3. It seems reasonable to assume that by 3 years from now authorities in the National Parks and other landscape areas will have incurred annual commitments amounting to £3m <u>at least</u> and given the expectation that the NCC's total commitments will exceed £12m, total expenditure on agreements will be in the range of £15-20m contrasting with a current baseline of less than £1m (allowing for both the NCC and Park and other local authorities).

4. This increase in in striking contrast to the implication of the Financial Memorandum accompanying the Bill in the 1981 Act.

This took the view that its effect would be largely neutral, with an increase of only £0.6 to £0.7m a year for safeguarding expenditure by the NCC, and no increase at all in spending on landscape conservation.

5. Some further increase in costs may arise beyond the end of 5 years from now as some new agreements will be made, but with few additional SSSI notifications in prospect, and no new major additions in prospect to areas identified for landscape protection, the increase can then be expected to flatten out.

POSSIBLE ALTERATIONS TO COMPENSATION CODE

THE STATUS QUO

1. Most of the relevant provisions are set out in DOE and MAFF Circular 4/83 'Financial Guidelines'. These are issued under section 50 of the 1981 Act. They apply in particular to management agreements which are mandatory in the sense of having to be offered following a refusal of farm capital grant on conservation grounds under either section 32 or 41 of the 1971 Act. In effect however they also apply to management agreements made in other circumstances since they establish a going rate for compensation.

2. Although the compensation code is not in terms prescribed, the implication of section 50 when taken with 32 and 41 is that any compensation paid will assume that farm capital grant would have been payable for the works which are to be restrained under the agreement concerned. In addition, section 29 of the Act makes provision for compensation for diminution of land value (as well as for other loss) attributable to the restrictions imposed by a nature conservation order. There is however no compensation for the restricting effect of SSSI notifications, these under the Act as it stands being subject to not less than 3 months notice.

POSSIBLE CHANGES

3. If changes to the Act are made as proposed in Annex C so as to provide for permanent and compulsory restrictions on specified operations and works, consequential alterations would in any event be necessary to provide for compensation on the assumption of the continuance of the broad principle that no one should be out of pocket because of restrictions imposed for conservation reasons. Thus there would have to be provision for loss of land values attributable to restrictions, and abortive expenditure or other loss, with the possible alternative of annual payments representing profits foregone.

THE OPTIONS

4. If however it is proposed to abandon or modify this central principle other amendments to the Act (and Guidelines) would be needed, and the following possibilities in more or less increasing order of severity fall to be considered:

(1) In the case of owner occupiers abolish option of compensation on the basis of profits foregone, and confine to compensation for loss of capital value (and abortive expenditure etc); in the case of tenant farmers abolish after 5 years.

Comment

This would abolish a political bete noire of critics of the Act, the concept of paying people profits that they have not earned. It would not however necessarily save money as in the long run there should be on average no significant difference between the effects of the 2 compensation formulae. There would also be a short term PESC disadvantage as there would be an immediate rise in the total of payments paid; assuming capital compensation in lieu of paying profits foregone a total sum of the order of £200m would probably be payable over the next 3/4 years.

Abolition of annual payments to tenants would cause particular difficulties. The conservation authority would naturally be unwilling to pay a capital sum to a tenant for an agreement which it could not enforce should the tenancy be terminated. The management agreement would have to be made with the landlord and be enforced via a covenant to the tenancy agreement agreed between landlord and tenant. The capital sum would be paid to the landlord and the tenant reimbursed on an annual basis through a reduction in rent. There are likely to be considerable uncertainties relating to the extent to which the tenant will be compensated during the lifetime of the agreement particularly if the initial rent was low and the profit foregone high. Tenants may therefore be much less willing to participate in such agreements than they are to enter into agreements directly with the conservation authority under the present rules.

(2) Provide that no allowance shall be made for payment of farm capital grant when determining sums payable under management agreements, and as proposed in Annex C remove the obligation on the NCC and local authorities to offer management agreements when grants are refused on conservation grounds.

Comment

It is repugnant to many people that farmers should have not only to be compensated for foregoing the benefit of improvements damaging to conservation but that they should also have paid in compensation a sum equivalent to grant. The alternative assumption would be that, if it is right on conservation grounds to refuse grant for improvements, it is right that any management agreement subsequently made should assume that works objectionable on conservation grounds are not eligible for grant.

Against this it may be argued that it is wider principle of land compensation to allow for the effect of grants which would have been payable but for the compensatable event. It is important moreover not to exaggerate the financial relief which might come from such a change. While no firm calculations are possible, the NCC tentatively estimate in their case that the effect would be to reduce total amounts payable by some 15%. This would represent a public expenditure saving of the order of £2.5m - £3m a year in 5 years time (on the forecast expenditure of £15-20M).

(3) Abolish compensation altogether for certain specific items of expenditure such as land drainage works, removal of trees other than trees forming part of an area of woodland, and removal of hedgerows.

Comment

This would strike in a simple way at some of the actions most damaging to conservation, but the choice of items could look arbitrary and the financial effect on individuals would be onerous. Public expenditure

savings would depend on the items chosen but would be in the range of £3m-10m a year.

(4) Abolish compensation altogether outside areas designed as Less Favoured Areas under EC Agricultural Structures Legislation; provide for a purchase notice procedure whereby anyone with an interest in land outside such areas could serve on the NCC or local authority, as appropriate, a notice requiring the purchase of that interest on the grounds that by virtue of the restrictions imposed it was (when taken together with any other land in the same agricultural unit) incapable of beneficial use in its existing state; disputed cases could go to Ministers. Compensation would exclude allowance for the benefit of improvements or other actions prohibited.

Comment

This would obviously be highly controversial and would inflict substantial losses of capital value on owners of land as well as (in the absence of transitional provisions) on tenant farmers. However, exemption of the Less Favoured Areas would remove the main tranche of hardship cases while the financial burden of compensation in expensive lowland areas would be removed. The purchase notice procedure would provide a safety net but would be likely to result in a fairly substantial increase in holdings of publicly owned land. Public expenditure savings would be substantial, in the range of £10m-£15m a year (in 5 years time).

(5) A variant of this option would be to allow for compensation outside the Less Favoured Areas but base it on standard payments per acre for land in particular areas. These payments would be deliberately set below full compensation levels.

Comment

Such a system would cut back some of the more expensive payments in prospect but would be essentially arbitrary. Public expenditure savings would depend on the level of payments set, but it would not be feasible to look for eventual savings of more than £5m a year if glaring disparities were to be avoided between amounts paid and profits foregone.

(6) The extreme options would be to abolish compensation altogether, saving the forecast £15m-20m a year, but causing serious individual hardship in some cases, and largely destroying goodwill towards conservation in the farming community.

Comment

The policing of the countryside which would be necessary to prevent damage to nature conservation and landscape interests and to invoke compulsory powers would involve the creation of a huge new bureaucracy. Voluntary bodies could be expected to set up squads of vigilantes, a potential recipe for conflict.