

STALKS

THE WATER ACT 1989

CODE OF PRACTICE ON CONSERVATION, ACCESS AND RECREATION

DEPARTMENT OF THE
ENVIRONMENT

MINISTRY OF AGRICULTURE
FISHERIES AND FOOD

WELSH OFFICE

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INTRODUCTION

The National Rivers Authority established by the Water Act 1989 ("the Authority"), the water and sewerage undertakers appointed under that Act ("the undertakers") and internal drainage boards continued in being by that Act exercise functions and manage resources which can affect in many ways the conservation of the environment, the preservation of public access to the countryside and the provision of facilities for sport and other forms of recreation.

The water and sewerage functions which are central to our daily lives rely on works and operations which have to take place not only in some of the most beautiful and ecologically and recreationally valuable areas of England and Wales, but also in urban areas where conservation and recreational opportunities are so precious. The Authority and the undertakers own substantial amounts of land in those areas. The way in which they care for it, both through their own actions and through oversight of other users, has significant effects on the protection of the environment and access to it.

The 1989 Act imposes on the Authority, the undertakers and internal drainage boards general duties in respect of conservation, public access and recreation. These duties, which are set out in full in Annex A, are in summary:

- i) to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;
- ii) to have regard to the desirability of protecting and conserving buildings, sites and other objects of archaeological, architectural or historic interest;
- iii) to have regard to the desirability of preserving for the public freedom of access to places of natural beauty, and to buildings, sites and other objects of archaeological, architectural or historic interest;

- v) to ensure that water and land associated with water which is under the control of the Authority or the undertakers or the internal drainage boards is made available for recreational purposes and in the best manner; and in doing so, that the needs of persons who are chronically sick or disabled are taken into account.

These duties apply to the performance of all of the functions of the Authority and the undertakers and the internal drainage boards and, additionally, to the management of land held by the undertakers for any purpose whatever, whether connected with the carrying out of their functions or not.

Section 10 of the 1989 Act enables the relevant Minister (the Secretary of State or, in the case of the Authority, the Secretary of State or the Minister of Agriculture, Fisheries and Food) to approve codes of practice for the purpose of giving practical guidance to, and promoting desirable practices by, the Authority and the undertakers with respect to these duties.

The Government believes that, in the performance of the relevant statutory functions, the Authority and the undertakers should be guided by a code of practice. The use of such a code is not new: water authorities adopted codes of practice to assist them in carrying out certain of their statutory functions. This code ("the Code") consolidates and develops the best practices and procedures of those authorities. It has been prepared jointly by the Secretary of State for the Environment and the Secretary of State for Wales and, insofar as the Authority is concerned, also by the Minister. The Secretaries of State and the Minister have consulted the Countryside Commission, the Nature Conservancy Council, the Historic Buildings and Monuments Commission for England ("English Heritage"), the equivalent body for Wales (Cadw), the Sports Council and many other interested bodies and organisations. In their flood defence activities water authorities have previously followed the 'Conservation Guidelines for Drainage Authorities' last issued in February 1988. The Minister will shortly update, and co-ordinate them with the Code.

Failure to comply with any provision of the Code will not of itself constitute a breach of the duties imposed by section 8 or 9 of the 1989 Act or give rise to any criminal or civil liability. However, the Secretaries of State and, where appropriate, the Minister will take into account whether there has been or is likely to be any contravention of the Code in determining when and how they should exercise their powers by virtue of the 1989 Act in relation to the Authority or the undertakers.

Although the 1989 Act imposes general duties in respect of conservation, public access and recreation on the Authority and the undertakers and on internal drainage boards, the Code does not apply to the latter. Accordingly, references in the Code to "the relevant bodies" are references to the Authority and/or the undertakers (as the circumstances require) and do not include references to internal drainage boards. Internal drainage boards are covered in the 'Conservation Guidelines for Drainage Authorities'.

I ESTABLISHING A FRAMEWORK FOR PLANNING AND MANAGING THE USE OF WATER AND ASSOCIATED LAND

The relevant bodies must discharge the environmental and recreational duties imposed on them with due regard to the proper performance of their statutory functions relating to the abstraction, use and protection of water resources. They may on occasion need to reconcile competing demands arising in relation to the performance of their duties. They must have full and up to date information about such conservation, recreation and related considerations as are relevant to the decision or action in question and be equipped to make best use of that information.

In discharging its responsibilities for the protection and management of rivers and other waters the Authority, advised as appropriate by regional advisory committees, will develop a general framework of policies and procedures for all aspects of river basin management, including conservation and recreation. The undertakers will need to take account of any such framework in reaching decisions and taking action in the discharge of their own functions, but will need to supplement this with:

- i) established channels for consultation and liaison with all relevant organisations, including the Authority, and with individuals or groups of individuals who own land, live or work in the locality in question;
- ii) integrated land use and management plans for sites of particular significance for conservation, recreation and access;
- iii) programmes for the training of their employees and for research;
- iv) appropriate arrangements for the dissemination of information about their plans;

(i) Consultation and Liaison

The relevant bodies should ensure that channels for liaison and consultation with appropriate organisations and individuals are established and open at all times, so that action can proceed speedily on individual cases. Organisations with whom they may wish to consult or be required to consult in relation to particular conservation matters are - the Countryside Commission, the Nature Conservancy Council, English Heritage or Cadw, the Council for the Protection of Rural England, the Council for the Protection of Rural Wales, the Royal Society for the Protection of Birds, the Council for British Archaeology, National Park authorities, the Broads Authority, local authorities, nature conservation trusts and other local conservation organisations. The bodies with whom they may wish to consult in relation to recreation are - the Sports Council, the Sports Council for Wales, the Central Council for Physical Recreation, the Ramblers' Association, regional councils for sport and recreation and the governing bodies of particular sports. Special importance attaches to consultation and co-operation with local authorities where the water and land resources of a relevant body are of such scale and character as to be of more than usual significance to the amenity of an area.

The relevant bodies should allow adequate time for proper consultation. This will entail providing information to their intended consultees well in advance of the date by which they need to reach a decision. Proper consultation is cost-effective: if handled in the right way and at the right time conservation and recreational requirements can often be taken into account at marginal cost.

(ii) Integrated Land Use and Management Plans

Conflicting operational, environmental and recreational considerations can rarely be reconciled in the best possible manner by decisions taken solely in relation to individual projects. Consistent, cost-effective reconciliation is likely to be achieved through the preparation of land use and management plans, particularly for sites which are likely to be subject to competing uses and pressures.

The relevant bodies should assess the character and environmental value of their sites and the suitability of land for different uses with regard to conservation, access, recreation, agriculture and forestry. They should review these assessments regularly, taking into account the results of consultation with relevant interests. Once an appropriate balance of uses and activities has been agreed in relation to a particular site, the relevant bodies should take such steps as may be necessary to ensure that the plans for those uses and activities are implemented, properly managed and reviewed where appropriate. Practical measures, such as regular inspection of the site, should be employed to ensure effective control and that the balance of uses and activities is maintained. Where conservation or access arrangements for an area are already the subject of a management plan or other arrangement with a local authority or similar body, for conservation, access or recreation, the terms of such arrangements should be fully observed. Decisions as to how such arrangements are to be interpreted and whether they are to be renewed, should be made with full regard to the duties imposed by section 8.

(iii) Training and Research

The relevant bodies should ensure that there are adequate arrangements for the collection, through research, surveys and otherwise, of the data that are needed for the proper discharge of their functions. They should also ensure that relevant staff are suitably trained. The careful preparation of policies and plans will be rendered ineffective if, for example, the person operating a mechanical digger is unaware of a site's environmental importance. The appointment of consultants and other advisers on wildlife, archaeology and landscape and other matters to assist with the design and planning of new works, maintenance works, general land management, training of staff and provision of recreation facilities should be regularly considered.

County councils and some other local authorities, for example, metropolitan borough councils and National Parks authorities, maintain a database, the Sites and Monuments Record - "SMR", of known sites and features of archaeological, historical and architectural significance. Wherever possible, the relevant bodies should endeavour to obtain access to that database and should consult it whenever they need information about the archaeological, historical or architectural value of their land. In some cases, for example in assessing the impact of development proposals or in drawing up management plans, the information held in SMRs will not be adequate to allow informed management decisions to be taken and further information will need to be obtained, for example, by archaeological fieldwork and evaluation. They may find that the SMR is a useful source of information for commissioning work of this kind.

The relevant bodies should take steps to ensure that their staff understand the significance of, and are committed to, the furtherance of their employer's conservation functions. These steps should be extended to their agents, contractors and consultants. Specific training should be provided for those employees whose activities directly impinge on conservation, access to the countryside and other recreational opportunities. Arrangements for training and for the distribution of information to staff should be reviewed regularly. Where practicable, the relevant bodies should enlist the help of appropriate conservation and recreational bodies and individuals with relevant experience.

(iv) Publicity

In addition to publishing information for the benefit of their shareholders, the undertakers should from time to time and at least one each year, provide, for the benefit of the public, reports of their activities in, and proposals for, discharging the duties imposed on them by sections 8 and 9 of the 1989 Act. Similar reports should be prepared and published by the Authority.

II CONSERVATION AND ENHANCEMENT OF THE ENVIRONMENT

Many of the regular operations of the relevant bodies have a significant impact on the environment. Direct visual and physical effects on the landscape and natural habitats, and buildings and archaeological remains can arise from design and construction of new schemes and works, from maintenance works and from alteration of the level and nature of water in rivers and ponds and of the water table. Control over abstractions of water for various purposes, over effluent discharges and over the pollution of water also involves actions and decisions which can have important consequences for nature and archaeological conservation.

The relevant bodies have positive duties for furtherance of conservation and enhancement of the environment in undertaking all the functions for which they are responsible. This section of the Code sets out some specific considerations as they apply to each function. Certain general considerations are relevant to all functions, and they are considered first.

GENERAL

Landscape Design

Careful consideration should be given to any works and land use changes which could have an adverse effect on the character of the landscape especially in sites of importance for conservation (See Annex B). The aim is to avoid damage arising from them. The natural beauty and man made features of the landscape can best be conserved and enhanced if projects are designed to:

- (i) maintain and reinforce the existing natural character and ecology of the area;

- (ii) avoid disturbance of or intrusion on archaeological and historic features;
- (iii) ensure that buildings and structures are sympathetic to and in scale with the wider landscape;
- (iv) make use of local materials and building forms whenever possible;
- (v) retain existing groundcover plants, shrubs and trees where this is the best option and protect these during construction;
- (vi) restrict new planting to species which are well adapted to local site conditions.

Proposals for conifer afforestation need careful consideration, particularly in the undertakers' upland gathering grounds. Links between conifer afforestation and the acidification of water supplies means that it will be difficult to reconcile large scale proposals with the continued role of land in water resource protection. Such proposals can also have adverse effects on conservation of landscape and amenity. The Forestry Commission do not support proposals for large-scale conifer afforestation in the English uplands above 600 feet. Appropriate forest establishment and management techniques for the protection of the water resource are described in the 'Forests and Water Guidelines'. Advice should be sought from the Forestry Commission in the planning of new forests and the management of existing ones.

Nature Conservation

The different functions of the relevant bodies will impose different requirements in respect of nature conservation, but certain practices helpful to nature conservation may be relevant to all aspects of management and use of the water environment. These include:

- (i) avoidance of canalisation of channels; design of asymmetric channels of varying width; reprofiling, where needed, carried out in short sections over several years;
- (ii) retention in rivers of pools, riffle sections, sand bars, shingle banks, cliffs, meanders and braided channels;
- (iii) retention of landscape features and habitats including brackish lagoons, marsh, fen, bog, scrub and marginal trees;
- (iv) minimum clearance of trees and bushes in strict accordance with project requirements;
- (v) pollarding of mature trees in preference to removal during general maintenance; replacement of trees removed with species appropriate to the site;
- (vi) retention, wherever possible, of overhanging trees, and fallen trees lying adjacent to rivers;
- (vii) use of natural materials wherever possible (the materials should be carefully selected and the scheme should respect the landscape setting);
- (viii) retention of trees at intervals where general scrub clearance is necessary in the interest of nature conservation.

It should be borne in mind that, with certain exceptions, it is an offence to fell trees without first having obtained a Felling Licence from the Forestry Commission. Additionally, where a tree is covered by a Tree Preservation Order issued by the local authority, it will be necessary to obtain the prior consent of that authority before any lopping, topping or felling is carried out.

The Man-Made Environment

Archaeological remains and sites, historic buildings, and industrial structures can be damaged or threatened by works which, by creating lower water levels, cause drying out and decay of waterlogged material such as timber or biological and environmental remains. The relevant bodies should also be aware of the need to protect buildings, monuments, and other historic features from damage caused by misuse or neglect, and they should maintain such features whether or not they are in current use.

It is important to recognise that archaeological and historic features and objects cannot regenerate in the same way that a dynamic ecosystem can: once destroyed or damaged their historical essence cannot be replaced. Appropriate management policies can do much to avoid damage and promote positive, cost-effective means of protecting the heritage.

The relevant bodies should protect the monuments, buildings and sites in their care. They should record details such as machinery, equipment, documents and drawings, which they have identified as being of historic interest. Lists of unwanted but important features should be circulated to potential new keepers such as industrial archaeology societies, county archivists, university libraries, local historical societies, civic trusts and the like. In relation to plant or machinery of historic interest the relevant bodies should seek the advice of the Science Museum, or the Council for British Archaeology, and any specialist bodies recommended by the Museum.

Nature and Heritage Reserves

Where sites have been identified by conservation bodies as significant for nature or archaeological conservation, the relevant bodies should consider whether establishing a nature or heritage reserve is a practicable option. They may find the best arrangement for ensuring the protection, management and public interpretation of such sites and features is to lease or licence them to appropriate conservation bodies, with an agreed management plan.

Maintenance Works and Programmes

The routine nature of maintenance works may cause their significance for nature and archaeological conservation to be overlooked. There are opportunities in all areas to encourage wildlife and improve the landscape, generally involving less intensive management. So far as consistent with their obligations to ensure the safety of employees, there should therefore be arrangements to ensure that the conservation duties are taken into account in maintenance works programmes, as much as in any other proposals. Relevant conservation considerations should be fully explained to those carrying out the work.

Maintenance policies should be reviewed periodically. Where there is any subsequent doubt as to the appropriateness of current maintenance programmes or proposals for significant change to them, relevant planning and conservation bodies should be consulted.

SPECIFIC

(i) Management of Water Resources

Where a relevant body undertakes new water resource schemes or major modifications to existing schemes it should consult conservation bodies on the plans themselves and

proposals for their implementation, and take such views into account when deciding how to proceed. These schemes will include river regulation, inter-river water transfer, conjunctive use, ground water abstractions, abstraction from watercourses into reservoirs, the alteration of water levels in lakes and the alteration in flow of freshwaters or estuaries.

Where a scheme involves the design, construction and subsequent management of water storage schemes, river barrages, estuarine barrages and other means of storing water, such as aquifer discharge, the relevant bodies should make nature and archaeological conservation an element for consideration in all decisions, from the earliest stage. Environmental assessments should be carried out for any such schemes which are likely to have significant environmental effects, in accordance with the Town and Country Planning (Assessment of Environment Effects) Regulations 1988.

In particular, in the design of new storage schemes and reservoirs, the relevant bodies should, wherever possible, make provision for the retention of existing features such as woodland, hay meadows, physically and vegetationally diverse margins and features of archaeological, architectural or historic interest; and they should make provision for the creation of new features such as islands, marshy areas and appropriate tree planting. Where specifically recommended by conservation bodies, consideration should be given to incorporating provision for wildlife reserves in the design.

Where a reservoir within a site of importance for conservation is to be drawn down or work undertaken in connection with an inspection or repairs under the Reservoirs Act 1975, the appropriate conservation bodies should be consulted well in advance, particularly as to the timing of the operations. If a relevant body proposes to retain a reservoir, which is surplus to operational requirements, it should consider, in consultation with appropriate conservation bodies, whether it could further conservation by using the abandoned reservoir to recreate wildlife habitats such as pools, marshes and marginal woodland and by establishing it as a nature reserve; and whether it could conserve and present previously inaccessible archaeological, architectural or historic features to the public. If a reservoir is drawn down permanently, consideration should be given where feasible to using the marginal area exposed for the creation of wet habitats such as pools and marshes.

(ii) Water Supply Schemes

Where the Authority proposes granting licences for abstractions, which are in or would affect a Site of Special Scientific Interest (SSSI), a scheduled ancient monument, or a site of importance for conservation, it should consult the Nature Conservancy Council (NCC), English Heritage or Cadw and other appropriate conservation bodies. This applies to all abstractions from surface waters, ground waters or any stored or impounded water for the purpose of water supply, including agricultural needs such as fish farming or spray irrigation. The needs of and provision for migratory fish should also be taken into account.

In cases of proposals to lower or reduce the water level in or adjacent to a scheduled ancient monument or other important archaeological site or area, the Authority should consult English Heritage or Cadw; where scheduled monuments are involved it is likely that scheduled monument consent will be required.

The Authority should ensure that there is an assessment, circulated to the NCC, English Heritage or Cadw or the appropriate conservation body, of the impact of such an abstraction on the hydrological regime of the site and should take into account any comments made to them by conservation bodies. The effect on nature conservation and the man-made heritage will be an important factor in considering whether proposed new abstractions from surface waters should or should not be licensed. Where consultations with the appropriate conservation body suggest that the hydrological regime of a site of importance for conservation may be adversely affected, provision should be made for monitoring it. Should the abstraction prove to have a significant deleterious effect on the conservation interest at that site, appropriate remedial action should be taken whenever reasonably practicable.

Features of archaeological interest can be threatened by physical disturbance in construction works and by reduction in water tables, causing drying out and decay of water-logged timber and biological remains. Where archaeological features and artefacts are at risk from disturbance or any lowering of the water table the appropriate remedial action may be the full investigation and publication of such features and artefacts at an early stage.

(iii) Sewerage, Sewage Disposal and Pollution Control

The relevant bodies should be alert to circumstances in which steps to upgrade standards of effluent quality are required to avoid impact on SSSIs, or other sites of importance to conservation. In particular, where an SSSI is sustaining damage as a consequence of nutrient enrichment, to which sewage disposal is making a significant contribution, the relevant body should consider suitable remedial action, such as the installation, in appropriate circumstances, of phosphate reduction equipment at sewage treatment works.

The locations and lengths of sea outfalls should be discussed with the appropriate conservation and planning bodies, so as to minimise construction damage and damage to marine ecology.

When considering the connection of premises to the public sewer which are currently served by septic tanks, the relevant bodies should take into account, along with other relevant considerations, the benefits to nature conservation which such a change may bring about.

New sewage treatment plants which are likely to have significant environmental effects will require environmental assessment under the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988.

(iv) Pipe Laying

When laying new trunk sewers and trunk mains the undertakers should seek to adjust routes to minimise damage to the landscape, to make every effort to by-pass sites of

importance for conservation and to make all reasonable efforts to avoid damage to features of archaeological, architectural or historic interest, as well as hedges, trees and ponds.

Construction programmes should be set to avoid, so far as reasonably practical, damage to natural systems. This may require specific assessments of the existence, character and extent of features which might be affected. Where damage to features of archaeological interest is unavoidable, arrangements should be made for an appropriate level of investigation (prior to the commencement of works) by an appropriate conservation body, and subsequent publication of results. Such arrangements should be made at the earliest possible stage of project design. Reinstatement should be carefully carried out in co-operation with the landowners and occupier with appropriate planting and seeding, and in accordance with the provisions of each undertaker's future 'code of practice for the exercise of works powers.'

(v) Fisheries and Bankside Activities

The relevant bodies should take steps to ensure that abstractions for and effluent from fish farms which they own or operate, or for which they issue consent, do not damage flora and fauna, features of archaeological, architectural or historic interest or the landscape. They should consult conservation bodies about any practice carried out for the improvement or development of a site of importance for conservation. In such circumstances, even standard techniques such as mechanical weed cutting, use of herbicides, the employment of noxious substances for fisheries management, the use of antifouling paints and intensive stocking should be carefully evaluated for environmental impact.

The interests of landscape, nature and archaeological conservation, including the conservation of fish populations, should be considered in the exercise of any controls over boating, bankside fishing and extensions to fishing areas or the fishing season.

(vi) Navigation

Where the relevant bodies have control over navigation on rivers and other waters they should have regard to their duties for landscape, nature and archaeological conservation and environmental protection and enhancement. Appropriate conservation bodies should be consulted about all major navigation proposals and associated engineering works on sites of importance for conservation, and the appropriate conservation body should be consulted about maintenance programmes and boat movements.

The relevant bodies should take steps to protect wildlife and landscape from the harmful effects of navigation. In particular the speed and level of boat traffic may need to be controlled in order to minimise disturbance to wildlife, the incidence of bank erosion and the increase in turbidity of the water, which may seriously reduce plant growth and diversity and adversely affect the landscape.

III PRESERVATION OF PUBLIC ACCESS

Subject to their conservation duty (section 8(1)), the relevant bodies have a duty, in formulating or considering any proposals related to their functions and to the management of their land, to have regard to the desirability of preserving for the public freedom of access to places of natural beauty and to buildings, sites and features of archaeological, architectural or historic interest.

Between 1973 and 1989 the water authorities did much to open up areas of high amenity value in their ownership for rambling and quiet countryside pursuits, through policies that recognised de facto access and provided concessionary footpaths. The relevant bodies should consider the adoption of similar policies and practices and the continuation of access arrangements established under management plans agreed with National Parks authorities, local authorities or other bodies.

In the light of the public access duty (section 8(2)) and having regard also to the duty in respect of the recreational use of water and land (section 8(3)), public access should normally be allowed:

- to land of natural beauty or of amenity or recreational value by way of either marked concessionary footpaths and bridlepaths or open access, wherever practicable, and having regard to the use and occupation of the land and the interests of third parties. The relevant bodies should consider the formal dedication of long established concessionary paths.

- to reservoirs and other water areas of amenity or recreational value provided that appropriate measures can be taken to minimise the risk of pollution and that no public health risk is involved.

- to archaeological monuments, buildings of historic and architectural interest and other historic features and records wherever this is reasonably practicable. This may be achieved by a variety of means, including:
- a) appropriate management and signposting of monuments and buildings occurring in areas with public access or close to rights of way;
 - b) the creation of heritage trails - if appropriate in conjunction with wildlife interests;
 - c) the creation of formal displays, museums, demonstrations, open days, etc;
 - d) provision of facilities for specialists to study objects, machinery, documents, plans, etc, either directly or through loans or gifts to appropriate libraries, museums etc.

The relevant bodies will need to know the extent to which proposals related to their functions or management of their land could affect preservation of freedom of access for the public. For this purpose they may need to establish arrangements, including relevant consultation procedures, which enable them to be informed of access provisions and their importance to particular interest groups or the public at large.

Where proposals related to the functions of the relevant bodies require the termination or modification of any existing freedom of access the relevant bodies should consult appropriate recreation bodies at the earliest practicable stage, and have

regard to their views in seeking to minimise, where possible, the degree of interference with such access. Statutory rights of way may only be diverted or extinguished by reference to the relevant legislation, the Highways Act 1980. Where for over-riding operational reasons, any existing freedom of access is terminated, the relevant bodies should consider whether compensatory provision can be made in the same vicinity. Where access is temporarily withdrawn for operational or conservation reasons, dispute can often be avoided by display of public notices to this effect.

IV USE OF WATER AND ASSOCIATED LAND FOR RECREATION

The relevant bodies are required to secure that, so far as reasonably practicable, their water and associated land is put to use, in the best manner, for recreation.

The land and water assets of the relevant bodies are very extensive and this duty is accordingly of considerable significance generally for recreational provision, but the relevant bodies will recognise the particular recreational responsibilities which arise from their ownership of:

- reservoirs in inland areas. These are often the prime resource for active water sports, such as sailing, boating and sail-boarding in areas such as the Midlands;
- upland water gathering grounds. These provide regionally important resources for informal recreation, such as rambling, mountaineering and quiet enjoyment of the countryside. They are of great importance to nearby conurbations.

This section of the Code sets out some general principles relevant to performance of the recreation duty, and then lists certain more detailed considerations.

General

The following general considerations should underlie the policies of the relevant bodies towards provision for recreation:

- recognition of the social importance of sport and recreation and the particular contributions which the relevant bodies are in a position to make in this field;

- the aim to contribute, as circumstances offer, to the wider provision of opportunities for sport and recreation; and to secure the best use of suitable existing and new resources;
- consultation on a regular basis with the regional councils for sport and recreation and with appropriate representatives of users of their sporting and recreational facilities; and as circumstances require with the relevant governing bodies of sport and recreation.

The relevant bodies are required by the Act to put their water and land to use for recreation in the best manner. They will need to consider, in the circumstances of each case, what this entails, but two particular considerations will almost always be relevant:

- the need to cater fairly and equitably for as broad a range of interest groups as practicable;
- the need to ensure that the recreational needs of the surrounding area are taken fully into account, and are not unreasonably prejudiced by proposals designed to meet more specialised demands.

Over many years water authorities, in the light of their statutory responsibilities, have permitted ready access in many areas to their water and land for fishing and other recreational pursuits. The relevant bodies are expected to take the greatest care to ensure that these arrangements, which have been important to many local communities, are not disturbed, so far as it is reasonable and practicable for them to do so.

In the establishment and operation of specific facilities the principal considerations which should be taken into account are that:

- (i) subject to suitable terms and conditions, public use of sporting and recreational facilities, once established should be maintained by the grant or renewal of leases or licences;
- (ii) facilities which become available should be offered for recognised recreational pursuits on terms which take account of those applying to similar facilities elsewhere;
- (iii) existing users of sporting and recreational facilities on the relevant bodies' lands or water and appropriate conservation bodies should be consulted prior to the introduction on those lands or waters of any new sporting or recreational activity.
- (iv) in considering what steps to take in performance of their recreational duty, provision should be made, where possible, for the needs of chronically sick and disabled people;
- (v) reasonable account should be taken of the need for public car parks, toilets and picnic sites; and facilities, upon reasonable conditions, for groups to study nature, geology or archaeology on otherwise restricted sites.

SPECIFIC

Water Resource Management

New reservoir schemes, major modifications to existing schemes or ground water abstractions may have the result of

varying water levels. This could affect boating or angling. Inter-river water transfers or conjunctive use schemes can affect fisheries and hence angling. Appropriate consultation with recreational bodies should be undertaken and existing recreational uses should be retained as far as possible.

Where a scheme involves the design, construction and subsequent management of water storage schemes, and of river or estuarine barrages, consideration should be given to the effect upon, or opportunities for, recreation; and to the possible inclusion of suitable recreational structures.

When major pipelines are constructed and land is retained alongside for access and maintenance, consideration should be given to the use of such land as a footpath, cycle track or bridleway.

Where a reservoir is to be drawn down or work undertaken the appropriate recreational bodies should be consulted, well in advance, particularly as to the timing of the operation. Such an operation may well promote recreation below reservoir outlets providing white water conditions for canoeists.

If an undertaker proposes to retain a reservoir, which is surplus to operational requirements, it should consider, with appropriate recreational bodies, whether one use could be of a recreational nature.

Sewerage, Sewage Disposal and Pollution Control

Most of the preceding points are applicable to sewerage undertakers. In addition:

- appropriate recreational bodies should be consulted in the planning of long sea outfalls in view of their significance for bathing beaches, sub-aqua diving and angling.
- when laying new trunk sewers undertakers should assess the opportunities for footpaths, cycle tracks or bridleways.
- the undertakers should consult appropriate recreational bodies as to whether their disused water works may have facilities which could be adapted for model boating, canoe training or other recreational uses.

Fisheries

The relevant bodies have a statutory duty to maintain, improve and develop salmon, trout, freshwater and eel fisheries. The relevant bodies should seek to maintain a balance between angling clubs and day ticket anglers either by requiring clubs to whom they lease fishing rights to issue such tickets or by managing some fisheries themselves.

For popular venues the provision of formal angling positions including some for disabled persons as well as launching facilities for boat fishing is advisable.

Navigation

The Authority will be responsible for navigation in several regions and will also have certain harbour and pilotage duties. All this will enable the Authority to encourage boating in such forms as canoeing, rowing, sailing, motor cruising, power boating

and water skiing. As these interests can conflict not only with conservation needs, but with one another and with commercial interests such as boatyards, marinas and sometimes commercial fishing and shipping, the Authority will wish to consider, in consultation with the appropriate regional council for sport and recreation, the need for strategic planning. Success has been achieved in some areas by the use of river users committees. If the Authority employs such committees, it will wish to ensure that recreational bodies are appropriately represented.

The Authority will not usually own land alongside a watercourse but it will note that the public rights of way along what was once a working towpath provide a valuable recreational resource.

Flood Defence

Every effort should be made by the relevant bodies to incorporate recreational considerations into capital and revenue schemes. Sailing may be possible by preserving adequate channel depths and by providing launching sites. Walking may be encouraged by providing access to flood banks from which views may be obtained.

The construction or repair of land drainage bypass channels or weirs may provide an opportunity for creating canoe slaloms or allowing rafting activities.

When carrying out sea defence work close to the holiday season, attempts should be made to minimise effects upon visitors of the sand and shingle replenishment work. In addition, when constructing or repairing sea defences suitable access should be considered for boats associated with various recreational activities.

When repairing or improving river banks improved facilities should be considered for moorings or boat access, angling or other appropriate recreational activities.

Care should be taken in using herbicides for aquatic plant control where sports involving immersion are taking place nearby.

V APPLICATION IN SPECIAL AREAS

While the Code applies to the operations of relevant bodies wherever they are undertaken, special considerations may arise when they come within or affect areas designated under other legislation. This applies particularly in the case of Sites of Special Scientific Interest and National Parks, and accordingly section 9 of the Act imposes special notification and consultation procedures in respect of these areas. This section of the Code first sets out these procedures. It then draws to the attention of relevant bodies the implications of certain other statutory designations as they relate to the conservation, access and recreation duties under section 8.

Sites of Special Scientific Interest (SSSIs)

The Nature Conservancy Council (NCC) has a duty under section 9 of the Water Act 1989 to notify relevant bodies of areas of land which are of special interest for their flora, fauna, geological or physiographic features and which might be affected by their activities.

If relevant bodies intend to carry out works or operations which they consider may be likely to damage an SSSI, they are obliged to consult the NCC. However, to avoid any irreversible mistakes, they are advised to consult in respect of all works or operations affecting SSSIs, at least until they are confident that reliable assessment procedures have been developed.

In addition, the Authority is required to consult the NCC before authorising any operation which is likely to damage an SSSI; this involves consents for land drainage, discharge consents and abstraction licences. It will be for the Authority and the NCC to agree procedures for consultation and for identifying those applications which are most likely to affect SSSIs.

Where relevant bodies own or lease land within an SSSI, the NCC will also notify them under the Wildlife and Countryside Act 1981, in the normal way. The notification will be accompanied by a list of operations likely to damage the SSSI. Owners or occupiers are required to give the NCC four months written notice if they intend to carry out or authorise on the SSSI any of the listed operations. This requirement does not apply if the operation has been authorised by a specific planning permission; or in the case of an emergency, when details should be notified to the NCC as soon as practicable after the commencement of the operation.

The NCC will follow up the formal notification procedures by contacting the relevant body to explain the special interest of the site and the likely effects of various types of operations. The aim will be to agree an operational plan for individual SSSIs and land-holdings. This should reduce the number of occasions on which notice needs to be given for individual operations.

ii) National Parks and Areas of Outstanding Natural Beauty (AONBs)

The undertakers will be among the most important land owners within the ten National Parks in England and Wales, and in the designated AONB, in particular in the Lake District and Peak District where upland land-holdings for water gathering purposes are extensive.

The special planning framework secured by the National Parks and Access to the Countryside Act 1949 and successor legislation, will apply fully to the undertakers as to

other landowners within the Parks. It is important that the undertakers keep in mind the close links between their special duties under section 8 of the Water Act 1989 in respect of their functions and the obligations that can arise from them as major holders of land connected with these functions, within the designated areas.

In addition to their responsibilities for planning, National Park authorities promote positive conservation work and provide information services. They work closely with farmers and other landowners to help maintain traditional land management practices and to ensure that management as well as development are sympathetic to the Parks' landscape. In sensitive areas they may be concerned in particular with drainage, the protection of wetlands and maintenance of existing ditches, and with agricultural practices including regimes for grazing, ploughing and the use of fertilisers; and with the management and use of woodlands. Many of these considerations apply equally in the Norfolk and Suffolk Broads which Parliament has recognised as being equal in importance to the National Parks and where a similar planning and management regime operates.

Relevant bodies should seek to maintain close liaison with National Park authorities and the local authorities in AONBs, take into account their plans and policies, and consult them on all relevant matters. To ensure that this happens on important matters section 9 of the Water Act 1989 provides for the National Park and Broads authorities to notify relevant bodies of areas of land within the Parks which are of significance in terms of the section 8 duties, and places a duty on the relevant bodies to consult the Park Authorities on operations which may affect them. The existence of the section 9 duties does not absolve the relevant bodies from the need for suitable consultation on matters which have not been notified.

Other Designations

Although the Act imposes no special direct obligations, the following designations are some of those which may also be relevant to the performance of relevant bodies' duties under section 8.

(i) Environmentally Sensitive Areas (ESAs)

The European Community structures regulation EC 797/85 as amended, provides for Member States to pay aids to farmers in suitably designated areas of high conservation value in order to encourage farming practices favourable to the environment. In the UK this has been implemented through Section 18 of the Agricultural Act 1986 by the designation of Environmentally Sensitive Areas of which there are 10 in England. These designations have been made for an indefinite period.

Under the ESA scheme farmers in the designated areas voluntarily enter into legal agreements with the Ministry of Agriculture, Food and Fisheries (MAFF) which require them to follow a range of management practices what will be beneficial to the environment in return for which they receive a fixed rate of payment. These agreements last initially for 5 years. The specified practices vary according to the environmental and agricultural circumstances of each ESA but include appropriate water management (where this is in the farmer's control) as well as a range of measures to support particular habitats, including those which are water based, as well as, for example, restrictions on the use of fertilisers and other chemicals.

In these areas, relevant bodies will need to have particular regard to the environmental and agricultural objectives of these schemes and should conduct their operations in a way that furthers ESA purposes. They will need to have regard to the character and sensitivities of such areas and should ensure that both statutory bodies and voluntary bodies are consulted about their operations and plans for the areas. If MAFF reviews ESA boundaries or designates additional areas it will notify in writing the relevant bodies affected by the designation.

(ii) Scheduled Ancient Monuments

The relevant bodies may be the owners or occupiers of structures or sites of archaeological interest scheduled as ancient monuments under the Ancient Monuments and Archaeological Areas Act 1979. Their operations can also affect sites not in their ownership. Either the Department of the Environment (Heritage Sponsorship Division) or English Heritage or Cadw should be consulted if there is any doubt about the status of a particular area. DOE Circular 8/87, paragraphs 49-52, summarises the legislation and its procedures. The consent of the Secretary of State is required for any work to a scheduled site which would have the effect of demolishing, damaging, removing, repairing, altering, adding to, flooding or covering it. Precise details of any proposed work must be submitted with applications for consent, and it is desirable to discuss any works well in advance with English Heritage to reduce delay in processing the application. English Heritage will also provide informal advice on any problems arising from management of scheduled sites. Unscheduled ancient monuments may also be of great importance; Circular 8/87 emphasises that the preservation of ancient monuments, whether scheduled or not, and their setting is a material consideration in the planning process.

(iii) Listed Buildings

Detailed advice on the application of legislation affecting historic buildings and conservation areas is contained in the Department of the Environment Circular 8/87. The compilation of statutory lists of buildings of special architectural or historic interest is a matter for the Secretary of State, advised by English Heritage or Cadw. Copies of the list for each area are held by local planning authorities which are responsible in the first instance for determining applications for consent to carry out works to listed buildings. Consent is required for any works of demolition, alteration or extension which would affect the character of the building. English Heritage are notified of all listed buildings applications affecting Grade I or II* buildings as well as planning applications affecting the setting of such buildings. This provides them with an opportunity to offer advice to local planning authorities, and to advise the Secretary of State on those applications which they think should be called in for determination by him.

Sections 8, 9 and 10 of the Water Act 1989

General
environmental
and recreational
duties.

8.—(1) It shall be the duty of each of the following, that is to say, the Secretary of State, the Minister, the Director and every relevant body, in formulating or considering any proposals relating to the functions of any relevant body or, as the case may be, that body—

- (a) so far as may be consistent with the purposes of any enactment relating to the functions of that body and, in the case of the Secretary of State and the Director, with their duties under section 7 above, so to exercise any power conferred on him or it with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;
- (b) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and
- (c) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.

(2) Subject to subsection (1) above, it shall be the duty of each of the following, that is to say, the Secretary of State, the Minister, the Director and every relevant body, in formulating or considering any proposals relating to the functions of a relevant body or, as the case may be, that body—

- (a) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
- (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and
- (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

(3) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes navigation which is subject to the control of that authority to be obstructed or otherwise interfered with, it shall be the duty of every relevant body to take such steps as are—

- (a) reasonably practicable; and
- (b) consistent with the purposes of the enactments relating to the functions of that body,

for securing, so long as that body has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

(4) Without prejudice to its other duties under this section, it shall be the duty of the Authority, to such extent as it considers desirable, generally to promote—

- (a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters;
- (b) the conservation of flora and fauna which are dependent on an aquatic environment; and
- (c) the use of such waters and land for recreational purposes.

(5) It shall be the duty of a relevant body, in determining what steps to take in performance of any duty imposed by virtue of subsection (3) or (4)(c) above, to take into account the needs of persons who are chronically sick or disabled.

(6) Nothing in this section or the following provisions of this Act shall require recreational facilities made available by a relevant body to be made available free of charge.

(7) In this section—

“building” includes structure; and

“relevant body” means the Authority, a water undertaker, a sewerage undertaker or an internal drainage board;

and references in this section to a water undertaker or sewerage undertaker or to the functions of such an undertaker shall be construed as if those functions included the management, by the company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether connected with the carrying out of the functions of a water undertaker or sewerage undertaker or not).

9.—(1) Where the Nature Conservancy Council are of the opinion that any area of land—

(a) is of special interest by reason of its flora, fauna or geological or physiological features; and

(b) may at any time be affected by schemes, works, operations or activities of a relevant body or by an authorisation given by the Authority,

the Council shall notify the fact that the land is of special interest for that reason to every relevant body whose works, operations or activities may affect the land or, as the case may be, to the Authority.

(2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—

(a) is land in relation to which the matters for the purposes of which section 8 above has effect are of particular importance; and

(b) may at any time be affected by schemes, works, operations or activities of a relevant body or by an authorisation given by the Authority,

the National Park authority or Broads Authority shall notify the fact that the land is such land, and the reasons why those matters are of particular importance in relation to the land, to every relevant body whose works, operations or activities may affect the land or, as the case may be, to the Authority.

(3) Where a relevant body has received a notification under subsection (1) or (2) above with respect to any land, that body shall consult the notifying body before carrying out, or (in the case of the Authority) carrying out or authorising, any works, operations or activities which appear to that relevant body to be likely—

(a) to destroy or damage any of the flora, fauna, or geological or physiological features by reason of which the land is of special interest; or

(b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.

Environmental
duties with
respect to sites
of special
interest.

(4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to the Nature Conservancy Council, the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.

(5) In this section—

“the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988;

“National Park authority” means a National Park Committee or a joint or special planning board for a National Park; and

“relevant body” has the same meaning as in section 8 above.

Codes of practice with respect to environmental and recreational duties.

10.—(1) The relevant Minister may by order approve any code of practice issued (whether by the relevant Minister or another person) for the purpose of—

(a) giving practical guidance to the Authority or to water undertakers and sewerage undertakers with respect to any of the matters for the purposes of which sections 8 and 9 above have effect; and

(b) promoting what appear to him to be desirable practices by the Authority or such undertakers with respect to those matters,

and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.

(2) A contravention of a code of practice as for the time being approved under this section shall not of itself constitute a contravention of any requirement imposed by section 8 or 9 above or give rise to any criminal or civil liability, but the Secretary of State and the Minister shall each be under a duty to take into account whether there has been or is likely to be any such contravention in determining when and how he should exercise his powers by virtue of this Act in relation to the Authority or any water undertaker or sewerage undertaker.

(3) The power of the relevant Minister to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Except in the case of an order made before the transfer date, the relevant Minister shall not make an order under this section unless he has first consulted the Authority, the Countryside Commission, the Nature Conservancy Council, the Historic Buildings and Monuments Commission for England, the Sports Council, the Sports Council for Wales and such water undertakers, sewerage undertakers and other persons as he considers it appropriate to consult.

(5) In this section “the relevant Minister” means—

(a) in relation to the Authority, the Secretary of State or the Minister; and

(b) in relation to a water undertaker or sewerage undertaker, the Secretary of State.

ANNEX B

SITES OF IMPORTANCE FOR CONSERVATION

Sites of importance for conservation should be taken to include all of the following:

- a) National Parks;
- b) Areas of Outstanding Natural Beauty;
- c) Sites of Special Scientific Interest;
- d) Environmentally Sensitive Areas;
- e) Nature Reserves;
- f) Areas of Special Protection for birds (designated by the Secretary of State under the Wildlife and Countryside Act 1981);
- g) Special Protection Areas (under EC Directive on Conservation of Wild Birds 79/409);
- h) Ramsar sites (under Convention on Wetlands of International Importance, especially as Waterfowl Habitat);
- i) Conservation Areas designated by a local planning authority;
- j) Heritage Coasts;
- k) Listed buildings of historical or architectural interest;
- l) Ancient Monuments;
- m) Sites in respect of which the relevant bodies consider that their proposed operations would have a major environmental impact;