Consultation on proposed changes to powers to restrict non-essential uses of water

March 2007
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Executive Summary

This consultation document, supported by a partial Regulatory Impact Assessment\(^1\) (Annex A), seeks views from all stakeholders with an interest in the scope of hosepipe bans and drought orders which restrict non-essential uses of water.

The 2004-06 drought in south-east England focused attention on the outdated scope of both water companies\(^2\) powers to impose hosepipe bans and on the Secretary of State’s powers to extend restrictions on non-essential uses of water through drought orders.

At a meeting with water companies and their regulators in June 2006 the Secretary of State for Environment, Food and Rural Affairs undertook to review the scope of the legislative framework relating to hosepipe bans. This review has also considered the scope of non-essential uses of water set out in the Drought Direction 1991 which can be invoked through a drought order made by the Secretary of State and/or the National Assembly for Wales\(^3\), as appropriate, on application by a water company.

The proposals set out in this consultation document are intended to achieve the following objectives:

- protection of water resources at times of shortage to enable essential water supplies for public health to be maintained;
- expansion of the range of discretionary uses of water which water companies may temporarily restrict or prohibit, not exclusively limited to water drawn through hosepipes;
- achievement of a broad demarcation between the domestic and commercial/public sectors where the modernised control over discretionary uses will apply primarily, but not exclusively, to the domestic sector, leaving the application of restrictions to the commercial and public sectors to be mainly determined by the Secretary of State/National Assembly for Wales through the drought order machinery;

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\(^1\) A Regulatory Impact Assessment (RIA) is an analysis of the likely impact of a range of options for implementing a policy change. A partial RIA contains details of policy options and the costs and benefits of these. After consultation this can be refined to produce a full RIA.

\(^2\) Water company or company in this document refers to a company that has been appointed to be the water undertaker for an area of England and Wales under section 6 of the Water Industry Act 1991.

\(^3\) On the coming into force of the Government of Wales Act 2006, the functions of the National Assembly for Wales which currently enable it to make Drought Orders will be transferred to the Welsh Ministers.
• clarification of the flexibility available to water companies in exercising their extended powers to prohibit or restrict discretionary uses of water in the legislation governing these powers; and
• production by the water industry of a code of practice which will facilitate a consistent approach by water companies over the use of their extended powers by water companies, addressing in particular the way in which the flexibility will be exercised.

This consultation document seeks your views on our proposals to modernise the scope of measures which can be taken to restrict discretionary and non-essential uses of water when water resources are in short supply.

Consultation questions

Consultation questions are asked throughout this document. To aid you in responding, a complete list of the questions asked is presented below, referenced by the section of this document in which it appears.

Q1 Have you any comments on our proposal to give the Secretary of State/National Assembly for Wales the power to prescribe further uses which could be prohibited or restricted under section 76 of the Water Industry Act 1991 by regulations? [4.1.3]

Q2 The restriction on the filling of domestic swimming pools would also apply to pools built within the domestic residence. Is there any justification to exclude these? [4.1.4(iv)]

Q3 A volumetric threshold could be set for paddling pools, below which they would be exempt. This could be set in an industry code of practice (see Part 5) or in legislation. We believe, though, that any threshold would send a misleading message about the need to conserve water. What are your views? [4.1.4(iv)]

Q4 We would welcome your views and comments on the range of uses we propose becoming subject to the new discretionary use ban powers. [4.1.4(vi)]

Q5 We would welcome your views on extending the publicity requirements to include website notices. [4.3.1]

Q6 Do you agree with this broad division of control over water use restrictions? [5.1.1]

Q7 Have you any views on these proposed modifications to the provisions currently in the Drought Direction? [5.1.6]

Q8 We invite views on whether the use of hosepipes to water gardens, lawns, landscaped areas and the operation of ornamental fountains and cascades, by
public authorities should be brought within the scope of the proposed discretionary use ban power instead of remaining a second stage measure to be addressed through drought orders invoking the Drought Direction. If so, should this extend beyond the public sector to all other sectors? [5.2.1(iii)]

Q9 Have you any evidence of ornamental fountains that do not recycle their own water supply? [5.2.1(iv)]

Q10 Do water companies consider the retention of this provision to be a useful way to enforce against wasteful or out of date fittings, in addition to their powers in section 75 of the Water Industry Act 1991? [5.2.1(v)]

Q11 It would be reasonable to set a volumetric level below which storage tanks would be exempt from control. What would be a reasonable level? [5.3.1(iii)]

Q12 We would welcome your views and comments on the additional water uses which we propose should be brought within the scope of the Drought Direction. [5.3.1(iii)]

Q13 Have you any comments on the extent of the flexibility of the discretionary use ban powers proposed? [6.1.4]

Q14 Age alone is not an indicator of physical fitness. But do you consider that there should be an age specified beyond which an individual should be exempt from restrictions on the use of hosepipes for garden watering? If so, what age would you consider to be reasonable? [6.2.2]

Q15 We would welcome your views on a static hosepipe concession for filling watering cans for elderly or disabled people. Have you other suggestions for helping elderly or disabled people continue with garden watering during drought? [6.2.3]

Q16 What are your views on the concept of time-based restrictions? [6.2.6]

Q17 Do you support the production of a water industry code of practice as outlined above? Are there other matters such a code could usefully address? [6.2.8]

Q18 Are you able to provide any evidence of business cost impacts arising from water use restrictions during the 2004-06 drought in south-east England? [RIA 4.12]

Q19 Are you able to provide any quantified assessment of the likely future impact for businesses of the proposed widened scope for water use restrictions? [RIA 4.12]
Q20 In addition to the specific nature of questions 18 and 19, do you have any other comments about the partial Regulatory Impact Assessment which examines the costs and benefits of the new discretionary use ban powers and an updated Drought Direction? [RIA 7.2]
Part 1: Introduction

1.1 Scope of consultation and Regulatory Impact Assessment

1.1.1 This consultation document and accompanying partial Regulatory Impact Assessment (RIA) set out the views of central Government and the Welsh Assembly Government. As these views are shared, each Government is referred to in this paper as "the Government". The functions exercisable by the Secretary of State under sections 73 to 78 of the Water Resources Act 1991 in respect of drought orders are now exercisable by the National Assembly of Wales in relation to Wales.\(^4\)

1.1.2 Unless stated otherwise, any reference to drought orders in this document is to ordinary drought orders.

1.2 The purpose of this consultation exercise

1.2.1 This consultation document and partial Regulatory Impact Assessment (Annex A) form the core part of a consultation exercise which aims to seek views from all stakeholders with an interest in the modernisation of the scope of hosepipe bans and drought orders which restrict discretionary and non-essential uses of water. The proposals in this consultation document apply to England and Wales only.

1.2.2 The Drought Direction 1991 sets out the uses of water which can be restricted or prohibited under drought order powers. Updating and modernisation of the Drought Direction 1991 is necessary in its own right in addition to being consequential on the changes proposed to the hosepipe ban powers.

1.3 What we are proposing to do

1.3.1 The Government will need to amend primary legislation to make changes to the scope of hosepipe bans. To do this it will need to find a suitable legislative opportunity in the Parliamentary timetable. The Drought Direction 1991 can be revised by the Secretary of State/National Assembly for Wales under existing powers.\(^5\)

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\(^4\) The National Assembly of Wales (Transfer of Functions) Order 1999 (SI 1999/672) (as amended).

\(^5\) On the coming into force of the Government of Wales Act 2006, the functions of the National Assembly for Wales which currently enable it to make the proposed Direction will be transferred to the Welsh Ministers. The proposed Direction is likely to be made after these powers have been transferred, and if this proves to be the case, will be made by the Welsh Ministers, rather than by the National Assembly for Wales.
1.3.2 Unless an early opportunity becomes available to amend the hosepipe ban powers the Government intends to revise the Drought Direction 1991 in advance of those powers. Widening the scope of the existing Drought Direction would provide water companies with an opportunity to manage greater water savings in the short-term if the impact of a new drought warranted wider drought order restrictions on non-essential uses of water in the period before the hosepipe ban powers had been amended. A further Drought Direction would then be required to re-align the division of water uses as soon as the new primary legislation was in force.

1.4 Devolution

1.4.1 The hosepipe ban legislation is contained in section 76 of the Water Industry Act 1991 (see Annex D) and covers both England and Wales. We would need to amend primary legislation to make changes to the scope of hosepipe bans.

1.4.2 The power to update the Drought Direction 1991 is devolved to the National Assembly for Wales in relation to Wales. The National Assembly could update the Drought Direction 1991 for Wales only. The Government would prefer to revise the Drought Direction jointly rather than separately to avoid one set of provisions applying in Wales and another applying in England, for those water companies that supply water in both countries.

1.5 Contributing to the consultation

1.5.1 A list of the stakeholder organisations that we have approached directly for views is included in Annex B. This is not an exclusive list and we would welcome views from all interested parties.

1.5.2 As water consumers we may all, at one time or another, be affected by hosepipe bans or drought orders which restrict use of water supplied by water companies. The restrictions affect some businesses as well as domestic users of water. We are consulting with many of those affected through the relevant representative councils, federations and associations that have been identified. Please inform Dawn Instone, contact details provided in paragraph 1.5.7-8, if there are any other interested parties that are not already listed, that you feel should be consulted.

1.5.3 Your contributions and comments are sought and all responses will be considered in updating the hosepipe ban powers and revising the Drought Direction.

1.5.4 You are welcome to comment on all aspects of our proposals but there are some specific issues on which we would particularly value your input. These
are presented as specific questions throughout the document which are also listed after the Executive Summary.

1.5.5 The partial Regulatory Impact Assessment is included at Annex A and your views are sought on this.

1.5.6 This consultation follows central Government’s consultation criteria, which are reproduced in Annex C.

1.5.7 The closing date for written responses to this consultation is **15 June 2007**. If you will have difficulties in meeting this deadline please contact either Dawn Instone at Defra (tel no. 0207 082 8353) or Sue Jenkins at the Welsh Assembly Government (tel no. 02920 825509), who will do their best to accommodate a short extension to the deadline.

1.5.8 Responses to this consultation should be sent by **15 June 2007** to the following email address:  
waterrestrictions.consultation@defra.gsi.gov.uk Email responses are preferred.

Responses can also be sent by post to:

Dawn Instone, Defra, Room 304, 55 Whitehall, c/o 3-8 Whitehall Place, London SW1A 2HH

1.5.9 Respondents in Wales are asked to send their response to the email address water@wales.gsi.gov.uk and to copy their responses to the Defra email address above.

Or by post to:

Sue Jenkins, Environment Protection and Quality Division, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ

and to send a copy of their response to the Defra postal address above.

**1.6 Confidentiality**

1.6.1 In line with Defra’s and the Welsh Assembly’s policy of openness, at the end of the consultation period copies of the responses may be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. The information they contain may also be published in a summary of responses.

1.6.2 If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT
system in email responses will not be treated as such a request. You should also be aware that there may be circumstances in which Defra or the Welsh Assembly will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.

1.6.3 The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or email requests (020 7238 6575, defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the library 24 hours’ notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

1.7 Comments about this consultation process

1.7.1 Any comments or complaints about the consultation process itself should be addressed to consultation.coordinator@defra.gsi.gov.uk

1.8 Next steps

1.8.1 Following the consultation period there will be a Government response to consultation feedback which will be published on the Defra website: www.defra.gov.uk A link will also be placed on the Welsh Assembly Government website: www.wales.gov.uk

1.8.2 The Government is unable to specify a precise timescale for when the modernised hosepipe ban powers and the revised Drought Direction will be in place. On the former, the timing will be dependent on finding a suitable legislative opportunity in the Parliamentary timetable. Revisions to the Drought Direction can be made at any time by the Secretary of State or the National Assembly for Wales. The existing Drought Direction is a joint England and Wales Direction that applies equally in both countries. The intention is that a revised Direction will also be made jointly by the Secretary of State and the National Assembly for Wales.
Part 2 – Drought planning

2.1 Government’s role

2.1.1 Defra and the Welsh Assembly Government have policy responsibility for water resources in England and Wales and ensure that the Environment Agency fulfils its duty to secure the proper use of water resources. This responsibility extends to ensuring that the legislation governing water resources is fit for purpose.

2.1.2 In times of drought, the Government’s role is to work closely with the Environment Agency and water companies, to ensure that the public water supply is maintained and that the environment does not suffer unduly. The Government’s formal role when there is an actual or threatened deficiency in public water supplies caused by an exceptional shortage of rain is to deal with drought order applications.

2.1.3 The circumstances in which water companies may exercise their powers in the Water Industry Act 1991 to impose temporary hosepipe restrictions (see Annex D) are not expressly linked to drought. Before imposing a temporary hosepipe ban, a water company has to be satisfied that a serious deficiency of water available for distribution exists or is threatened. With drought orders and drought permits there is the additional statutory criterion that the actual or threatened deficiency is attributable to an exceptional shortage of rain. That said, hosepipe bans are almost exclusively used as a drought planning tool.

2.1.4 The 2004-06 drought in south-east England led to widespread hosepipe bans by southern water companies, affecting more than 13 million people, and the granting of drought order powers to restrict further non-essential uses of water, the first such orders in a decade. As such it drew attention to the limited scope of the hosepipe ban powers and how they did not reflect contemporary uses of water. The changes to the hosepipe ban powers we propose will also impact on the scope of the Drought Direction 1991 which determines uses of water that can be restricted or curtailed through drought orders.

2.2 Water companies’ water supply duties

2.2.1 Water companies’ water supply duties are set out in the Water Industry Act 1991. The Act distinguishes between the domestic supply duty and supplies for non-domestic purposes. The meaning of “domestic purposes” in relation to a supply of water to any premises is defined in Section 218 as water used for drinking, washing, cooking, central heating or sanitary purposes. Domestic purposes also include those outside the house, including the washing of vehicles and the watering of gardens, which are connected with the occupation of the house and which may be satisfied by water drawn from a tap inside the house and without the use of a hosepipe or similar apparatus.
2.2.2 The domestic supply duty is therefore to provide a supply of water sufficient for domestic purposes and to maintain the connection between the water company’s main and the premises’ supply pipe. Under Section 54 of the 1991 Act the domestic supply duty is owed to the consumer. A water company’s domestic supply duty does not extend to providing supplies for domestic use that do not fall within the definition of domestic purposes, whether drawn from a hosepipe or through other means. In practice, though, the water companies aim to meet all domestic demands whenever they are able.

2.2.3 The public water supply, treated to very high drinking water standards, is provided predominantly for health and hygiene purposes but it is generally accepted that this water may also be used for other purposes. Not all domestic purposes require high quality water and over a third of household water is used to flush the toilet. Water companies’ infrastructure systems are not designed, though, to cope with unlimited demand for unlimited purposes and thus cannot always accommodate peaks of demand during times of water stress. Such peaks of demand can literally drain the supply system and cause temporary supply interruptions.

2.2.4 Whilst there is no technological barrier to having a public water supply system which delivers all demands for water under all circumstances, the cost to consumers would be excessive and there may be significant implications for the water dependent environment. Periodic restrictions on use of water are, therefore, an integral part of water resource planning by water companies. Some water companies’ plans envisage hosepipe bans at a frequency of 1 in 10 years, although most companies plan for them at much less frequent intervals.

2.2.5 Similarly, some companies plan for the use of drought order powers affecting water use once in 20 years, whilst most companies plan for the use of such powers no more frequently than once in 40 years or longer. We expect the companies to propose levels of service that their customers can expect to receive when they consult on their draft Water Resources Management Plans in 2008. When they submit their final plans, companies should justify their chosen level of service with reference to customer preferences, and to the environmental and cost implications.

2.3 Water companies’ Drought Plans

2.3.1 Water companies cannot make plans to supply their customers without considering the use of restrictions. The cost to a water company of having infrastructure capable of withstanding prolonged drought, without recourse to hosepipe/sprinkler bans or other demand management options, would be very high and the additional costs would have to be met by customers.

2.3.2 All water companies in England and Wales prepare and maintain drought plans which set out how the company will continue to meet its duties to supply
adequate quantities of wholesome water during drought periods with as little recourse as possible to drought orders and drought permits. Until recently drought plans were produced voluntarily. From 1 October 2005 it became a statutory requirement for all water companies in England and Wales to have these plans under section 39B of the Water Industry Act 1991.

2.3.3 The first set of statutory drought plans were submitted to the Secretary of State/National Assembly for Wales during 2006. Water companies are required to consult publicly on their draft drought plans, and they did so during 2006. If required, the Secretary of State/National Assembly for Wales is able to call for a hearing, or issue directions requiring changes to be made to the draft drought plans, prior to publication of the final plans.

2.3.4 Drought plans cannot stop a drought occurring, but seek to minimise the use of additional abstractions obtained through drought orders and permits, which can be damaging to the environment at a time when drought is already placing stress upon it. The plans list the measures which a water company will deploy during the various stages of a drought to manage supplies and demand. The plans have trigger points which show what should be done, when and in which circumstances.

2.3.5 The types of demand/supply side measures that drought plans cover, depending on a company’s circumstances are:

Demand side (measures that serve to control or influence the amount of water used):

- increased level of promotion of water efficiency
- increased leakage reduction activity
- mains pressure reduction
- hosepipe and sprinkler bans
- restrictions on non-essential use through drought orders

Supply side (measures that provide an increase in the amount of water available for supply):

- re-commissioning of unused sources
- network distribution improvements such as construction of temporary pipelines
- inter-company bulk transfers of water
short term actions authorised through drought permits made by the Environment Agency or drought orders made by the Secretary of State/National Assembly for Wales to enhance supply (see section 2.5 below)

2.3.6 Plans for the use of hosepipe/sprinkler bans as a measure to restrict demand during a drought should be included in a company’s drought plan. The plan should also include details of any sites or areas likely to be affected by potential drought orders and permits.

2.4 Hosepipe and sprinkler bans

2.4.1 Hosepipe and sprinkler bans may be imposed by water companies under their own powers in section 76 of the Water Industry Act 1991 and do not require the approval of the Secretary of State/National Assembly for Wales or the Environment Agency. Before imposing a ban the relevant water company has to be satisfied that a serious deficiency of water available for distribution exists or is threatened.

2.4.2 The current hosepipe ban legislation, in section 76 of the Water Industry Act 1991, is set out in Annex D. The scope of the powers which water companies may exercise under this section is limited to prohibiting or restricting the use of hosepipes or similar apparatus for watering private gardens or washing private motor cars. A hosepipe ban applies only to water taken from the mains supply.

2.4.3 Historically, companies have imposed bans in two ways, sprinkler and unattended hosepipe bans, or full hosepipe bans. A sprinkler and unattended hosepipe ban may be introduced as a first phase of restrictions followed up at a later date by a full ban, although companies may impose a full hosepipe ban from the outset.

2.4.4 The use of hosepipe bans, as a temporary demand management tool, is normally one of the first steps taken by a water company to protect its water resources, when they are in short supply, in order to fulfil its statutory duty to supply its customers. A hosepipe ban can result both in a reduction in actual demand and suppression of ‘peak demands’ that would otherwise occur, not least because of customer awareness of the need to be less wasteful in the use of water. There is some evidence from the recent drought in south-east England to indicate that hosepipe bans, accompanied by appeals to conserve water, can cut customers’ demand for water by 5-15 per cent. The main effects of hosepipe bans are to cut the peak demand for water and to send signals to customers about potential future problems in meeting demand.
2.4.5 Before a hosepipe ban comes into force the water company must give public notice of it, and the date of its imposition, in two or more local newspapers. A ban can be introduced for any or all parts of its supply area.

2.5 Drought orders and drought permits

2.5.1 In a worsening drought, simple supply and demand management measures are not always sufficient and water companies may have to take additional steps by applying to the Environment Agency for a drought permit or to the Secretary of State for Environment, Food and Rural Affairs/National Assembly for Wales for a drought order. In July 2005 Defra, the Welsh Assembly Government and the Environment Agency updated a booklet providing information about the process for obtaining drought orders and drought permits.

2.5.2 Drought orders and permits provide a temporary mechanism for managing water resources limited by exceptional shortage of rain. They are a water resources management tool and exist to help avoid risk to public water supplies while providing the best possible protection for the environment.

2.5.3 A company’s drought plan should include details of those supply/demand measures it would expect to take before applying for a drought order or permit. A hosepipe ban is one such measure. It is unlikely that a drought order or permit would be granted unless a water company had implemented all other reasonable drought measures identified in its plan.

2.5.4 Drought permits are handled by the Environment Agency. The Environment Agency must be satisfied that an exceptional shortage of rain has caused or threatens a serious deficiency in water supplies. Drought permits can enable water companies to take water from new sources, or to alter or suspend restrictions on existing abstractions. They can last up to 6 months and if need be can be extended to remain in force for up to a year.

2.5.5 Drought orders can be made by the Secretary of State/National Assembly for Wales under Section 73 of the Water Resources Act 1991 (as amended by the Environment Act 1995) on the application of a water company. Ordinary drought orders can go further than drought permits and deal with discharges of water, abstractions and discharges by people other than the water company affected, supply, filtration and treatment obligations. An ordinary drought order can also authorise water companies to prohibit or limit the use of water for any of the non-essential purposes specified in the Drought Direction 1991. Like permits they can last up to 6 months and can be amended to last up to a year.

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Emergency drought orders can go further still and can give the water company complete discretion on the uses of water which may be prohibited or limited, and also supply water by means of stand-pipes or water tanks. This consultation document does not address the actions that can be taken under emergency drought orders.

2.5.6 Before a drought order can be made the Secretary of State/National Assembly for Wales must be satisfied that, by reason of an exceptional shortage of rain, there exists or is threatened:

- a serious deficiency of supplies of water in any area, or
- such a deficiency in the flow or level of water in any inland waters, as to pose a serious threat to any of the flora or fauna which are dependent on those waters.

2.6 The Drought Direction 1991

2.6.1 The Drought Direction 1991 (reproduced at Annex D), made by the then Secretaries of State for the Environment and Wales, lists the non-essential uses of water that can be restricted or prohibited under a drought order pursuant to section 74(2)(b) of the Water Resources Act 1991. A company can apply to restrict any or all of the uses listed there.

2.6.2 When a water company applies for a drought order, it has to advertise that it is doing so in one or more local newspapers circulating in the area affected, and a statutory period is allowed for objections to be made. Objectors to a drought order are normally invited to a hearing, held before an independent Inspector, where they have the opportunity to be heard. Following the hearing the Inspector will report to the Secretary of State/National Assembly for Wales with findings and recommendations.

2.6.3 If granted, such a drought order empowers a water company to restrict those non-essential uses of water that are specified in the order. The extent to which a company uses its drought order powers is a matter for it to decide. Depending on the prevailing situation, it may choose to restrict only some of the uses specified in the order and then at differing times. A company can also restrict its application to certain customers only.

2.6.4 The water uses listed in the Drought Direction 1991 apply to both businesses and non-commercial customers. Given the scope for the powers to be exercised flexibly, the Secretary of State/National Assembly for Wales would expect a company granted these powers to use them sensitively and proportionately where the situation allowed implementation to be phased. Wherever possible a company would be expected to act in a way which maximises savings whilst minimising hardship for those who rely on water for their business.
Part 3 – The need to modernise the temporary hosepipe ban legislation and the Drought Direction 1991

3.1 Why are changes necessary?

3.1.1 As mentioned in section 2.4 above, hosepipe bans affect discretionary uses of water. The scope of this power has not changed since 1945. Whilst many purposes for which water is used for domestic purposes have not changed, the volume of water used now, with modern household appliances and recreational and children’s play equipment, is significantly greater than it was six decades ago.

3.1.2 The estimate of household per capita consumption in 1975 was 114⁷ litres per day. By 2005 this figure of household per capita consumption had risen to 155⁸, an increase of 36 per cent over a 30 year period. Equivalent figures for the preceding 30 year period, back to 1945 when the temporary hosepipe ban power was first introduced, are not available. Discretionary uses of water need to be constrained when water resources are in short supply to maintain water supplies for essential uses.

3.1.3 Evidence of the effectiveness of the way in which water companies now plan for drought events may perhaps be found in the extent to which companies found it necessary to rely on drought order powers during the recent two year drought in south-east England. This drought was comparable in terms of severity to the worst droughts of the last 100 years⁹. Extensive hosepipe bans were imposed affecting more than 13 million people. After a second dry winter the triggers in several companies’ drought plans indicated the need for further powers to restrict water use and three water companies applied for and were granted drought order powers to restrict non-essential uses of water. In the event only one of the companies found it necessary to exercise its powers and then not to the fullest extent possible. The strain on water resources during the recent drought was, of course, eased significantly by the response from customers across southern England to appeals to conserve supplies.

3.1.4 Drought, though, does not only affect the drier areas of Great Britain in the south-east and East Anglia. All droughts differ in terms of location, duration and intensity. The worst effects of the 1975-76 drought were felt in north Devon and south-east Wales where emergency drought order powers were used to authorise supply interruptions. No emergency drought orders have been made

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⁸ OFWAT Security of supply, leakage and water efficiency report for 2005/06.
since the 1975-76 drought. Table 1 below shows the numbers of drought orders made in England and Wales since 1989. In the 4 years preceding 1989 no drought orders were made in England or Wales. The regions referred to are the Environment Agency’s regions.

Table 1: Drought orders made in England and Wales 1989-2006

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3.1.5 The drought orders in this table cover the range of measures, not just non-essential use ban orders, which drought orders may authorise (see section 2.5). As the figures show, some droughts affect significant areas of England and Wales whilst others have considerable regional impact or are much more localised.

3.1.6 The effects of climate change are likely to result in decreased summer rainfall and more frequent droughts and have the potential to create future water supply problems. In contrast, though, winters are forecast to become wetter with heavy winter rainfall more frequent, providing the potential for more winter storage to balance increasingly variable summer rainfall patterns. Water resource planning therefore incorporates a climate change dimension so that the implications for public water supply are taken fully into account according to the best available scientific advice.
3.1.7 Clearly there is no room for complacency over our ability to cope with drought. However, whilst the future incidence of droughts might increase, it does not necessarily follow that restrictions on customers’ use of water (regardless of sector) should be any more frequent. The planning process, dealing with both demand and supply, will continue to evolve to adapt to changing scenarios.

3.1.8 The changes we propose to modernise the hosepipe ban powers and the role of drought orders in respect of non-essential uses of water are part of this wider process. These changes are discussed in detail in Parts 4 and 5 of this document but readers may find the table at Annex E to be a useful “at a glance” summary of the present position and how we envisage it changing. The changes are intended to apply, as with the existing powers, regardless of whether a customer has a measured or unmeasured water supply.

3.2 Wider support for change

3.2.1 During 2006 Defra commissioned Waterwise to consider the scope of the hosepipe ban powers and to report with recommendations. The Waterwise report\(^\text{10}\) made a number of recommendations including amendment of the powers to widen the scope of restrictions and the need for consistency of interpretation by water companies. A parallel, though wider, study\(^\text{11}\) by UK Water Industry Research Ltd recommended the updating of the hosepipe ban powers and the scope of the Drought Direction 1991. This latter study also recommended the development of a water industry code of practice governing demand restrictions.

3.3 Use of rainwater and grey water

3.3.1 Our proposals apply only to water supplied by water companies under their statutory supply duties. These supply duties are directly linked to quality criteria. The filling of a receptacle by hosepipe from the mains supply, with no intervening use, for a proscribed purpose would be a breach of any restrictions in force. However, once water supplied by a water company has been used then that water is no longer of a kind that was originally supplied. For example, used bathwater or shower water diverted to a receptacle by means of a hosepipe for subsequent use for garden watering would not be affected by use restrictions. Our proposals do not apply to the use of rainwater and grey water.

\(^{10}\) Garden Watering Restrictions – A report to Defra reviewing international models of external water use restrictions. Waterwise, November 2006.

\(^{11}\) Drought and Demand: Potential for improving the management of future droughts. UKWIR (in preparation).
Part 4 – Replacing the hosepipe ban power with a wider discretionary use ban power

4.1 Widening the scope of the hosepipe ban powers

4.1.1 Section 76 of the Water Industry Act 1991 (reproduced at Annex D) allows a water company to impose hosepipe bans where it is of the opinion that a serious deficiency of water available for distribution exists or is threatened. Our proposals are to replace the hosepipe ban powers of water companies with broadly similar powers to ban a wider range of discretionary uses of water. The wider scope of the powers would apply predominantly, but not exclusively, to the domestic sector. The extent to which non-domestic customers would be affected is discussed under paragraph 4.1.4 below.

4.1.2 We propose that the modernised powers will not be restricted to water drawn from the mains through hosepipes or similar apparatus in the case of swimming and bathing facilities (see paragraph 4.1.4 item (iv) below). For those activities where the restriction applies to water drawn from the mains by hosepipe or similar apparatus alone, the activity may continue by hand. As mentioned earlier, the use of water not drawn from the mains supply is unaffected by the current measures and that remains the case with the proposed new powers.

4.1.3 We propose that all the water uses which are to become subject to the new discretionary use ban power should be identified in the amended section 76 of the 1991 Act. We propose too that the amended section 76 incorporates a power enabling the Secretary of State/National Assembly for Wales to prescribe further uses, from time to time by regulations to ensure that the prescribed uses that may be restricted can accommodate lifestyle changes in the decades ahead, some of which may result from the impacts of climate change. This mechanism would enable the legislative provision to be updated without the delay of finding a suitable legislative opportunity, whilst preserving Parliamentary scrutiny of planned changes.

Q1 Have you any comments on our proposal to give the Secretary of State/National Assembly for Wales the power to prescribe further uses which could be prohibited or restricted under section 76 of the Water Industry Act 1991 by regulations?

4.1.4 The specific uses of water which we propose should be subject to the new “discretionary use ban” power are discussed below.

(i) Washing of private motor cars by hosepipe

We do not intend to expand the definition of “private motor cars” in section 76 of the Water Industry Act 1991 which already includes
• any mechanically propelled vehicle intended or adapted for use on roads other than public service vehicles and goods vehicles.
• any vehicle which is towed by a private motor car.

The current scope of a hosepipe ban is not limited to the washing of private motor cars by domestic customers alone. The test of whether the ban applies to the washing of “private motor cars” or not relates to the status of the vehicle, rather than the operator of the hosepipe. Ministerial cars, for example, fall within the scope of hosepipe bans since they are not specifically exempted as public service or goods vehicles. Taxis and minicabs, on the other hand, are public service vehicles and so are not subject to hosepipe bans. Some small businesses specialising in hand car washing may use hosepipes as part of their process and so to the extent that they are washing “private motor cars” they would be subject to any hosepipe ban in place, save for any concessions given by the relevant water company (see further Part 6 below).

The power will continue to be limited to the washing of private motor cars by hosepipe. It is not intended to prevent the washing of cars by hand.

(ii) Washing of domestic sector boats, personal watercraft and other recreational water craft by hosepipe

There is increased private ownership today of boats, personal watercraft and other types of waterborne recreational or sporting transport. Whilst the trailer used to transport the craft between home and destination is already subject to the restriction applying to private motor cars we see it as anomalous that the craft being transported falls outside the scope of water use restrictions. We recognise that engines and accessories may need to be flushed with freshwater after use in saltwater but this does not necessarily have to be by hosepipe from the mains supply when water resources are in short supply. We propose to include the washing of personal watercraft and other recreational water craft by hosepipe in the wider discretionary use ban power.

(iii) Watering of private gardens by hosepipe

We do not intend to alter the existing power to restrict the watering of private gardens by hosepipe. The term “private garden” is not at present defined but is not restricted to domestic gardens. The Government’s view is that the term extends to private allotments, that is allotments which are not open to the public and which are not commercial in nature. We will clarify that such allotments fall within the scope of these powers. Other types of allotments will remain subject to drought order powers to ban non-essential uses of water. The watering of private gardens by hand will remain unaffected.

In providing a definition of private gardens we will set parameters for determining whether a garden should be regarded as private or public. This will depend
largely on the extent to which it is open to the public. Some private gardens are open to the public at certain times.

In the modernised legislation we intend to clarify the extent to which concessions can be offered to individuals or groups. We propose that an industry code of practice addresses the way in which concessions may be applied for and the circumstances in which they are likely to be given. An industry code of practice is discussed in more detail in Part 6 of this document.

(iv) Filling of domestic swimming pools, paddling pools, hot tubs and similar bathing facilities

We propose to bring all domestic sector swimming and bathing facilities within the scope of the new discretionary use ban power. This will include both permanently constructed and temporary facilities. It would include the filling of these facilities either by hosepipe or directly from the mains water supply through permanent plumbing.

Whilst all these domestic facilities enhance leisure time, they can use considerable quantities of water. For example, a 3 metre diameter paddling pool filled to a depth of 30cm contains sufficient water for the domestic daily requirements of 14 people. Use of water for such purposes when resources are in short supply is difficult to justify.

We propose to maintain the statutory concession, already in the Drought Direction 1991, in respect of swimming pools designed to be used in the course of a programme of medical treatment and for filling with water where necessary in the course of their construction.

The filling of non-domestic private sector swimming pools will remain in a revised drought direction (see section 5.2 below) subject to the same statutory concessions in respect of medical treatment and during construction.

The filling of public sector swimming pools will remain outside controls over water use.

Q2 The restriction on the filling of domestic sector swimming pools would also apply to pools built within the domestic residence. Is there any justification to exclude these?

Q3 A volumetric threshold could be set for paddling pools, below which they would be exempt. This could be set in an industry code of practice (see Part 5) or in legislation. We believe, though, that any threshold would send a misleading message about the need to conserve water. What are your views?
(v) Use of hosepipes, within the domestic sector, to operate water slides, to clean patios, drives and other hard standings, and to clean windows and building exteriors

We propose to bring all these uses within the scope of the controls. The quantity of water drawn through a hosepipe in an hour can be the equivalent of the domestic needs of a family of four for a day. We see no justification for allowing the existing situation to continue where control over hosepipe use for car washing and garden watering is available whilst other discretionary uses remain uncontrolled. Washing of hard surfaces, windows and building exteriors by hand would not be affected. An exclusion in respect of safety and hygiene would be provided in respect of the cleaning of hard surfaces.

(vi) Filling of domestic sector ornamental ponds by hosepipe

The filling of ornamental ponds other than fish ponds is presently one of the uses of water specified in the Drought Direction 1991 which can be restricted under drought order powers. We propose to bring domestic sector ornamental ponds within the scope of the controls. We propose too that statutory concessions exempt fishponds and wildlife garden ponds (ponds that are primarily managed or kept to provide a natural habitat for wildlife). Exemption for fish ponds reflects the exemption already in the Drought Direction 1991 in relation to the filling of ornamental ponds.

We see the extension of the exemption to include wildlife garden ponds to provide a habitat for indigenous wildlife as equally justifiable as the maintenance of water levels for fish, many of which are not native to the UK.

Q4 We would welcome your views and comments on the range of uses we propose becoming subject to the new discretionary use ban powers.

4.2 Flexibility of the powers

4.2.1 The existing hosepipe ban powers enable a water company to prohibit or restrict the use of water drawn by hosepipe or similar apparatus for such period as it considers necessary for the purposes of watering private gardens and washing private motor cars. The restrictions may be imposed over the whole or any part of the company’s area.

4.2.2 There is no express provision in the existing hosepipe ban powers governing concessions. We propose therefore that the new discretionary use ban power clarifies the extent of the discretion available to water companies in exercising their powers. This is discussed in more detail in Part 6 below.
4.3 Procedural aspects of proposed new discretionary use ban power

4.3.1 The existing temporary hosepipe ban powers require the water company imposing a ban to give public notice of it, and the date on which it will come into force, in two or more local newspapers circulating in the area affected by the prohibition or restriction. We do not propose to change this but we propose that the publicity should be enhanced by requiring the company to post a copy of the notice on its website.

Q5 We would welcome your views on extending the publicity requirements to include website notices.

4.4 Offences

4.4.1 It is an offence to breach a temporary hosepipe ban and, on summary conviction, offenders are liable to a fine not exceeding level 3 on the standard scale, which is currently £1000. We propose to retain this provision unaltered in respect of the new discretionary use ban.

4.5 Charges for the use of a hosepipe

4.5.1 Under the existing powers any charges made by a water company for the use of a hosepipe are required to be subject to a reasonable reduction when a hosepipe ban is imposed. In addition, where a charge has been paid in advance, the water company is required to make any necessary repayment or adjustment. Some water companies have a charge for hosepipes in their tariff schemes. We intend therefore to retain this provision unaltered.
Part 5: Proposed changes to the Drought Direction 1991

5.1 Proposals for updating the Drought Direction 1991

5.1.1 The Drought Direction 1991 is reproduced at Annex D. The intention of this review of powers, as stated earlier in this document, is to achieve a broad demarcation between the exercise by water companies of

- their own powers governing domestic discretionary uses of water; and
- powers to extend controls over non-essential uses of water to the commercial and public sectors granted to them through drought orders made by the Secretary of State/National Assembly for Wales.

Section 5.2 discusses whether certain water uses by non-domestic consumers should instead be subject to the new discretionary use ban power described in Part 4 of this document. Whilst this would to some extent blur further the broad demarcation between sectors, there may be sound justification for doing so.

Q6 Do you agree with this broad division of control over water use restrictions?

5.1.2 As described above, we propose to replicate a number of the water uses specified in the current Drought Direction in the new discretionary use ban power insofar as they are applicable to the domestic sector. Those uses which remain relevant to the commercial and public sectors will continue to be specified in the revised Drought Direction. In addition we propose to include some new uses of water in the revised Drought Direction and make minor amendments to the provisions of the existing Drought Direction.

5.1.3 In essence, then, those commercial and public sector water users who are currently potentially subject to restrictions imposed under non-essential use drought orders would remain in the same position. But this is subject to views expressed on the issues discussed in section 5.2. Some other water uses which affect these sectors will be brought within the parameters of drought order powers to ban non-essential uses of water.

5.1.4 Commercial users who are dependent on mains water supplies for their business operations should consider, if they have not already done so, taking steps to protect their businesses from the effects of water use restrictions which may be imposed under the provisions discussed in this document. Business plans may need to be revisited to accommodate the accessing of alternative water supplies when use restrictions are in force. Businesses so affected might consider pooling resources and pursuing the scope for accessing alternative water supplies with the water industry. There is no statutory requirement for any
customers of water companies to be compensated when water use restrictions are in force through non-essential use drought orders.

5.1.5 The existing uses of water which we propose should remain proscribed in the new Drought Direction, subject to the minor modifications referred to in paragraph 5.1.6 and the issues discussed in section 5.2, and be applicable to the commercial and public sectors, unless otherwise stated, are the following:

- The watering, by hosepipe, sprinkler or other similar apparatus, of gardens (other than market gardens), including lawns, verges and other landscaped areas; allotments; parks; or any natural or artificial surfaces used for sport or recreation, whether publicly or privately owned.
- The filling (whether wholly or partially) of privately owned swimming pools, other than pools designed to be used in the course of a programme of medical treatment and the filling of pools where necessary in the course of their construction. See also section 5.2 below.
- The filling (whether wholly or partially) of ornamental ponds other than fish ponds.
- The operation of mechanical vehicle washers, whether automatic or not.
- The washing of road vehicles, boats, railway rolling stock or aircraft for any reason other than safety or hygiene.
- The cleaning of the exterior of buildings, other than windows.
- The cleaning of windows by hosepipe, sprinkler or other similar apparatus.
- The cleaning of industrial premises or plant for any reason other than safety or hygiene.
- The operation of ornamental fountains or cascades, including those where water is recycled.
- The operation, in relation to any building or other premises, of any cistern which flushes automatically, during any period when those premises are wholly or substantially unoccupied.

5.1.6 All these uses of water are already specified in the Drought Direction 1991 but we intend to make the following modifications to some of these uses:

- The exemption for the filling of fish ponds will be extended to include the filling of wildlife ponds for the same reasons as are discussed above in paragraph 4.1.4 (vi) in respect of domestic ornamental ponds.
- The washing of road vehicles, boats, railway rolling stock or aircraft is subject to an exclusion in respect of safety or hygiene. We propose to clarify that this exclusion includes bio-security. We propose to make the same clarification in respect of bio-security for the cleaning of industrial premises and plant.

Q7 Have you any views on these proposed modifications to the provisions currently in the Drought Direction?
5.2 Some issues concerning the scope of the Drought Direction 1991 and its replacement

5.2.1 The points raised below address some issues concerning the scope of the Drought Direction 1991 which will be equally relevant with a new Drought Direction. This document frequently differentiates between, on the one hand, the domestic sector, and, on the other, the commercial and public sectors. In general the Drought Direction 1991 applies also to non-profit organisations and charities. This will continue to be the case with a new Drought Direction. Where the Drought Direction 1991 refers to the ownership of gardens and swimming pools, there may be some doubt as to application to the voluntary sector. The Government’s intentions in respect of this are clarified in the following paragraphs.

(i) Private non-domestic sector swimming pools

Under the Drought Direction 1991, the filling of swimming pools applies to privately-owned swimming pools only. The Government believes that there are some swimming pools, such as some health and leisure club pools which, although not under private ownership, are not open to the public, or whose use is in practice restricted or intended only for the use of particular persons. All non-domestic sector swimming pools which are not open to the public or whose use is in practice restricted or is intended only for the use of particular persons will be included within the scope of the new Drought Direction.

(ii) Public sector gardens, parks, lawns, landscaped areas and ornamental fountains

The proposals for revising the Drought Direction 1991 would maintain the existing position where the use of hosepipes to water gardens (other than private gardens), parks, lawns, landscaped areas, and the operation of ornamental fountains and cascades, can be restricted only through drought order powers. In Part 7 of this document public authorities are reminded that they should consider the water conservation measures they can take across the range of their activities and not wait, while a drought worsens, until they are subject to formal restrictions imposed through drought order powers.

Public authorities are therefore expected to be routinely vigilant about conserving water and increasingly so when supplies are under stress and domestic restrictions are in force. Restricting the operation of fountains and cascades for what is purely aesthetic reasons would undoubtedly convey a visible message about the need to conserve water. But it may be perceived as unfair only to be able to introduce such restrictions in respect of public sector gardens and fountains when the water resource situation has deteriorated to the point where drought order powers are required.
Respondents may feel that water companies should be able to restrict the use of water by public bodies for these purposes at the same time that restrictions are imposed on the same uses within the domestic sector.

(iii) Gardens, lawns, landscaped areas and ornamental fountains owned by bodies other than the domestic and public sectors

If there is a case for including the use by public bodies of hosepipes for horticultural purposes, and the operation of ornamental fountains, in the new discretionary use ban power, as discussed above, it may be hard to justify allowing the use of water for these purposes in relation to gardens, lawns, landscaped areas and ornamental fountains owned by commercial customers or non-profit organisations and charities. Respondents might consider it more equitable to enable water companies to use the new discretionary use ban power to control the watering of these areas by hosepipe, and the operation of fountains, by anyone regardless of which sector of the community they fall within. In exercising the new power water companies would be able to apply it progressively and to different customers at different stages. The proposed flexibility of operation is discussed in more detail in Part 6 of this document.

Q8 We invite views on whether the use of hosepipes to water gardens, lawns, landscaped areas and the operation of ornamental fountains and cascades, by public authorities should be brought within the scope of the proposed discretionary use ban power instead of remaining a second stage measure to be addressed through drought orders invoking the Drought Direction. If so, should this extend beyond the public sector to all other sectors?

(iv) Ornamental fountains and cascades

Fountains of the most significance are likely to be located in public parks and city open spaces. We believe most, if not all, such fountains recycle water rather than consume it though with more powerful fountains there will inevitably be some evaporative loss arising from the effects of wind blow in dispersing water.

Q9 Have you any evidence of ornamental fountains that do not recycle their own water supply?

(v) Automatically flushing cisterns

We believe that the provision for restricting the operation of automatically flushing cisterns when premises are largely or wholly unoccupied has not necessarily been obviated by the Water Supply (Water Fittings) Regulations 199912 (as amended). In respect of automatic flushing mechanisms, these regulations focus

12 SI 1999/1506
particularly on urinals. There may though be other cisterns which flush automatically for other purposes.

**Q10** Do water companies consider the retention of this provision to be a useful way to enforce against wasteful or out of date fittings, in addition to their powers in section 75 of the Water Industry Act 1991?

### 5.3 Additional water uses for inclusion in an updated Drought Direction

5.3.1 We propose to add three more items to the list of water uses to be specified in the new Drought Direction. These are discussed below.

(i) **Use of hosepipes to clean drives, paved areas and other hard standings serving non-domestic premises**

The reasons for including this use are broadly the same as those described in paragraph 4.1.4 (v) above in relation to the domestic sector. In its application to the commercial and public sectors we propose to add an exclusion in respect of safety and hygiene. We would make clear that hygiene embraces bio-security.

(ii) **Use of hosepipes for dust suppression**

Water companies have told us that it is not uncommon for local authorities to instruct building site managers to use water for dust suppression. The simplest way of doing this is by hosepipe connected to the mains supply. When water resources are in short supply use of mains water may be seen as extravagant for purposes such as this. In many instances it should be feasible for sources of water other than the mains supply to be explored. Alternatively water could be brought to the site by tanker or bowser from an area with no water use restrictions in force. We accept that in some circumstances there may be perfectly valid health and safety reasons for keeping dust levels down and we therefore propose to provide a health and safety exemption.

(iii) **Filling of storage tanks for use for a proscribed purpose anywhere**

Allowing the filling of storage tanks from the mains supply for subsequent use for a proscribed purpose would represent a failure to make the powers effective. That failure would be compounded if no provision were made to prevent water drawn from the mains supply being used in an area where no use restrictions were in force. We propose therefore to make the filling of storage tanks, in excess of a specified capacity, for subsequent use for a proscribed purpose anywhere a use which can be prohibited.
Q11 It would be reasonable to set a volumetric level below which storage tanks would be exempt from control. What would be a reasonable level?

Q12 We would welcome your views and comments on the additional water uses which we propose should be brought within the scope of the Drought Direction.

5.4 Offences

5.4.1 It is an offence to take or use water in breach of a restriction or prohibition imposed by a drought order under section 80 of the Water Resources Act 1991. On summary conviction offenders are liable to a fine not exceeding the statutory maximum, which is currently £5000. Conviction on indictment renders offenders liable to a fine for which no upper limit is specified. We do not propose to amend section 80.
6.1 Flexibility

6.1.1 The Government believes that water companies who have imposed hosepipe bans in recent years have not fully used the flexibility contained in the existing legislative provisions to offer concessions. It has been made clear to us though that companies themselves have reservations about the extent to which concessions may be offered. It is certainly the case that there is no express provision in the existing legislation governing concessions.

6.1.2 As a general principle, if an exemption from water use restrictions is considered in all circumstances to be appropriate then it should be written into the law. There are examples of this in both the hosepipe ban powers and in the Drought Direction 1991. The hosepipe ban powers exclude from their scope public service vehicles and goods vehicles. The Drought Direction excludes, for example, swimming pools designed to be used for medical treatment. Part 5 of this document identifies what few new exemptions we propose are made in the revised Drought Direction.

6.1.3 In respect of the proposed new discretionary use ban powers we propose to make more explicit that in imposing restrictions a water company may:

- apply some or all of them, to differing degrees, for such period as it considers necessary;
- apply them in respect of the whole or any part of the company’s area;
- exclude such customers or groups of customers as it considers appropriate;
- exclude certain practices as it considers appropriate; and
- exclude such apparatus as it considers appropriate.

6.1.4 Unlike statutory exemptions, concessions are flexible. They may be altered from time to time and may, if circumstances demand it, be withdrawn, partially or wholly. The explicit ability to make concessions will enable companies to exercise their powers effectively whilst causing minimum hardship. Clearly, the modification or withdrawal of concessions would have to be notified to those affected in advance.

Q13 Have you any comments on the extent of the flexibility of the discretionary use ban powers proposed?
6.1.5 On the face of it this will enable water companies to differ in their approach to the operation of discretionary use bans. The alternative, of having very prescriptive enabling powers, would constrain flexibility and risk becoming outdated as, for example, new water efficient technology came on the market. Water UK recognises this and is keen for companies collectively to develop a consistent approach to the treatment of concessions whether they be in respect of customers, uses or apparatus.

6.1.6 Water UK therefore supports the idea of an industry code of practice. A major advantage of a code of practice over prescriptive enabling powers is that it can readily be updated to reflect technological developments. It can be anticipated that technological developments will proceed at a faster pace in future as a consequence of climate change implications for water resources.

6.1.7 In a widespread inter-regional drought, or one in which several water companies are equally affected, the success of water saving measures will depend very much on the companies concerned having a clear and consistent strategy for communicating with their customers. This could include, for example, a common approach to the phasing of particular water use restrictions. A model for this could be developed in a code of practice.

6.2 Scope for concessions and an industry Code of Practice

6.2.1 During the 2004-06 drought in southern England a number of pleas were made for elderly or disabled people to be exempted from hosepipe bans which prevented them from using hosepipes to water their gardens. By nature of their age or disability, some people are unable to carry watering cans to the plants that require watering.

6.2.2 We see an industry code of practice setting out how elderly or disabled people can apply to their water company for a concession in respect of particular proscribed uses and what, if any, evidence in support of their application they would be required to produce.

Q14 Age alone is not an indicator of physical fitness. But do you consider that there should be an age specified beyond which an individual should be exempt from restrictions on the use of hosepipes for garden watering? If so, what age would you consider to be reasonable?

6.2.3 Alternatively, you may consider that a different kind of concession might be appropriate for elderly or disabled people. Questions were raised during the recent drought as to whether water could be drawn through a static hosepipe solely to fill watering cans. This would avoid the difficulty some people have of
carrying full watering cans to the plants to be watered. Water companies may wish to consider whether a concession such as this would be workable and appropriate.

**Q15** We would welcome your views on a static hosepipe concession for filling watering cans for elderly or disabled people. Have you other suggestions for helping elderly or disabled people continue with garden watering during drought?

6.2.4 An industry code of practice would also set the parameters of concessions in respect of purposes which may be exempted. The industry would have the flexibility to set parameters for any of the uses covered by the new discretionary use ban powers. A particular example which has been raised concerns the watering of newly laid turf for a specified period. There will doubtless be others.

6.2.5 A code of practice would establish guidelines governing the type of water efficient apparatus and its use which would qualify for exclusion from restrictions. As an example, drip irrigation through perforated hosepipes can be a water efficient means of watering plants but not if the mains tap is left open for much of the time. A code of practice could state the circumstances in which such a means of watering plants would qualify for exemption.

6.2.6 Some countries operate time-based water restrictions when necessary. This can work in a number of ways such as restrictions applying during certain times of the day or to different customers on different days. There are numerous ways in which time-based restrictions could be applied. The enabling powers will clarify that such practice is allowed but it will be for water companies themselves to consider whether this would be appropriate to their circumstances and acceptable and workable for their customers. Again, an industry code of practice could explore the pros and cons of such an approach and set an industry protocol if appropriate.

**Q16** What are your views on the concept of time-based restrictions?

6.2.7 Throughout this consultation document we have referred to the intention to apply the new discretionary use ban primarily to domestic customers of water companies, leaving drought order non-essential use bans to apply to commercial and public sector customers. Inevitably the divide between these sectors will not always be clear cut. There may be circumstances in which small businesses operating largely or exclusively in the domestic sector become, by the nature of their operations, subject to a discretionary use ban. An industry code of practice could address this area and explain how such business water users could contact the water company concerned for clarification over whether water use restrictions in force apply to them.
6.2.8 We would expect the water industry to develop a code of practice openly and in consultation with Government, water regulators and consumer representatives.

Q17 Do you support the production of a water industry code of practice as outlined above? Are there other matters such a code could usefully address?
Part 7: Water conservation by public authorities

7.1 The public sector water conservation duty in section 83 of the Water Act 2003

7.1.1 Section 83 of the Water Act 2003, which came into force on 1 April 2004, places a water conservation duty on public authorities\textsuperscript{13} in exercising their functions and conducting their affairs. The duty requires public authorities, where relevant, to take into account the desirability of conserving water supplied, or to be supplied, to premises.

7.1.2 Public authorities should consider the water conservation measures they can take to fulfil this duty within their normal operations and business; they should not wait for restrictions outlined in this consultation to come into effect before taking measures. Examples of this arise over the watering by hosepipe of gardens and lawns and the operation of ornamental fountains. Private gardens are currently subject to the hosepipe ban power and, under the proposals in this document, will become subject to the discretionary use ban power, which is aimed at the domestic sector. Domestic customers may, however, consider it unfair and unreasonable for public authorities not to restrain their water use in times of water shortage even when there are no drought order restrictions affecting their use of water for specified purposes. Turning off ornamental fountains in public places will convey a clear message about the need to conserve supplies. This issue is discussed further in section 5.2 of this document, following which two questions invite views.

\textsuperscript{13} Public authorities are defined as Ministers, Government Departments, the Welsh Assembly, local authorities, people holding specified offices, statutory undertakers and any other public body of any description.