

# THE NATIONAL RIVERS AUTHORITY

THE GOVERNMENT'S POLICY FOR  
A PUBLIC REGULATORY BODY  
IN A PRIVATISED WATER INDUSTRY

DEPARTMENT OF THE  
ENVIRONMENT

MINISTRY OF AGRICULTURE  
FISHERIES AND FOOD

WELSH OFFICE

DECEMBER 1987

## THE NATIONAL RIVERS AUTHORITY

### The Government's Policy for a Public Regulatory Body in a Privatised Water Industry

#### Introduction

1. The Government has considered the responses to the policy and consultation paper on the National Rivers Authority published in July 1987. Nearly 350 responses were received, and there was widespread welcome for the proposal for a national body which will retain the water authorities' regulatory and river basin functions in the public sector after the privatisation of the water authorities' main functions. A summary of the main issues raised in the consultation is at Annex A.

2. On the basis of this response, the Government reaffirms its commitment to the creation of a National Rivers Authority. This will be done in the same Bill which will transfer the utility functions of the ten water authorities in England and Wales, that is water supply and sewerage, to utility companies constituted as public limited companies under the Companies Act 1985. These will subsequently be offered for sale to private investors.

ENVIRONMENT AGENCY



099528

National Rivers Authority  
Information Centre  
Head Office

Class No .....

Accession No ACBY/L .....

3. It is the Government's view that the regulatory functions of the water authorities must remain in the public sector, and that the broader range of river functions is inextricably linked with regulation. These functions - water resource planning and control, land drainage and flood protection, the protection of the water environment, and the improvement and development of fisheries, and navigation where it applies - are carried out not simply for the benefit of individual customers but to meet more general purposes, including the protection of the environment. These activities cannot all be financed exclusively from charges; at present, they are supported by the authorities' environmental services charge, and - in the case of land drainage - by precepts on local authorities and capital grants from central government. The NRA will be encouraged to recover as much of its costs as possible directly from users, but it will continue to depend to a significant extent on support from public funds. An estimate of the expenditure of the NRA is given in Annex B.

4. It is therefore necessary that these functions should be the responsibility of a public body, so constituted that it can be subject to Governmental policy control, and answerable to Ministers, for the way they are carried out. They will become the responsibility of the National Rivers Authority.

5. The transfer of the statutory functions of river management to the NRA means that the NRA must be fully accountable for these functions. It must have responsibility for deciding what work is done, and the power to ensure that the arrangements satisfy the requirements of value for money in the public sector. It would not therefore meet the requirements of public accountability for the NRA to be wholly dependent on the privatised utility companies for the execution of these functions as part of their conditions of appointment or licence. This rules out the possibility of an NRA limited to a purely regulatory or auditing role.

6. However the Government does not consider it necessary for the work involved always to be carried out by the NRA's own employees. On the contrary, the Government is committed to the principle that public bodies should pursue efficiency by the fullest possible use of competitive tendering and is confident that there is scope for the NRA to contract out a significant amount of its operational work. The provisions of such contracts are likely to vary depending on the nature of the work, and the market conditions relevant to contracting for the type of work. For example, the effects on a contractor of losing a particular contract must be a consideration in his acceptance of whatever terms of contract may be on offer. Equally, the NRA cannot be expected to agree terms which permit the contractor to get away with poor performance. The general principle is that the NRA must be in a position to specify what it needs to be done, and there

must be appropriate provision for variations to meet changing circumstances. To that end, contracts will need to be awarded on a competitive basis, as the principle of competitive tendering is an important means of promoting efficiency in public bodies.

7. It will, of course, be open to the privatised utility companies to compete for such work if they wish. But, like any other accountable public sector body, the NRA must be free to employ the contractor who provides the best value for money for the work it requires to be done. The Government also recognises that the way some functions are presently organised in some regions may mean that it is not possible for the work to be offered on a competitive basis immediately the NRA is formed. In these circumstances, the NRA may enter into special arrangements for the carrying out of the work by the privatised utility companies. The period of contracts in these circumstances would vary according to the type of contract, but would need to take full account of the interests of the contractor, and the achievement of value for money. For these reasons there will initially be no absolute requirement on the NRA to contract out all operational aspects of all the functions for which it will be responsible. The Government will however expect as full as possible a use of contracting out from an early date in those areas where no risk to the independence of the NRA arises, and where a range of potential alternative contractors already exists. The NRA will be expected to continue to make progress as

the potential scope for contracting out increases, and the Government will have the right to require contracting out if it is dissatisfied with the rate of progress in any area.

8. The fact that the precise arrangements for contracting out work may vary from function to function and region to region mean that it is not possible to give any precise estimate of the number of staff who will be directly employed by the NRA until further detailed analysis has been done in each region. But the Government is anxious to ensure, through contracting out and other means of securing efficiency, that the NRA is no larger than necessary to ensure the efficient and effective execution of its statutory duties.

#### **NRA Organisation**

9. The NRA will be a completely separate organisation from the Director General of Water Services, as the NRA's responsibilities are related to environmental matters and involve controls over all who use rivers and other natural waters, whereas the Director-General is concerned with economic regulation of the utility PLCs. The NRA and the utility PLCs will become statutorily responsible for their respective functions on the same day, and flotations of the PLCs will follow.

10. The NRA's status will be as a non-departmental public body, and it will have a Board of up to 12 members, of whom two will be appointed by the Minister of Agriculture, Fisheries and Food, and one by the Secretary of State for Wales. The Chairman and the remaining members will be appointed by the Secretary of State for the Environment. The intention will be to appoint members with knowledge relevant to the functions of the NRA.

11. As a national body covering England and Wales, the NRA will have a head office, with a Chief Executive and senior officers with responsibility for the NRA's main functions, and personnel, finance, legal and other support services. This will inevitably be the forum for negotiation and discussion with Government Departments, the EC, and for dealing with a wide variety of other national interests.

12. But the main activities of the NRA will take place in the regions, as it will inherit from the existing water authorities responsibilities for river basin management of individual catchments. The structure of the NRA will reflect this. It will have the same regional boundaries as the existing regional water authorities, based on river catchments, and the regional management structure, under a regional manager in each region, will be strong enough to deal with the range and magnitude of activity in each region, taking full account of the needs of all river interests. Many of the NRA's staff at the regional level

will come from the existing staff of water authorities, already working on activities related to what will become the NRA's functions.

13. The consultation paper acknowledged the need for the retention of specialist committees at a local level. On land drainage, the present Regional Land Drainage Committees will remain as committees reporting to the NRA, though renamed Regional Flood Defence Committees to reflect their present emphasis on flood protection. In addition, the Regional Fisheries Advisory Committees will continue in their present form, though they will be appointed by and report to the NRA.

14. The consultation paper proposed that the regional recreation and conservation committees, which presently report to the nine English water authorities, should in future be the responsibility of the NRA, with the NRA making appointments to the committees. However, in response to concern about the importance of taking account of local river interests in regional decision taking, the Government proposes to expand each RRCC into a wider committee, the regional river advisory committee (RRAC), which would represent the main interests concerned in both using and conserving the rivers, ie conservation, recreation, industry (including the water supply industry), agriculture and local government. These committees, which would be appointed by the NRA, would advise the NRA on their river basin management functions. They would typically have between 15 and 25 members.



The RRACs would be responsible for advising on all aspects of river basin management, but would have no direct involvement in the handling of the regulatory responsibilities of the NRA. Apart from the RLDCs, which would continue in essentially their present form, and the RFACs, both of which would retain their present roles in their own areas of responsibility, the new RRACs would be the major focus for consultation by the NRA about matters affecting river catchments at the regional level. All major river interests would be represented on the RRACs. Because of the RRACs' concern for water-based recreation, they will be the appropriate body to continue the RRCCs' role in respect of recreation on reservoir and the other recreational resources of the utility PLCs.

15. In Wales, the recreation and conservation functions are currently combined with the customer service functions by the local consumer advisory committees, but a new RRAC will be established along the lines of the RRACs in England. Response to the consultation paper did not indicate a need for a separate NRA in Wales. Nevertheless, a special committee will be formed to advise the Secretary of State for Wales on Welsh issues. This committee will be chaired by the Secretary of State for Wales' appointee to the NRA, and its membership will include the chairmen of the RRAC, the RFAC and the RFDC.

## Water resources

16. Water resources, and planning that adequate supplies of water are available, is a central function of the utility PLCs and the NRA. It will be for the utility companies to forecast demand and take the necessary steps to ensure that adequate supplies are available for their customers. The NRA will have the responsibility for safeguarding water resources for public water supply and all other uses. An important part of this role is the licensing of abstractions and impoundments. The existing licensing framework contained in the Water Resources Act 1963 will be retained, including the right of applicants to appeal to the Secretary of State against the NRA's decisions. It will be a statutory requirement for the NRA to consult the privatised utilities and statutory water companies about the applications it receives. In determining applications, the NRA will be required to have particular regard to the duty that water undertakers have to provide public water supplies.

17. The main assets involved in providing water resources are reservoirs. The water authorities' existing reservoirs were built primarily for public water supply, even in cases where they regulate flows to support abstractions further downstream. As proposed in the July paper, ownership of existing reservoirs will be transferred to the utilities. In cases such as regulating reservoirs where the public interest needs to be safeguarded by means of agreements between the NRA and the utilities, a basis

for payment is still to be worked out. Subject to that, and the preparation of suitable agreements, it should generally be possible to avoid the need for the NRA to take existing reservoirs into ownership.

18. The NRA will pay the utilities for the service they provide in regulating river flows, and will recover these and other water resource costs through abstraction charges. Authorities' existing charging schemes have been devised to allocate costs appropriately between the water supply side of each authority and all other abstractors. They will continue in operation while the present water authorities have statutory responsibility for water resources. Any review of such schemes will be a matter for the NRA, once it has been established.

19. The NRA will generally look to the utilities and other abstractors, to create the new sources which they need. In such cases, it may be that the general needs of the river make it necessary for the NRA to require a larger reservoir than planned. In such a case, the utility would be reimbursed for this either by a direct contribution by the NRA, or through the charge it paid the utility for operating the reservoir. As the utility would effectively be meeting a large part of the NRA's costs through abstraction charges, this will provide appropriate incentives to ensure that costs are minimised. Given its overall responsibility for ensuring that adequate resources are available, it will be necessary for the NRA to be given the

powers necessary to enable it to build a reservoir itself, though no circumstances are currently envisaged where it would be likely to do so. In any event, no major new resource projects are planned before the end of the century.

### **Flood Defence**

20. The NRA will inherit the land drainage and flood protection functions which the water authorities perform under the Land Drainage Act 1976. In this capacity, it will be answerable in England to the Minister of Agriculture Fisheries and Food and in Wales to the Secretary of State for Wales. This includes responsibility for flood defences in some 40,000 kms of main rivers and defences against tidal flooding.

21. Water authorities also have responsibility for supervising the activities of other public bodies with drainage responsibilities including local authorities who have permissive powers to carry out works in non-main rivers and internal drainage boards which are constituted as public bodies under land drainage legislation. All water authorities have precepting powers at a local level, and are eligible for Exchequer grant in support of capital projects.

22. The NRA will discharge these functions through regional flood defence committees (RFDCs). These will be based on the same areas as the existing regional land drainage committees, and will be constituted on similar lines. Members will, however, be drawn from a wider field than at present, reflecting the importance of urban flood defence and of environmental considerations.

23. RFDCs will assess the needs of their area, decide on a medium term and an annual programme of capital works and maintenance, determine the sums needed, and make recommendations about the precepts to be raised to the NRA, who will be responsible for these functions, and can decide on the best methods of discharging these statutory duties. As now, substantial use will be made of outside contractors for capital works, and the NRA will also be encouraged to contract out maintenance work. As a principle for flood defence and other purposes, all river-operational assets at present owned by water authorities will be vested in the NRA. This is necessary to ensure that the NRA is properly accountable for its statutory duties. The assets include flood barriers, sluices, weirs, pumping stations and river banks and sea defences that water authorities currently own. The Government recognises that in practice some assets and facilities serve several purposes, but local arrangements for the operation of these assets should be able to take account of this under NRA ownership.

## Pollution Control

24. The NRA will be the regulating authority with the central responsibility for protecting and enhancing inland, coastal and underground waters, and it will have the necessary powers and resources for these purposes. Determining the quality objectives and standards to which waters are maintained and improved will be the responsibility of Ministers but in doing so they will draw upon the assistance and advice of the Authority. The NRA will be required to have regard to these quality objectives and standards in discharging all its functions and to achieve the objectives so far as it can through the exercise of its powers. It will take over the water authorities' present responsibilities for issuing discharge consents and monitoring observance of them by industrial and other dischargers and for following up and avoiding pollution from all sources. It will also take on the Governmental responsibility for consenting water authorities' own discharges. The NRA will have new powers to charge for pollution control and monitoring.

25. In the control of pollution, as in the control of abstractions it would be unacceptable from the point of view of other interests if a privately owned company had a prerogative in granting licences and consents or the responsibility for policing work and preventing if necessary those responsible for unauthorised incidents causing damage to a water resource.

26. However, even in the pollution control function, the Government believe there is scope for contractual arrangements with the private sector. The collection and analysis of water samples or the processing of water monitoring data can be contracted to any firm that can offer these services competitively and reliably, provided that the pollution control authority - the NRA - is in a position to direct these activities from day to day and to ensure that they are seen publicly to be carried out impartially. The real business of protecting the water environment is intimately bound up with other aspects of river management and, in lowland areas, especially with flood protection and land drainage. All these activities need to be carried out under the same direction in the public sector.

27. The respective roles of the NRA and Her Majesty's Inspectorate of Pollution (HMIP) were described in the policy and consultation paper. They are determined by the basic principle that the NRA is concerned with the water environment, whereas HMIP is concerned with the best practicable means of dealing with discharges from industrial processes by all disposal routes and by alternative methods. The details of the distinctive roles of NRA and HMIP and the arrangements for relationships between them will be subject to some further consultation in the New Year. The NRA and HMIP will be expected to collaborate closely at the

casework level to prevent wasteful and burdensome duplication in the practical application of the regulatory regime to individual businesses.

### **Hydrometric Network**

28. The hydrometric network, measuring rainfall, groundwater and river flows, is needed both by the NRA and the utilities. It is important for water resource planning, land drainage and pollution control. At the moment, the systems in many authorities are highly integrated between different functions, and the aim in separating off the NRA functions will be to avoid unnecessary duplication. It is proposed that wherever possible, the utilities and the NRA should exchange information which they each require to collect for their own purposes anyway. Other information required by the NRA could be obtained directly, or by other agents, including the utilities, on its behalf. Detailed arrangements will need to be decided in the light of local circumstances.

### **Fisheries**

29. As was made clear in the July paper, the NRA will take over the responsibilities of the water authorities under the Salmon and Freshwater Fisheries Act 1975 for maintaining, improving and



developing fisheries, for regulating fishing, and for consulting affected interests about the manner in which they discharge these duties. The NRA will be charged with improving sport fisheries, both by enhancing water quality and the river environment, and by positive fisheries management policies, including a strong attack on illegal fishing. The regional fisheries advisory committees (RFACs) will be maintained as committees of the NRA, and will continue to play a valuable role in advising regional management on these issues. This advisory activity will be co-ordinated at national level by one of the members of the NRA appointed by the Minister of Agriculture Fisheries and Food.

#### **Conservation, Recreation and Navigation**

30. The NRA will have the same duty as the water authorities to have regard to the conservation of the natural environment and to exercise their functions so as to further conservation. They will also have a statutory duty to make land and any waters in their ownership available for recreation, so far as is reasonably practical. The policy and consultation paper published in July made clear the importance the Government attaches to these duties, and this has been welcomed.

31. Navigation is also an important operational function, and the NRA will take over the responsibilities for navigation which certain water authorities have. There can be a close connection

between the maintenance of rivers and other waterways for navigation and their maintenance and operation as land drainage channels.

## Finances

32. The NRA will have essentially the same sources of income as the water authorities for the services it provides. The exceptions are its new power to recover from dischargers the costs of administering pollution control and enforcement and the fact that the NRA will not levy an environmental services charge. It will be encouraged to seek the maximum possible recovery of its costs from direct charges such as licences. Additional support will be made available to the NRA through Exchequer grant-in-aid, but the present environmental services charge will cease. The environmental services for which the NRA is unable to recover its costs directly are provided for the benefit of the community as a whole. It is right, therefore, that they should be met from central funds, rather than covered by a charge levied on the utilities and ultimately their customers. It is anticipated that the charging principles currently embodied in s.30 of the Water Act 1973 will apply to the NRA as well as to the utilities. The Government will ensure that the NRA, while efficiently run, has the resources necessary for its task. More details of expenditure on the NRA's activities is given in Annex B.

### **NRA's employment policies**

33. The employment policies of the NRA will be a matter for it to determine, both at national and regional levels. These can be developed only after the NRA has been established, and after appropriate consultation. In the first instance, all existing water employees who transfer to work for the NRA at the same level will be employed on the terms and conditions in their contracts at the time of transfer. Other appointees, whatever their present employment, will be offered terms and conditions based on those current at the time of transfer in the water industry.

34. On pensions, it will also be for the National Rivers Authority to determine an appropriate scheme. But, for existing employees of water authorities who are in the Local Government Superannuation Scheme on the date of transfer to the NRA, the Government can give an assurance that any new scheme that may be introduced will be an option, and, on transfer, such employees will be able to remain in a scheme with the same benefits, and requiring the same contribution, as the Local Government Superannuation Scheme.

## The next steps

35. The functions of the National Rivers Authority are at present functions of the Water Authorities. The aim is to constitute the NRA immediately after the main legislation has received Royal Assent, and to provide for the transfer of these functions at the earliest possible date. The legislation will also make provision for the transfer at that date of staff and of assets appertaining to these functions.

36. To meet that timing, substantial preparations must be made, starting as soon as possible. The Public Utility Transfers and Water Charges Bill, currently before Parliament, will give water authorities express powers to prepare themselves for privatisation and restructuring.

37. Each Water Authority will be required to draw up proposals for a scheme of organisation on the basis of guidelines issued by the Government, under which the authorities' functions will be carried on until vesting day, when the NRA and utility PLCs assume their functions. Each authority's scheme of organisation should anticipate, as envisaged in the Public Utility Transfers and Water Charges Bill, the arrangements which will pertain after vesting day. So it must provide, if necessary by stages, for the formation of a viable regional component of the NRA by vesting

day. The intention is that the NRA's regional structure should correspond to the regional boundaries of the present Water Authorities.

38. Each authority will be asked to submit its scheme of organisation to the Secretary of State within a month of Royal Assent to the Public Utility Transfers and Water Charges Bill.

39. The final decision upon organisation must of course rest with the Government, and in order to advise them on the appropriateness of each water authority's proposals for reorganisation, the Secretary of State for the Environment, together with the Minister of Agriculture Fisheries and Food, and the Secretary of State for Wales, will be appointing an advisory committee, called the National Rivers Authority Advisory Committee. It will have the following terms of reference:

"To advise the Secretaries of State and the Minister of Agriculture, Fisheries and Food on the implications for the water authorities of the reorganisation needed to provide a separate organisational structure for their water supply and sewerage functions, and the functions that will be performed by the new National Rivers Authority; and to advise them on the acceptability of the scheme proposed by each Water Authority, and to ensure that it will enable the NRA adequately to fulfil the tasks proposed to be allocated to it."

40. Subject to guidelines issued by Ministers, the National Rivers Authority Advisory Committee will scrutinise the proposals from each water authority, and advise on their acceptability. The differences in the character and topography of the regions mean that it is not expected that the authorities will necessarily follow a uniform pattern. Nevertheless, the ten schemes of organisation must be compatible, and the NRAAC with its preparatory team will report to Ministers on whether the regional schemes taken together will result in a public body which, managed from a small head office, is effective from the outset in all its functions.

41. Each regional scheme of organisation will provide for a separation of the management and professional structure for the NRA functions from that which will run the functions and activities eventually vested in the utility companies. It is appreciated that this will be a substantial reorganisation, affecting many employees in water authorities. Alterations will be required to job definitions, and accommodation and facilities for the NRA functions will need to be identified, and activities will need to be relocated in all regions. Assets and facilities will need to be allocated either to the utility PLC or to the NRA, including new arrangements for common services for both the PLC and the NRA. Each authority will be expected to consult its employees and its trade unions, in order to minimise any problems which could arise.

## ANNEX A +

### The National Rivers Authority

#### Responses to consultation paper

1. The deadline for responses to the paper outlining the Government's proposals for a National Rivers Authority published in mid-July was mid-October. In fact, comments continued to be submitted well beyond this date. By the end of November, a total of 349 responses had been received. Of these, 179 supported the establishment of a National Rivers Authority, and 39 opposed it; the remainder (131) expressed no view for or against the National Rivers Authority, but offered comment on aspects of its operation. Copies have been laid in both Houses of Parliament of responses by all those who have agreed that their comments may be made public.

2. The issue of most concern to respondents was the presence which the Authority would have in the river-basins under its control. Interest centred on the nature of the Authority's regional organisation, on the relationship between the Authority's centre and its regional elements, and on the relationship between the regional elements and river-basin users. In

particular, many commentators were concerned with the arrangements to formalise the representation of users' interests in the new Authority's regions.

3. Respondents also commented extensively on the degree to which the new Authority should handle the operational aspects of the functions which it will take over from the water authorities. The July paper raised the possibility that the Authority might make contractual arrangements with other bodies on operational matters, and this drew a range of responses. There was general recognition that any such arrangements must not impair the impartiality of the regulatory decisions which the Authority would have to make. Some respondents argued that this precluded any contracting-out of work, but a greater number accepted that the Authority could appropriately make use of third parties at least in non-regulatory areas of work.

4. A third major theme for respondents was the need for clarity in the division of responsibilities between the regulatory bodies to be concerned with water matters. There was little dissent from the view that the National Rivers Authority would have a distinct role, and should therefore be a separate body, from the Office of the Director-General of Water Services (OFWAT), which is to be set up to deal with the economic regulation of the privatised water utilities. The point was however made that there would need to be co-ordination of the different types of regulatory impact, since the NRA's decisions could well have



significant cost implications for the utilities which should be borne in mind by OFWAT in its decisions on the charges made by the utilities. There was less of a consensus about the separation between the NRA and Her Majesty's Inspectorate of Pollution, however, and concern to avoid overlapping responsibilities expressed itself particularly strongly over the demarcation between these two bodies.

5. Much informed comment was also received about detailed aspects of the performance of the different functions to be exercised by the new Authority. It was the major institutional questions described above, however, which figured most in responses.

6. One other issue raised was whether the statutory water company model would be a more appropriate model for the utility companies than the PLC model. The Government recognises that the statutory water companies have a long tradition of providing service to the public to a high professional standard. At the same time the statutory water company model contains too little incentive to efficiency, and it allows companies to charge customers whatever is necessary to pay their dividends after covering whatever costs they may incur. Under the PLC model, the discipline of providing dividends to shareholders within a price controlled regime is a permanent stimulus to the most efficient use of resources. The Government considers that, with the

appropriate safeguards it will be proposing, the objective of ensuring that standards of service to customers are adequately protected, can be fully secured under the PLC model as proposed.

## ANNEX B

### NATIONAL RIVERS AUTHORITY: FINANCES

1. The following is an estimate of the NRA's annual expenditure on the functions transferred to it from the water authorities.

	£M		
	Expenditure	Income	Deficit
Water resources	114.3	114.3	-
Pollution alleviation	4.4	-	4.4
Water quality regulation	18.1	0.3	17.8
Recreation and amenity	6.9	2.8	4.1
Fisheries	8.6	4.4	4.2
Navigation	4.7	1.8	2.9
Flood Defence/land drainage	89.7	89.7	-

The figures are based on the authorities' 1985/86 accounts.

2. These are not new costs, but expenditure that will in future be carried out by the NRA rather than the water authorities. At present, the deficit is met from the environmental services charge, levied by water authorities on rate-payers within their

area. In future, income from direct charges will be increased, with additional support through Exchequer grant-in-aid to the NRA.

3. The figures include an allocation for overheads. Some additional costs may arise from loss of economies of scale enjoyed by the water authorities and the need to set up a small central office for the NRA. On the other hand, there is likely to be scope for reducing costs by means of contracting out.