The Government's Response to the Royal Commission on Environmental Pollution's Twenty-Third Report

Environmental Planning

England

Cm 5887

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Presented to Parliament by the
Deputy Prime Minister and First Secretary of State
By Command of Her Majesty
July 2003

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INTRODUCTION

The Royal Commission on Environmental Pollution's Twenty-Third Report *Environmental Planning* was presented to Parliament in March 2002. The Commission's Report examined the way the current planning system provides for the protection and enhancement of our environment, and recommends fundamental changes to meet those challenges.

Planning is a devolved matter. A separate overarching response has been laid before Parliament which summarises the position in the UK as a whole. This document is one of four 'daughter documents' and sets out the detailed position in England. Taken together, the overarching response and the daughter documents provide the formal response to the Commission's report.

We reproduce below the Commission's recommendations in bold type (including paragraph references from the report), and give the Government's response to each one.

We recommend that the demonstrable capacity of public participation to improve plans and policies should be fostered by improving existing procedures and developing new deliberative processes. (5.18)

The Government will draft all future legislation and procedures to comply with the public participation requirements of the Aarhus Convention and is currently in the process of updating existing legislation and procedures to ensure that compliance is met.

The Government intends to publish a consultation paper on community involvement in planning in the autumn.

We recommend that the legislation on development control, conservation areas, scheduled monuments, listed buildings and control of advertisements should be consolidated and a single consent procedure introduced, provided this can be achieved without any weakening of the present safeguards. (5.21)

Our Policy Paper *Sustainable Communities: Delivering through Planning* said that we intend to commission a research project to look at the scope and benefits of a single consent regime. That research project has now been commissioned and is expected to report in early 2004.

The research will consider the extent to which the planning, listed building and conservation area consent regimes could be integrated into a single regime. Additionally, it will consider the extent to which the following regimes could also be integrated into that single unified system: consent under the Advertisement Regulations; Building Regulations approval; Scheduled Monument Consent; Hazardous Substances Consent; and consent for works to trees protected by preservation orders or situated in conservation areas.

The Government has also published a consultation paper *Protecting our Historic Environment: Making the System Work Better* (July 2003) which suggests the creation of a single designation regime bringing scheduled monuments and listed buildings together.

We recommend that pollution control authorisation and planning permission for industrial plants should be obtained through a single open process involving a common environmental statement (see 7.27-7.28 below) and, where appropriate, a joint public inquiry. (5.24)

There is no statutory requirement on a developer to obtain planning permission before pollution control authorisation, or vice versa. Industry may need, in some cases, to have sufficient security in respect of location before making the substantial commitment for authorisation of the specific process.

But the Government recognises the benefits that can accrue from considering planning applications and pollution control authorisations together. Indeed, Planning Policy Guidance note (PPG) 23 *Planning and Pollution Control* already recommends that applications for planning and pollution control authorisations should be considered in parallel, where possible. This PPG is currently being revised. It will continue to encourage parallel applications but recognise the flexibility that is required by industry. Where it is not possible to submit the planning and pollution permit application at the same time we will continue to recommend close consultation between the relevant authorities. The Town and Country Planning (General Development Procedure) Order 1995 (the GDPO) establishes the Environment Agency as a statutory consultee for certain types of

development. The Agency are actively discussing with the Planning Officers Society (POS) and the Local Government Association (LGA) ways in which this co-operation can be improved and the commitment of industry to the parallel tracking of applications, where appropriate, can be obtained.

We emphasise that there should be no reduction in the obligations on planning authorities to consult the agencies responsible for pollution control, flood defence, conservation of species and habitats, countryside and the built heritage. (5.29)

We agree with this recommendation. Our Policy Paper *Sustainable Communities: Delivering through Planning* said that the number of statutory consultees and the types of development for which they should be consulted would be reviewed, but with no presumption that the list should be reduced. We have written to all existing statutory consultees to ask whether any changes are needed to the type of application on which they are consulted. We are currently reviewing their responses and will consult on proposals in due course.

There will be some types of case in certain areas where the relevant specialist agency can provide the planning authority with standing advice in advance, and so dispense with the need for consultation on individual cases and we recommend that more effort be devoted to identifying such categories of cases. (5.29)

We agree with this recommendation. Our Policy Paper *Sustainable Communities: Delivering through Planning* said that we will encourage the use of standing advice by statutory consultees in order to help speed up the planning process. We intend to make a minor amendment to the GDPO to remove the requirement for local planning authorities to consult an authority or body where that authority or body has provided up to date standing advice. Where standing advice has been sent to the local planning authority they will be required to consult that standing advice instead, and to take it into account in determining an application for planning permission.

We are aiming to introduce this amendment within the next few months, and will issue a guidance note to accompany it.

We recommend the establishment of Environmental Tribunals to handle appeals under environmental legislation other than the town and country planning system, including those now handled by planning inspectors. (5.36)

Procedures for taking decisions on environmental matters outside the town and country planning system have grown up over time and are enshrined in different Acts of Parliament.

However, while we acknowledge that there are variations between appeal provisions in environmental legislation, there is not yet a consensus for the creation of Environmental Tribunals. We do not as yet know the scale of demand to replace the existing arrangements of written submissions, public local inquiries or hearings, with such a body.

Before the Government would be prepared to consider the creation of a new body of this kind, it would need to be fully satisfied that it would add value and that its proposed workload could not be carried out equally effectively within existing judicial fora. Research findings looking at the case for an environmental tribunal were published on 11 June 2003. These will inform future discussion of the matter.

We recommend that third parties should have a right appeal against decisions on planning applications in certain circumstances, and that similar rights of appeal for third parties should be introduced for other forms of environmental regulation. (5.46)

We disagree with the RCEP's recommendation. The Green Paper *Planning – Delivering a Fundamental Change* set out clearly our reasons for not supporting a right of appeal for third parties against the grant of planning permission, even one limited in scope. A right of appeal for third parties would slow down the system. It would not be consistent with our democratically accountable system of planning. It is the responsibility of local planning authorities to act in the general public interest when determining planning applications. They must take account of the views of local people on planning matters before decisions are made and justify their decisions subsequently to their electorate.

The planning system already provides opportunities for anyone affected by or with an interest in the development of an area to make their views known and to have those views taken into account. Through the provisions of the Planning and Compulsory Purchase Bill we intend to build on and strengthen these opportunities by making the planning system more accessible and transparent with enhanced opportunities for community involvement throughout the process. The Bill provisions will strengthen the opportunities for people to comment on and influence development proposals much earlier in the process, even before a planning application has been submitted. By listening to people's concerns up-front the need for action after a decision has been made should be minimised.

We have not been presented with a case for the introduction of third party rights of appeal for other forms of environmental regulation. However, Defra is providing funding for research that looks at some aspects of environmental justice, including the case for an environmental tribunal and the experiences of court users. Findings should help to inform discussion of the current arrangements.

We recommend that the public planning register should contain, not only all section 106 agreements entered into, but also the heads of agreement between the local planning authority and the developer which provide the basis for negotiating the detailed terms. Local authorities should also be encouraged to consult the public on the terms of such agreements. (5.57)

We have amended the GDPO to require local planning authorities to put obligations and agreements on the planning register. Authorities are now required to record in the register details of obligations and agreements entered into or proposed in respect of applications for planning permission or reserved matters.

Planning authorities must be properly resourced for their tasks so that they will not have the incentive to accept forms of funding which could prejudice their decisions. (5.58)

The Government agrees that nothing should adversely affect the propriety of local authority planning decisions.

In relation to the resourcing of planning authorities (mentioned specifically by the Royal Commission), the Government has already taken a number of steps to ensure the proper funding of local authority planning services. It increased planning fees by 14% from April 2002. The Planning and Compulsory Purchase Bill proposes an amendment to the current fee setting powers in the Town and Country Planning Act 1990 so that fees and charges can be levied on a wider range of local authority planning functions. To inform decisions

on the use of these wider powers (subject to Parliamentary approval of them), the Government is carrying out a fundamental review of the fee regime. The consultants undertaking this work are due to report very shortly. Finally, in SR2002 the Government made a generous settlement on local planning authorities through the new Planning Delivery Grant, which will add £350 million of funding over the period 2003-2006, tied to performance improvements.

We recommend that, where a local authority might have a conflict of interest in relation to a planning matter it is considering, there should be a statutory requirement for it to make a formal public declaration of the nature and extent of its interest before taking a decision. We further recommend that the decision whether to grant planning permission for any development above a specified size promoted by a local authority or affecting local authority which is also the planning authority or affecting its land should be taken by an inspector appointed by the Secretary of State. (5.60)

Self-development of land by local authorities is governed by the procedures laid down in the Town and Country Planning General Regulations 1992. Additional guidance on these Regulations is set out in DOE Circular 19/92. Essentially this means that authorities are required to make planning applications in the same way as other applicants and follow the same procedures.

While authorities can grant themselves planning permission for their own land development or for development to be carried out by the authority and a third party, there are safeguards in place to check opportunities for abuse. Namely, such proposals must be advertised in the same way as any other similar applications. Secondly, the decision-making process is taken out of the hands of the committee or the relevant planning officer who would normally have the responsibility for the management of the land or building which the application relates. There is also transparency in the process because members of the public cannot be excluded from the relevant meetings at which local authority development proposals are discussed. Local authorities must take into account relevant objections by local residents. Only genuine land-use planning concerns can be taken into account. Moreover local authorities are required to notify the Secretary of State if their land proposals do not conform to the provisions of the development plan in force in the area. He will then consider whether to 'call-in' the application for his determination. Interested parties can ask the Secretary of State to call-in applications even if they do conform to a development plan.

The Secretary of State's policy is to be very selective about calling in planning applications. He will, in general, only take this step if planning issues of more than local importance are involved. Such cases may include, for example, those which, in his opinion:

- may conflict with national policies on important matters;
- could have significant effects beyond their immediate locality;
- give rise to substantial regional or national controversy;
- raise significant architectural and urban design issues; or
- may involve the interests of national security or of foreign Governments.

However, each case will continue to be considered on its individual merits.

Similar procedures are in place where the proposal is for development which will be carried out on local authority owned land by another developer. In addition, permission must be sought from the responsible development control authority. Consequently where

the county council owns land and permission is being sought for its development, most applications will need to go to the district council for a decision. Local authority decisions on planning development are open to challenge by way of Judicial Review.

There are already sufficient safeguards in the current planning system which will cover the type of situation envisaged by RCEP i.e. where applications will be referred to the Secretary of State to consider calling in. Under the various Directions (Departures; Shopping; Playing Fields; Residential Density - London and the South East) the common requirement is for Local Planning Authorities (LPAs) to notify the Secretary of State if they propose to grant planning permission for applications subject to referral under any of the Directions. This requirement only applies if LPAs want to grant permission, the requirement does not bite if they want to refuse permission. LPAs only have to refer applications after they have considered the application and they have decided that they wish to grant permission, they do not have to refer an application as soon as it is made.

The Secretary of State's decision on whether or not to call in an application referred to him under any of these Directions will be taken in the light of his call in policy:

a) If an application is called in a public inquiry will be held – the Inspector will send his/her report to the Secretary of State following the inquiry with a recommendation about whether the application should be granted, granted with conditions or refused.

b) If the Secretary of State decides not to intervene then the LPA is left to determine the application.

We urge the government and the devolved administrations to review all categories of data withheld on grounds of commercial confidentiality, to see which can be safely released. In particular, we recommend that Agricultural Departments place agricultural returns in the public domain. (6.15)

The introduction of Publication Schemes under the Freedom of Information Act 2000 (FOIA) has already led to a review of information that is held. Under the Defra Publication Scheme, approved by the Information Commissioner in November 2002 for a four-year period, new information has been placed in the public domain and a timetable agreed for further fresh information to be published. The current Publication Scheme is a living document and is viewed as the first stage of a cumulative information holdings review process, which will lead to new tranches of previously unpublished information being identified and recorded in the Scheme. Further information can be made available to the public on request which may require some adaptation for individual customers. This will be placed in the Defra Information Asset Register (IAR). Both the Scheme and the IAR will be regularly updated on the Defra website.

The Government has consulted on proposals for new Environmental Information Regulations (EIR) which are required to meet our obligations under the Aarhus Convention and the EC Directive 2003/4/EC. The new EIR will clarify the requirements on making available environmental information and introduce a response time of 20 working days. There will be an exemption from disclosure of commercial or industrial information, where such confidentiality is actionable to protect a legitimate economic interest in disclosure, is outweighed. There will be a presumption in favour of disclosure.

Aggregated information on agricultural returns is placed in the public domain, provided that such release does not breach commercial confidentiality or the rights of individuals in respect of the privacy of their personal information under the Data Protection Act 1998 and the Human Rights Act 1998. Under the National Statistics Code of Practice it is only possible to publish aggregate statistics that do not disclose the identity of individual farmers.

We recommend that data which have been gathered in the public name and for the public good should be available electronically at no cost for public use. (6.20)

The Government agrees that much information should be available for access electronically free of charge. Publication Schemes for Government Departments are already available electronically, and these link to a vast resource of electronic data.

Defra has consulted on proposals to encourage Public Authorities to proactively disseminate environmental information by electronic means in order to implement the requirements of the new EC Directive on Public Access to Environmental Information (2003/4/EC).

New Environmental Information Regulations will require public authorities to make all reasonable efforts to organise environmental information held by or for them with a view to its active and systemic dissemination to the public. Information to be maintained and made available will include international agreements, legislation, polices, plans, programme and reports relating to the environment. Data, or summaries of data, derived from monitoring of activities affecting the environment should also be disseminated.

However, collecting and producing information and making data available is not without cost. There are some circumstances where a charge for access is appropriate, for example where the private sector produces similar information commercially, or where access is free of charge but re-use of the information may, in particular cases, require a licence for which there may be a charge. Some organisations, such as the Met Office, total income comes from customers, both public and private sector, and it is the overall income that funds the collection of data, processing, etc. There may also, of course, be some data which is not available for public access or re-use for personal, commercial or other reasons where the public interest in refusing access overrides that in disclosure.

We recommend that the government adjust the financial model for public bodies holding and developing essential data sets (such as the Natural Environment Research Council and the Ordnance Survey) and replace income from sales of environmental information with direct grants. Consideration should be given to retaining a market element by relating the level of grant to the public use made of a body's data sets. (6.20)

Much Government information on environmental and other matters is available for access, and for re-use, free of charge or at minimal cost. We consider that for the public bodies mentioned in this recommendation, a financial model in which the public sector pays for the information materials which it uses, and the private sector pays for those which it uses, has the effect of relating the funding of such organisations to the public use made of the body's data sets. It promotes the efficient use of resources by incentivising users to identify their priority requirements and the supplying bodies to respond with value for money services.

There are no easy alternative options. Some commentators have suggested that if alternative funding could be found up-front to replace income from sales to non-central government users, it would subsequently lead, at some future date, to a greater financial benefit to Government from more employment in commercial information suppliers of value-added services. But that is far from certain, and if such an increase in employment did occur in that industry, it could be at the expense of employment elsewhere in the economy. The only certain assumption is that income from sales of environmental

information by these public bodies could only be replaced by direct grants if resources could be diverted from other government functions, such as health, education, etc, or from an increase in taxation.

We consider that would be a less efficient use of resources. Moreover, some or all of the services undertaken by such public bodies are capable of being undertaken by the private sector which might be discouraged from such enterprise if it were unable to see the prospect of selling its services to earn a return on its investment, thus the proposal to replace sales with direct grants is potentially anti-competitive.

We recommend that the Government fund a feasibility study on the use of Grid technology in planning. (6.34)

Such a high capacity network has clear benefits to computationally intense applications such as climate prediction and particle physics. But it is unclear what benefits it could bring to planning process where computational requirements are more modest.

We recommend the establishment of a virtual centre for environmental data, in order to overcome the barriers to presenting coherent and consistent environmental information in electronic form. (6.36)

The Freedom of Information Act establishes that each public authority should manage its own virtual portal through its Publication Scheme.

Numerous similar systems already exist, but not yet a single environmental portal. For example, Defra and the Environment Agency provide two important portals for environmental information, but local authorities, the ODPM, the Department for Transport and a large range of non-departmental public bodies also collect and manage environmental information. Such sites should seek, where possible, to provide links to other relevant sites where environmental information is held.

The European Commission is consulting on an initiative which could lead to the creation of national and community level geographic information portals. This initiative, known as INSPIRE (Infrastructure for Spatial Information in Europe) seeks to promote consistent quality controlled geographic information for community policy making at local, regional, national and international levels. The Commission may propose new EU legislation on the subject. ODPM and Defra are jointly taking the lead on co-ordinating the UK Government's response to the INSPIRE consultation process.

Public authorities are required by law to hold certain environmental information in publicly accessible registers. Defra is developing a web portal to provide easy, searchable access to details of all such environmental public registers, including the location of registers and web links to registers that are held online.

All relevant public sector bodies would be under a statutory obligation to give free access to their information. (6.39)

The Government agrees that in-situ access to public registers or lists of environmental information should be free of charge.

Where information is published on public websites there is normally access free of charge, and brief extracts of the material may be reproduced for the purposes of research, private study, criticism, review and news reporting.

In other circumstances it can sometimes be appropriate to make a charge for producing the material, including where access is provided via a website (and where information is provided to or through a virtual centre or portal), or in other formats such as booklets. In particular cases, the information should be made available on a commercial basis where public and private users pay for what they use, or in the interests of fair competition where the private sector produces similar information.

There is provision for public authorities to make environmental information available at a reasonable charge where appropriate. In particular cases where information is made available on a commercial basis, and where this is necessary to guarantee the continued collecting and publishing of such information, a market-based charge is considered to be reasonable. This approach is endorsed by EC Directive 2003/4/EC.

Where compliance with a numerical standard is the goal, the body setting the standard should give clear guidance on the appropriate methodologies for modelling and measurement. (7.20)

The Government agrees the need for such guidance. The Environment Agency already carries out environmental modelling exercises according to consistent methodologies. It also provides guidance on modelling and monitoring the effects of discharges to water. Guidance on the statistical basis for such standards, and how they are applied, is inseparable from modelling and monitoring; developing such guidance is subject to the practicalities of providing guidance applicable to the wide range of circumstances in which it is needed, and this will affect the level of detail within that guidance that can be given.

We recommend that consideration be given to introducing a mandatory preliminary stage in environmental impact assessment in which the planning authority will prescribe the scope of a particular assessment after public consultation. (7.31)

Under the present Environmental Impact Assessment (EIA) Directive there is no requirement for competent authorities to prescribe the scope of an EIA but they must do so if such a request is made prior to the application for development being made . There is no requirement to consult with the public prior to providing a scoping opinion.

The UK Regulations reflect the requirements of the Directive. There are no plans to amend these Regulations to require planning authorities to prescribe the scope of an EIA following public consultation, or to require them to consult the public in those cases where they may be asked by a developer to provide a scoping opinion.

Planning authorities are required to consult with specified bodies, including the Environment Agency, the Countryside Commission and English Nature, before they issue a scoping opinion. These bodies are consulted because of their knowledge and expertise on environmental issues. There is, however, no reason why a local authority may not consult more widely with, for example, local amenity or community groups that may be able to provide specific local insights. Guidance issued to developers on preparing Environmental Statements recommends that consultation with the public can be useful in identifying key environmental issues at the scoping stage prior to submitting a planning application. And there is evidence from the RCEP's report that this is happening with the public being consulted on roughly 40% of cases.

The case for requiring planning authorities to consult publicly on all requests for scoping opinions is not clear. The RCEP's report notes that in "only a proportion" of those cases where they were consulted did the public influence the content of the environmental statement.

We are not persuaded that it would be reasonable to require planning authorities to consult with the public in every case where a request for a scoping opinion is made. Not consulting at this initial stage does not of course remove the public's ability to influence the environmental statement. If there are particular omissions these can be drawn to the attention of the planning authority once the environmental statement is made available for public comment and, if necessary, the authority can request further information to address these concerns.

Finally, scoping has not been made mandatory because developers are under no obligation to discuss their proposals with a LPA before submitting a planning application, or to disclose or publicise their proposals in advance.

We recommend that a counterpart to the Dutch Environmental Impact Assessment Commission should be established in the UK to provide a rigorous independent check on the assessment process. The commission could also carry out evaluations of a sample of statements and issue guidance on best practice. (7.35)

We do not envisage that a Commission on similar lines to the Netherlands model will be established.

This recommendation appears to raise two issues - assessment of the EIA prior to approval and monitoring and evaluation of predictions in the environmental statements post-approval. The relevant text that precedes the recommendation, however, focuses only on the post-approval stage.

For projects that are authorised through the town and country planning procedure, the environmental impact assessment is undertaken by the developer and the report on his assessment (Environmental Statement) submitted to the planning authority. It is for the planning authority to satisfy itself that the assessment has been carried out rigorously and that the Environmental Statement (ES) accurately, and without undue bias, reports all of the likely significant environmental effects. In doing it consults with relevant environmental bodies and the public.

If any of the consultation bodies have concerns about the assessment or the information in the ES or about the methodologies used to obtain it is open to them to raise it with the LPA which may request further information or clarification from the developer. The LPA may also commission an independent review of the ES, or parts of it, from bodies such as the Institute of Environmental Management and Assessment or an environmental consultancy. It could probably also seek a view from one of the universities that have EIA Centres of Excellence and that carry out much research on EIA.

We believe that LPAs have at their disposal adequate means to ensure that the EIA assessment process for planning projects is carried out rigorously; that it fairly and accurately reports the likely effects and suitable measures to mitigate them, and that it challenges unsupported claims and assumptions about both environmental effects and mitigation measures.

Post-approval monitoring and evaluation is not a requirement of domestic or European legislation. But studies are from time-to-time carried out to gauge the effectiveness of the EIA procedure. Studies are also routinely carried out by many of the UK's universities so a substantial amount of information is available about EIA.

We recommend that human health issues be incorporated explicitly in the environmental impact assessment process. (paragraph 7.38)

For projects where environmental impact assessment is required it is expected that the assessment will consider the potential effects that the project will have on people's health.

For example, the assessment should address the likely effects of discharges to air and soil and water and how these may impact upon the human population.

The Government recognises the benefits of Health Impacts Assessment (HIA), and recognises that it should be carried out as part of sustainability appraisals or sustainability impact assessments, or even within Strategic Environmental Assessments. But we are not persuaded that detailed health impact assessment, which requires different expertise and methodologies, should form an integral part of environmental impact assessment at individual project level.

We recommend that the government, if it wishes to retain sustainability appraisal, strengthen the environmental component so that it will satisfy the legal requirements of the European Directive on strategic environmental assessment. We do not consider that sustainability appraisal as currently undertaken is adequate for this purpose. (7.48)

The Government remains committed to the principles of sustainable development and sustainability appraisal. We agree with RCEP that the environmental component of sustainability appraisal needs to be strengthened to meet the legal requirements of the Strategic Environmental Assessment (SEA) Directive. We are making provision for this in our guidance on the SEA Directive for planning authorities. A draft, on which we carried out full public consultation between October 2002 and January 2003, showed how the Directive's requirements could be integrated into a wider sustainability framework. We plan to publish the guidance this summer.

Under the Planning and Compulsory Purchase Bill, Regional Spatial Strategies and Local Development Documents will be subject to sustainability appraisal. Guidance will be issued in due course.

We recommend that a comprehensive and definitive statement of priority objectives for the environment be produced now for each part of the UK, and widely publicised. (8.7)

Government Departments have adopted clear statements of their priority objectives in their Service Delivery Agreements (SDA). The SDA contains both overarching objectives and more specific targets. Defra's Service Delivery Agreement includes overarching aims and objectives relating to sustainable development, environmental protection, prudent management and use of natural resources, and environmental impacts and health. These are supported by a range of further action-orientated targets. The SDAs are published on the Defra website.

In relation to land use, we will ensure that these environmental objectives are reflected in national planning policy statements under the current suite of planning policy reviews. We are considering separately whether additional steps may be necessary to publicise our environmental priorities more specifically amongst the town and country planning community.

Wherever possible, this statement must include a quantified target or targets for movement towards the objective by a specified date. (8.7)

Defra's targets in its Service Delivery Agreement are underpinned by detailed delivery plans setting out the actions to achieve them, with rigorous milestones and monitoring measures.

We recommend that the initial statements of priority environmental objectives should be reviewed at an early date through a process of extensive consultation and debate about environmental priorities. (8.8)

While Service Delivery Agreements apply for the period 2003-2006, the Government fully accepts the need for the widest possible engagement in environmental and related policies and priorities. We intend for example that the forthcoming review of the UK's Sustainable Development Strategy will be a major collaborative effort.

It will be necessary to produce a statement of priority environmental objectives for the UK as a whole, as well as for each component part. (8.9)

Many areas of environmental policy are devolved but there is already close collaboration between the different administrations within the UK – and indeed beyond, through the Environmental Strand of the British/Irish Council.

We recommend the statements of priority objectives should be prepared on the basis that sustainable development is achievable only if the environment is safeguarded and enhanced. (8.10)

The Government agrees that maintaining environmental capacity is a key element of sustainable development, and that this should be reflected in the statement of priority objectives. Policy will need to address when environmental assets are of such importance that they must be safeguarded from any development which has the potential to degrade them; when it is possible to substitute capacity so that development in one area is offset by building up environmental capacity elsewhere; and in other instances whether a strategy of mitigation and/or restoration would be more appropriate.

It is essential that each objective is underpinned by a soundly based program for achieving it. (8.13)

We agree with this recommendation. Defra's targets in its Service Delivery Agreement are underpinned by detailed delivery plans which clearly set out the actions required to achieve them along with rigorous milestones and monitoring measures.

We recommend that the town and country planning system should be given a statutory purpose, and that an appropriate purpose would be 'to facilitate the achievement of legitimate economic and social goals whilst ensuring that the quality of the environment is safeguarded and wherever appropriate enhanced'. (8.33)

The Government understands the rationale for setting out a statutory purpose for the town and country planning system. However, the Government is concerned that any such purpose needs to be drafted in such a way that it could not be misinterpreted or lead to legal argument over interpretation which could hamper the operation of the system.

Instead, Clause 38 of the Planning and Compulsory Purchase Bill, currently before the House of Commons, places a duty on those persons and bodies exercising functions in respect of the preparation of Regional Spatial Strategies (RSS) and local developments documents (LDDs) in England, to do so with a view to contributing to the achievement of sustainable development. In doing so, the bodies concerned must have regard to policies and guidance issued by the Secretary of State.

This duty is supported by the requirements in the Bill for the RSS and LDDs to undergo a sustainability appraisal.

The Government believes that the best approach is to set out a specific duty, rather than a general statement of purpose whose application is unclear. This follows the approach taken in other legislation. Under the plan led system, a duty at the policy and strategy level will provide a framework within which planning decisions have to be considered. Under Clause 37 of the Bill, where regard has to be made to the development plan in making planning decisions, the decision must be made in accordance with the plan unless material considerations indicate otherwise.

The Government also believes that the duty should be framed with a simple reference to sustainable development rather than trying to define in legal terms what is a complex and evolving concept. Instead, guidance will be issued to expand on the definition and operation of Clause 38. The Government issued a briefing note to the Standing Committee on the Bill on the duty in the Clause, which can be found at http://www.planning.odpm.gov.uk/consult/greenpap/clause38/01.htm

We repeat the recommendation made by the Commission in 1996 that the diverse legislation the Environment Agencies inherited should be reviewed to give it coherence and relate it to consistent general principles, and the necessary changes should be enacted at the earliest practicable opportunity. (8.35)

The Government agrees that the legislation the environment agencies (the Environment Agency and the Scottish Environment Agency) inherited should be reviewed to give it coherence. Work on the review was initially delayed to allow the agencies time to become established and deal with some of the mechanics of devolution. Following devolution in 1999, it was agreed with the Scottish Executive that the Whitehall review should focus on the situation in England and Wales, which is the area covered by the Environment Agency.

The review has looked at the possible rationalisation of the regulatory mechanisms which the Agency operates, the workings of the legislation the Agency inherited and the administrative and managerial arrangements it has adopted.

An interim report was published in 2000 and the Agency was commissioned to assess the implications of a simplified structure of regulation. This work has now been completed, and the final report was published on 23 June and has been placed on the Defra website.

We recommend that town and country planning legislation should stipulate key aspects of the environment and natural resources as material considerations that should be taken into account in considering planning applications. (8.36)

Given that the circumstances surrounding planning applications vary so widely, we do not consider it would be appropriate for legislation to prescribe the material considerations that should be taken into account in considering planning applications. Whether particular matters are material considerations, and the weight that should be attached to those matters, are properly for the determining authority to decide in the light of the circumstances of the individual case. Ultimately, only the courts can decide if a factor is material to a case.

However, detailed advice on what might be material in certain circumstances is provided in the appropriate Planning Policy Guidance notes. For example, paragraph 40 of PPG10 *Planning and Waste Management* gives advice on the considerations needed to be taken into account in planning for the management and disposal of waste.

We recommend that planning policy guidance for England (the PPG series) should be condensed into a single document updated at frequent intervals, both on the Internet and in paper form;

We disagree. We believe that it is easier to update individual PPGs as the need arises. One of the commitments in the Policy Paper *Sustainable Communities – Delivering through Planning* is to review the PPG series over the course of the next three years.

We emphasise that proposals for major infrastructure projects should always be put forward within the framework of carefully considered national policies, which should always be adopted after wide public consultation, and take full account of environmental considerations including the statement of environmental objectives we have recommended. (8.49)

The national need for additional infrastructure should be probed in an open and participatory process, which where practicable should engage local communities which may be affected. (8.50)

[Response covers recommendations at 8.49 & 8.50]

There will generally be consultation on draft policies, and full account will be taken of the relevant environmental issues. In this context, proposals for Major Infrastructure Projects will be considered as they emerge. *Sustainable Communities – Delivering through Planning*, set out the Government's approach to Major Infrastructure Projects.

We believe our proposals do this. In any event, need will be taken into account when a planning proposal is being considered and local communities may participate in that planning process. As far as Major Infrastructure Projects are concerned, we are proposing a three-part approach;

- Clearer Government Policy statements, which may be supported by clearer regional strategies. The Government would expect to consult on policy statements, and there will be statutory consultation processes for Regional Spatial Strategies including examinations in public;
- The new procedures in the Planning and Compulsory Purchase Bill that will enable the appointment of a team of Inspectors to simultaneously consider various aspects of Major Infrastructure Project proposals at inquiry; and
- New inquiry rules that will allow Inspectors to make better use of inquiry time while ensuring that everyone can adequately express their views.

Taken as a package, these measures will together speed up the planning process, whilst ensuring that everyone can adequately express their views.

The issues involved in framing a national policy underlying major infrastructure projects may be better handled by a body which combines inquisitorial and adversarial elements, as a planning inquiry commission would. (8.56)

We have already listened to the strong views expressed following the Green Paper and consideration by Parliamentary Committees and revised our proposals accordingly. As it was felt that the use of Parliamentary time to consider Major Infrastructure Projects would not speed up the process we do not see that a Planning Inquiry Commission would necessarily be better equipped to be able to handle such projects, principally because we have grave reservations about the working of such a body. We believe that the existing well proven inquiry system as refined by our proposals in response to the recommendation at 8.50 above will best facilitate the handling of MIPs proposals.

There must continue to be open hearings at which local people and others can express views about the local impacts of a proposed major infrastructure project and challenge claims by the developer. (8.58)

We believe that our proposals for Major Infrastructure Projects detailed in response to the recommendation at 8.50 above achieve this.

We recommend that, if under the government's proposals for major projects the inspector conducting the local inquiry concludes that the local impacts of a proposed project would be unacceptable, he should be permitted to recommend that the approval in principle should be reconsidered. (8.58)

There is no such concept in land use planning of "approval in principle". In relation to Major Infrastructure Projects, the new procedures described above will help Inspectors to make a recommendation for or against a whole project following a public inquiry carried out under the Major Infrastructure Project Rules as revised, following enactment of the Bill.

We recommend that targets set for developing renewable energy at regional and local levels should have a firm and consistent basis in terms of the capacity for developing each of the main types of renewable energy without damage to the environment. (8.65)

The Government agrees. The regional target assessments carried out by each Government Office have taken account of this. Further advice will be provided in the revision of PPG 22 *Renewable Energy*.

On 6 March 2002, the DTI published a report *Regional Renewable Energy Assessments*, compiled by OXERA, to help the Government plan for its renewable energy target of 10 per cent electricity from renewable sources by 2010. The OXERA Report found that the regional renewable energy assessments had been undertaken using consistent and reasonable assumptions of land use and technical constraints.

As set out in the recent Energy White Paper, the Government will develop, in partnership with local and regional bodies, a new strategic framework for local areas and regions in England to ensure that national objectives on energy are reflected in local and regional decision-making and to ensure that national policy reflects local and regional priorities.

We are working with local and regional bodies, including planners, on the development of a new regional level strategic approach to energy, including renewables. We expect that these approaches should be developed by partnership between regional chambers, RDAs, Government Offices, local authorities and other stakeholders. Such approaches will incorporate targets and other objectives, and action plans showing how local and regional bodies will act to realise them. There are already a number of good examples of such approaches across the regions. Others are in development. Where they are in place, they will be crucial in helping planners and others consider strategically the resources and opportunities for renewables projects in their areas, and how they will contribute to overall national objectives.

We strongly support giving greater prominence to energy issues in regional planning guidance. (8.69)

We will be reviewing PPG11 *Regional Planning* in preparation for the introduction of regional spatial strategies in 2004 under the new Planning and Compulsory Purchase Bill. As part of that review we will examine the scope for developing the guidance on energy set out in chapter 14, taking account of the revised PPG22 and the Energy White Paper.

We expect the development of regional strategic approaches to energy to provide a key policy context for planners and others. These approaches, and the targets, objectives and actions they set out, will need to be reflected in regional planning guidance.

We recommend that planning policy guidance on renewable energy in England, which is now nearly nine years old, should be revised and reissued as soon as possible. (8.72)

The Government agrees. Work on the revision on PPG 22 *Renewable Energy* has commenced and the Government hope to publish a draft for public consultation during summer 2003.

Mechanisms are needed to ensure that legitimate societal needs can be met in the face of preferences opposing the developments implied by those needs. The town and country planning system is intended to be such a mechanism but such developments must be essential parts of comprehensive and generally accepted policies, they must stem from transparent assessments of needs and environmental capacity, and there must be more imagination in countering any adverse effects on particular areas. (8.73)

The Government agrees that the planning system must provide mechanisms for mediating between societal needs for sustainable development and the legitimate concerns of individuals and communities. The Government agrees also that the planning system must be transparent, accessible and hold the confidence of developers, individuals and communities.

Our planning reforms will reinforce these strengths, in four main ways. Firstly by putting sustainable development, with its recognition of social needs, at the very heart of our reforms. Secondly, by promoting more effective participation and engagement covering all sections of the community so that the preferences of the few do not dominate. Thirdly by requiring a transparent assessment of how draft plans satisfy sustainable development needs through the sustainability appraisal process and the independent examination into the soundness of the plan. Fourthly, and most important of all, by seeking to change the culture of planning from a reactive process to an imaginative and proactive approach to spatial change.

We recommend that the overall policy objective for contaminated land should be to identify and seek to bring about the combination of remediation and subsequent use that represents the best practicable environmental option for each site. (9.10)

Defra's policy objectives are clear – to identify and remove unacceptable risks to human health and the environment, to seek to bring damaged land back into beneficial use and to seek to ensure cost burdens faced by parties involved are proportionate, manageable and economically sustainable. In this context there are clear planning objectives stated in PPG 23 *Planning and Pollution Control* (and in the consultation document on revision of the contaminated land parts of PPG 23 issued in February 2002) to encourage the beneficial re-use of previously developed land while ensuring that any unacceptable risks from contamination are identified and properly dealt with.

We recommend that the government and the devolved administrations set target dates for local authorities to complete their inspection of contaminated land, and provide the necessary finance for them to do so. (9.12)

The Government is currently exploring a new Best Value Performance Indicator relating to local authority inspection under the statutory regime for contaminated land and one of the areas that will be looked at is the feasibility of locally set targets. The Government also provides capital support to local authorities through a £20m programme, including support for site investigations.

We recommend that, once a clearer picture emerges of the extent of the problem posed by contaminated land and the possible uses for remediated sites, the government and the devolved administrations should set targets for the total area to be brought back into beneficial use over ten years and should plan to provide the necessary finance. They should also report on the feasibility of the 2030 goal for dealing with contaminated land proposed by the Urban Task Force. (9.14)

Not all contaminated land is in need of a new or beneficial use, since in some cases it is in productive use in its present condition. Equally, not all previously developed but unused or under-used land is contaminated. There are already government targets relating to the reclamation and reuse of brownfield land, which include cases where such land is contaminated. These are described in the Sustainable Communities Plan. Targets for identifying and dealing with contaminated land, as an environmental protection issue, will be considered in the context of the regime for dealing with such cases presented by Part IIA of the Environmental Protection Act 1990, as described in DETR Circular 02/2000 ("Contaminated Land"). The Government believes Part IIA supports the beneficial re-use of land damaged by contamination, by clarifying liabilities and remediation requirements so that land can be made fit for any new uses proposed for it.

We urge the government to put in place mechanisms to replace the Partnership Investment Programme for land remediation. (9.16)

The European Commission recently approved our land remediation scheme. The approval enables the RDAs, English Partnerships and local authorities to aid the remediation of contaminated land, brownfield land and derelict land to make it suitable for any new use. Up to 100% of eligible costs are allowed under this approval.

The approval also permits the payment of aid to help a business relocate where it is lawfully carrying out an activity that creates major pollution and is required to move to a more suitable site. Aid of up to 30% of eligible costs (40% for small or medium sized enterprises) is allowed.

Detailed guidance on the approval is currently being developed.

Government should inject more public finance into site investigations and remediation not covered by the statutory regime for contaminated land, and develop means of recovering at least a proportion of the cost of these investigations from any subsequent commercial scheme. (9.17)

We believe that this would contravene state aid rules where the public sector are taking responsibility for funding works which should be undertaken by the private sector in investigating land requiring to be remediated, particularly if there was no partial clawback. Many commercial schemes would not be financially viable and therefore the ability to recover a portion of the cost is very limited. Schemes that are currently financially viable without grant aid tend to happen anyway where there is a profit to be made by the private sector provided that the planning use allows this to happen. Many sites are not commercially viable and therefore there would be no ability for the public sector to regain its financial input thereby breaching state aid guidelines.

There should be a single web portal that would allow local authorities, developers, their professional advisers and the public to access information on contaminated land throughout the UK, and through which all relevant public documents, including research findings, would be freely available. This should also include the public registers maintained by local authorities. (9.18)

The Government agrees with the intention behind this recommendation, which is to facilitate ease of access to information. The approach to all information established by the Freedom of Information Act is that each public authority should manage its own virtual portal, having set out its approach access to information in its Publication Scheme.

The Defra Publication Scheme was approved by the Information Commissioner in November 2002. The Defra website includes pages about land contamination, including details of legislation, circulars, guidance, and other technical material published by Defra and its predecessors, with links to other organisations. The Environment Agency website also has details of its own publications and its role. Both sites are linked, and there are also links to other useful sites.

Information on contaminated land is covered by the Environmental Information Regulations 1992 (as amended) and will be covered by new regulations which are to be introduced to implement the requirements of the Aarhus Convention and the new EU directive on public access to environmental information. This directive includes a requirement for public authorities to organise their environmental information with a view to active dissemination, in particular by means of electronic technology.

Defra is also developing a website which will provide links to all the environmental registers that are required by law to be kept by public authorities. This will include a link for the public registers held in respect of contaminated land, as well as the registers dealing with IPPC and local authority planning registers where these are already held in electronic form. This will then be updated as the information is progressively made available in electronic form in accordance with the new legal requirements. Defra has approved a request for match-funding towards the development of a Europe-wide website on contaminated land matters, being supported by the European Commission.

We recommend that the government and the devolved administrations review the respective roles of the town and country planning system and the building regulations in order to design and implement an effective system for achieving substantially better environmental performance in new or refurbished buildings. (9.21)

ODPM, in partnership with other Government Departments, will be examining what scope there is to bring consideration of the use of renewables and energy efficiency in developments more within the scope of the planning system, in the context of the review of PPG22 and the Government's wider planning reforms

As far as the Building Regulations are concerned substantial changes were made to Part L – which relates to the conservation of fuel and power – together with new Approved documents L1 (dwellings) and L2 (other buildings). The aim of these is to further cut the carbon dioxide emissions and the costs of heating and hot water in all types of buildings. For new dwellings the reduction will on average be up to 25%. The changes were published in October 2001 and came into effect on 1 April 2002.

Three further stages of amendments were envisaged up to 2008. The Government has indicated in the Energy White Paper however that a further comprehensive review of the energy efficiency provisions will be started this year with the aim of bringing a further major revision into effect in 2005, and that building standards will be raised over the next decade learning lessons from other comparable European countries. The revision will include implementation of the requirements of the Energy Performance of Buildings Directive.

It needs to be borne in mind that the Building Regulations have evolved from the principles of Nineteenth Century public health legislation, and development control for planning from inter-war and immediate post-war legislation. Having evolved over these

considerable timeframes they inevitably now form mature, distinct, albeit essential and often parallel systems of regulation and control for buildings, development and land use. The introduction of one integrated system would therefore be a major legislative and administrative undertaking which would need to be proven in its practical feasibility, effectiveness, and overall benefit.

Although the two systems often do run in parallel for building developments, their areas of concern can be quite different. However, the Government accepts that as the remit of the Building Regulations increasingly extends its concern with environmental and sustainability issues there may be a case for at least better co-ordination of the two systems at development control/Building Regulation approval stage. Better co-ordination of the systems might also be less confusing to the public and deliver a more comprehensive process in terms of overall concern for environmental and sustainability issues. In terms of 'process' there might be economies and benefits to achieve in terms of a quicker, more streamlined decision process.

In 1996 the then DoE and English Heritage recognised the concerns at the apparent lack of integration between the various consent regimes and commissioned research on the reconciliation of building regulations and other controls affecting buildings of architectural interest. The ODPM has recently now commissioned a wider research project to look at the scope and benefits of a single consent regime (which is mentioned in our answer to Recommendation 2). It will also consider whether there is scope for unifying the planning and building regulations consent regimes. The consultants findings should form a substantive basis from which to further examine the potential for better or even full integration of the Town and Country Planning system and the Building Regulations as outlined above.

In the last few years the Building Regulations Advisory Committee (BRAC) has pursued a strategic agenda concerned in particular with extending the remit of the Building Regulations to cover environmental and sustainability issues. An important element of this has been consideration of which regulations might be made retrospective in terms of their application to the existing building stock. The most notable success here has been in the area of conservation of energy where there is a clear vires for the regulations, and where for the first time they have been made retrospective to some degree in their application to the existing building stock (see second paragraph above). There is currently only limited vires for dealing with many of the areas of sustainability in the regulations; although ODPM is committed to considering sustainability issues in the context of the Approved Documents (which accompany the regulations) and Regulatory Impact Assessments, and in taking the earliest Parliamentary opportunity to rectify the lack of vires.

In considering the extension of the Building Regulations to embrace environmental and sustainability issues BRAC has also commented on the desirability of encouraging joined up thinking with the planning system.

We recommend that the government and devolved administrations include in their guidance to planning authorities targets for the maximum distance any urban household should be from a green space of specified size open to the public. (9.23)

The Government believes that green spaces in urban areas are vitally important for the well being of people and their communities. This importance is reflected in its revised PPG17 *Planning for Open Space, Sport and Recreation*, issued in July 2002. This guidance to

planning authorities requires that standards be set both for size and accessibility of all types of open space. This includes publicly accessible green space to which the RCEP recommendation refers.

The Government believes that open space standards are best set locally. National standards cannot cater for local circumstances, such as differing demographic profiles and the extent of existing built development in an area. The guidance requires planning authorities, in setting these standards, to undertake robust assessments of need and audits of all their existing facilities. It specifies that standards should be included in development plans.

To help authorities to meet these requirements and to plan properly for open space and other recreational facilities it has issued a companion guide to PPG17, *Assessing Needs and Opportunities*. This document includes advice on setting provision standards for accessibility, including setting distance thresholds and minimum sizes.

We consider production subsidies to agriculture should be phased out as soon as possible. While they remain part of the Common Agricultural Policy (CAP), we recommend that farmers receiving such subsidies should be required to maintain a defined level of environmental protection on the land they manage. We urge the government to take full advantage of the existing scope for cross-compliance under the CAP to support the protection and enhancement of the environment, and to seek to widen the scope for cross-compliance as part of the reform of the CAP. (9.32)

The Government agrees that subsidies linked to production should be phased out and has long argued that we need to secure a shift in support towards agri-environment and wider rural development measures.

The Government supports proposals from the European Commission – published on 22 January – that, in future, receipt of support payments would no longer be linked to production, rather to the meeting of environmental, animal health and welfare and food and occupational safety standards, as well as the maintaining of land in 'good agricultural condition'. We will want to consider carefully the practical implementation of these requirements and Defra will work closely with the devolved administrations, and ensure that they are fully involved in discussions in Brussels on this issue.

We believe there is justification for the state to continue payments to rural land managers, including arable and livestock farmers, for achieving well defined, measurable environmental and social objectives. We recommend that the Department for Environment, Food and Rural Affairs and the devolved administrations launch a wide debate on rationalising the support for owners and managers of rural land through the introduction of schemes that serve environmental and, where appropriate, other objectives. (9.34)

The Government agrees that continued payments to rural land managers for achieving environmental and social objectives are justified and that these objectives need to be defined and measurable.

In England, as in each of the other countries of the UK, a Rural Development Programme began in 2000 and will run until 2006. This has a budget of £1.6bn and offers payments to rural land managers and others for a very wide range of social and environmental objectives.

In addition, Defra is conducting an in-depth review of agri-environment schemes in England. As part of this process Defra has initiated a wide debate on the future of these schemes, both by running a series of public consultations and by involving a range of partner organisations in the review process. Pilots of an entry-level agri-environment scheme, allowing wider coverage than the existing schemes, and in line with the recommendations of the Policy Commission on the Future of Farming and Food, were launched on 23 February 2003. Further details are provide on the Defra website at www.defra.gov.uk\erdp\schemes\landbased\review\aedraftnew.htm.

We recommend the withdrawal of the permitted development rights that currently apply to building conversions and the construction of new buildings, roads and vehicle tracks when these activities are associated with agriculture or forestry. (9.42)

All permitted development rights (PDRs), including those relating to agriculture and forestry, are currently being reviewed as part of a research project to consider whether existing permitted development rights are still appropriate. We expect the research report to be published shortly. The Government will consider the report's conclusions and recommendations. If we consider that changes to permitted development rights are desirable; we will consult on any proposed changes in due course.

The Government considers that PDRs facilitate flexible and efficient agricultural and forestry operations, whilst providing safeguards for the countryside, for example, through the prior approval procedure which allows local planning authorities to regulate the siting, design and appearance of permitted agricultural and forestry development in certain cases. The wholesale withdrawal of these PDRs would be likely to increase the regulatory burdens on farmers in particular, when they are trying to recover from the crisis in their industry. Such a move would also increase the burdens on many local planning authorities, and would run counter to the Government's strategy of streamlining the planning system.

We recommend that the impact of new planning guidance on rural diversification is monitored for its effectiveness in protecting the environment and to ensure that it does not block beneficial diversification projects. We also recommend that information is collected on the rate at which diversification is proceeding in rural areas, the quantity and type of employment created and maintained, and the overall environmental impact of diversification including its effect on travel patterns. (9.45)

Planning Policy Guidance note 7 *The Countryside* was last fully revised in February 1997 (and is currently under review, with a public consultation document to be issued shortly). The advice in PPG7, and in PPG13 *Transport*, on farm diversification was updated in March 2001. The policies on farm diversification and on rural diversification more generally, are just some of many planning policies relating to rural areas. The Government does not, as a matter of course, routinely and systematically monitor the impact of these policies, although it does keep the overall effectiveness and relevance of its planning policies under review.

In 2000-01 we commissioned a specific study on the impact of PPG7 (and PPG13) policies on farm diversification. The report was published in October 2001. We have no current proposals to repeat, or commission any further studies in this area although, if particular issues or concerns about the impact of the current planning policies arise, we shall consider the need for any further investigation or research.

We call on DEFRA and the devolved administrations to ensure that the rural environment enjoys the best possible protection under the EIA Directive. In particular, they should not hesitate to refuse consent to schemes that would cause significant environmental damage, nor miss such schemes at the initial screening stage. Screening should be carried out by staff with appropriate environmental training using rigorous criteria. (9.49)

In operating the EIA Regulations relating to uncultivated land and semi-natural areas, the Government is seeking to ensure that, as required by the Directive, significant environmental damage to such areas is avoided in consultation as appropriate with statutory consultees (i.e. English Nature, English Heritage, Environment Agency and Countryside Agency).

Staff involved in assessing the impacts of agricultural intensification are experienced in both land management and EIA processes and the team is also a corporate member of the Institute of Environmental Assessment and Management. As part of their Continuing Professional Development, they receive general and specific training on EIA. Further consideration is being given to formal EIA accreditation.

We recommend that local planning authorities should be added to the list of statutory consultees for environmental impact assessment of intensive agriculture. (9.50)

The Government states (at paragraph 21 of published Guidelines) that before deciding whether a project is likely to have significant environmental effects, it will consult as necessary. This may include consulting the statutory agencies (English Nature, English Heritage, Environment Agency and Countryside Agency) in relation to their relevant interests. Local authorities may also be asked to provide specific information on data which they may hold on particular aspects such as Archaeological Sites and Monument Records and biodiversity information. It will also consult groups with specific interests – such as National Park Authorities and AONB Conservation Boards, where projects are proposed in National Parks and AONBs.

We recommend that there should be a thorough review of controls on environmental impacts of agriculture. This should include measures for protecting the conservation value of the countryside and for controlling agricultural pollution.

We further recommend that the specialist environmental agencies should co-operate to conduct an independent assessment of the efficacy of the new EIA regulations and the other measures mentioned above in five years' time. (9.53)

A review of the EIA (Uncultivated Land and Semi-Natural Areas) Regulations will take place later this year. Statutory environmental agencies will be heavily involved in discussions and the public and other environmental organisations will also be consulted. The Government will consider the need for further assessment of the EIA regulations in the light of that review.

The Government supports the need to address the environmental impacts of agriculture and a number of initiatives are already underway. The Strategy for Sustainable Farming and Food, which was launched on 12 December 2002, provides a framework for the majority of these initiatives.

The Strategy which is backed by £500 million of public money over three years, sets out how industry, Government and consumers must work together to secure a sustainable future for English farming and food industries, as viable industries contributing to a better environment and healthy and prosperous communities.

With specific reference to the environmental objectives, the Strategy sets out twin challenges of reducing the environmental damage caused by agriculture and the wider food chain, and the need to enhance the positive impacts. Specific measures embraced by the strategy to meet these environmental challenges, include:

- A new entry-level agri-environment scheme, suitable for all farmers which will reward them for farming in a more environmentally responsible way. The Government is currently piloting this scheme and, if successful, will make it available to farmers across England from 2005. Amongst other benefits, this will enable agri-environment schemes to make a contribution to the sustainable management of natural resources, such as soils and plant nutrients, with consequential benefits for the control of diffuse pollution;
- The Government is also engaged in a review of the current agri-environment schemes and intends to combine them into a single higher tier scheme designed to complement the proposed Entry Level Scheme. As part of this review we are examining the potential of this higher tier scheme to contribute to resource protection;
- A commitment for Government to undertake a review aimed at identifying cost-effective measures to control diffuse water pollution from agriculture, to improve the water environment;
- The Government is also committed to following up the draft Soil Strategy for England and is playing an active role in developing sustainable soil use policy in the use of the EU Soil Thematic Strategy;
- Increasing our understanding of the potential to further reduce agricultural emissions and developing the agricultural policy in response to climate change;
- A commitment by Defra and the Environment Agency to work on a new strategy for the modernisation of Environmental Regulations which, amongst other outcomes, will seek to place emphasis on environmental outcomes, whether for enhancement or protection. Although the strategy is close to completion, it has recently been overtaken by the setting up of a department-wide Regulation Taskforce due to report its conclusions in Autumn 2003; and
- The recently agreed reform of the Common Agricultural Policy (CAP) includes a number of welcome developments that have considerable potential to help protect the conservation value of the countryside. It will be possible for Member States to fully decouple the majority of farm support payments from production. This will lead to a number of beneficial environmental consequences. There are also measures available to Member States to address some of the potentially negative environmental consequences of decoupling, in particular through the role of cross compliance and a proposed national envelope scheme to target up to 10% of decoupled payments towards environmentally friendly farming systems. The Government was a strong advocate of the principle of cross compliance during the negotiations and the final agreement retains requirements for farmers to respect environmental legislation and maintain farmland in good agricultural and environmental condition. A proposal for a Farm Advisory Service has been made less bureaucratic and is now strongly linked to helping farmers observe good agricultural and environmental conditions. The proposal to move over time resources from Pillar I to Pillar II agri-environment and rural development schemes (so called modulation) has been retained, although this shift is less ambitious than the Government would eventually like to see. It is also possible for Member States to maintain voluntary modulation for a transitional period and this will allow the roll out of the Entry Level Agri-environment Scheme in England, a key aspect of the Strategy for Sustainable Food and Farming. The Government will soon be consulting on the implementation of these measures with a wide range of stakeholders.

In addition to these initiatives, other closely related measures contained in the Strategy for Sustainable Farming and Food, which are likely to impact on environment policy include;

- a pilot network of demonstration farms to share best practice and experiences; and
- a new 'whole farm' approach to management and regulation, to help farmers plan their business as a whole to meet commercial, environmental and regulatory needs.

We recommend that in future each agricultural holding in the UK receiving public subsidy should be required to prepare a farm plan containing actions to improve the environment which can be readily monitored; and that, to simplify the existing arrangements, all bodies giving grants, exercising regulatory functions or requiring certification of environmental performance should accept the plan as meeting their requirements for information. (9.54)

We recommend that DEFRA move swiftly to bring forward proposals for legislation for a farm plan scheme, following wide consultation, and produce guidance on the format and content of such plans with an emphasis on securing environmental protection and simplifying current administrative procedures. The Rural Payments Agency and its counterparts should have responsibility for all grant payments made pursuant to the plan, including payments made in respect of management of SSSIs or for farm woodland or afforestation schemes. (9.55)

[Response covers recs at 9.54 & 9.55]

The Government welcomes the Royal Commission's endorsement of the concept of a whole farm plan which was floated in *Sustainable Food and Farming: Working Together*. The plans will simplify arrangements and allow easier monitoring, and could, moreover, help to integrate good environmental practice with the business planning practices needed to ensure that food and workplaces are safe and that animals are healthy and well cared for.

However, such plans cannot override the requirements of individual regulatory or subsidy regimes, and therefore need careful consideration to ensure that they simplify and do not complicate life for farmers and landowners (as RCEP says) and achieving this will be the key to their success. There are a number of significant challenges to overcome, including as the RCEP identifies, establishing the range and impact of the data protection and privacy laws. Defra is undertaking a programme of work that identifies the common data requirements and potential problems. We are developing the whole farm approach in concert with a range of bodies including industry, the Environment Agency, Health and Safety Executive, Rural Payments Agency and local authorities.

We recommend that DEFRA and the devolved administrations take the lead in ensuring that sponsor bodies co-operate to make data from the second round of shoreline management plans for the UK publicly available in their entirety through a central point. (9.61)

Coastal groups and other stakeholders have agreed in principle to making data from next round of shoreline management plans available digitally. There is a commitment between those involved with these plans to share data but as yet no firm plans have been made to host or otherwise through central website. The Government will be monitoring this closely.

We recommend that planning protection is extended below the high water mark and to the sea-bed. (9.62)

Following the House of Commons Environment Select Committee report on *Coastal Planning and Management* in 1992, the Government consulted on *Development below the*

low water mark. It concluded, having taken account of the responses to that consultation, that there was no justification for extending the planning system offshore. It would raise extremely complex legal problems in relation to issues such as the definition of land and of development as well as difficult boundary issues, and would require "new burdens" resource transfers from Departments with current offshore environmental protection responsibilities into an expanded ODPM local government finance pot. In addition, it is felt that, while the current sectoral system may not be perfect, it did work. Since that time, the joint marine consents unit has been established between the Department for Transport and Defra which has improved the co-ordination between the consenting authorities.

However, this issue continues to be raised. The Government is currently reviewing the regulatory regime for the control of development in coastal and marine waters under the strategy for the conservation and sustainable development of the marine environment set out in *Safeguarding our seas*. It is also looking at developing a national strategy to deliver integrated coastal zone management following the recommendation on this subject that was adopted by the EU on 30 May 2002.

We recommend that allocations for development should not be made until it has been established that water supply and sewerage can be provided in an environmentally sustainable manner. (9.67)

The Government agrees that both water supply and sewerage treatment should be provided in an environmentally sustainable manner. PPG 23 *Planning and Pollution Control* already indicates that the supply of water and sewage disposal are capable of being material considerations in planning applications and appeals and in drawing up development plans. It recommends consultation with the National Rivers Authority (now the Environment Agency). Where a local planning authority is not satisfied about the adequacy of water and sewerage infrastructure, it may need to refuse permission or impose conditions to secure adequate arrangements are in place. The revision of PPG 23 will also encourage the use of sustainable drainage systems as a means of reducing the impacts of diffuse pollution from urban development.

PPG 25 *Development and Flood Risk* advises consultation with both the Environment Agency and sewerage undertakers in relation to run-off from development. It encourages the use of sustainable drainage systems that deal with water as near its source as possible. Amendments to Part H of the Building Regulations 2000, which took effect from April 2002, introduced a hierarchy of drainage options that gives priority to sustainable systems. The Government is working with the Environment Agency, local government and industry to develop a framework, including design standards, which will enable greater use of such systems.

The Government recognises that the supply of water is subject to challenges from urban growth, particularly in the south-east, and to a variety of other pressures, including climate change. For example, the UK climate change impact scenarios published in 2002 suggest that the pressure on water supplies could increase, particularly in the south-east, where summers could be up to 55% drier by the 2080s. Conversely, the expected greater incidence of intense rainfall has implications for the design capacity of sewerage systems that need also to be considered. All these issues will be factored in to the development of the major growth areas in the south-east in full consultation with the Environment Agency and the water undertakers. PPG 12 *Development Plans* emphasises the need for liaison at the earliest stage in development plan preparation between water companies and planning authorities to ensure the availability of water supply and disposal infrastructure to support new developments.

We recommend that all relevant planning guidance contain comprehensive advice on the risks of inland and coastal flooding under current conditions and following a period of climate change. (9.70)

Comprehensive advice on the risks of inland and coastal flooding is contained in PPG 25 *Development and Flood Risk* and in other PPGs where appropriate (eg PPG 3 *Housing*). PPG 25 also includes initial guidance on climate change and flood risk. It recognises that climate change science is developing fairly rapidly and indicates that the PPG will be reviewed 3 years after its publication in the light of further evidence then available on climate change and emerging experience of its implementation and effectiveness. Evidence from the Environment Agency's reports on its high-level targets indicates that PPG 25 is having an effect and that the amount of development that is permitted contrary to the Agency's advice is not excessive. In 2001-02, less that 0.5% of the number of new houses completed were permitted contrary to Agency advice on flood risk.

We further recommend that the Environment Agency should be made a statutory consultee on flooding issues. (9.70)

In 2001 the Environment Agency was consulted on about 90,000 applications, of which about 24,000 raised issues of flood risk. PPG 25 identifies the Environment Agency as having the lead role in providing advice on flood issues, both at a strategic level and in relation to planning applications. It advises consultation with the Agency on these issues. All the indications point towards this advice being followed in the majority of cases and there does not seem to be a major requirement for change.

However, the number of statutory consultees is to be reviewed in the light of the planning reform agenda. We have written to all statutory consultees including the Agency asking them to review the types of development on which they should be consulted. We shall examine the need to make the Agency a statutory consultee on flooding issues in the light of its response.

We recommend that climate change, its effect on natural resources and the managed environment, the scope for adaptation and the scope for reducing emissions of greenhouse gases is specifically taken into account in spatial strategies, and that planning departments receive guidance and training in dealing with climate change issues. (9.74)

Draft best practice advice on handling climate change in spatial strategies has been produced and subject to review by relevant stakeholders. The comments provided by this review process have been considered by ODPM and are being taken into account in the final version of the guidance.

We recommend that the use of land for agriculture, forestry and countryside recreation should be issues covered in all spatial planning in future. (10.16)

We agree that spatial strategies at both the regional and local levels should take an integrated approach which, where relevant, should address issues of agriculture, forestry and countryside recreation. This is in the context that much countryside activity, including the use of land for agriculture and forestry, is outside the statutory development control system. The Government has no plans to change that position. The powers available to planning authorities, the co-operation of other stakeholders and the circumstances and opportunities in each area will dictate where this is appropriate.

PPG7 *The Countryside* sets out the Government's policy on planning in the countryside to which regional planning bodies and local planning authorities should have regard in preparing or revising existing regional planning guidance and development plans. The

guidance note is currently under review and a public consultation draft of a new Planning Policy Statement on this subject will be issued soon.

We recommend the introduction of integrated spatial strategies which take account of all spatially related activities and all spatially related aspects of environmental capacity. They should be four-dimensional, covering the atmosphere and groundwater as well as the land surface, and looking at least 25 years ahead. (10.21)

The Planning and Compulsory Purchase Bill provides for integrated spatial planning at both the local and regional levels in the form of the new Regional Spatial Strategies and Local Development Documents. Planning at both levels will need to consider the impacts on the environment, including on the atmosphere and groundwater, and the then DETR advice of 1997 on the application of environmental capacity still stands. This approach will be reinforced by the need to comply with the requirements of the European Directive on Strategic Environmental Assessment. However, while we agree with the importance of taking a long-term view on these impacts it will not always be practical to take a 25-year view. Nor must we lose sight of the need to develop and deliver a meaningful strategy within a reasonable timescale.

An integrated spatial strategy must specify exactly what contributions are expected from local development plans and from the activities of other public bodies. (10.28)

We agree. It is essential that the new integrated Regional Spatial Strategies set out how and when they are to be implemented including the role of the new Local Development Documents and the activities of specified public bodies.

To ensure that all the relevant bodies contribute fully to preparation of the integrated spatial strategy, and are committed to its implementation, it should have a firm statutory basis, and the lead body should be clearly designated. All other public bodies should be placed under a duty to co-operate in its preparation and comply with it where it affects their activities. (10.29)

The Planning and Compulsory Purchase Bill provides a firm statutory basis for integrated Regional Spatial Strategies which are to be part of the development plan in addition to the spatial local development plan documents. The lead body will be the designated regional planning body (RPB) which has to satisfy certain tests of being sufficiently representative and inclusive. In all regions in England, the Regional Chamber is now the RPB. The Government has said in the Regions White Paper that where an elected regional assembly (ERA) has been agreed in a referendum, that ERA will take on the functions of the RPB when it is established.

The local development documents are required to be in general conformity with the RSS. The Bill imposes a duty on the regional planning body to advise any other body or person if it thinks this would help implement the RSS. However, we consider it would be unreasonable and unworkable to impose a duty on all other public bodies to co-operate in the preparation of the RSS and comply with it where it affects their activities. This would require every public body in the country to check whether any aspect of its activity would be affected by the RSS however insignificant.

We consider there should continue to be rights to object and provision for a public inquiry into a draft local plan or local development framework, on the ground that this kind of public challenge is fundamental to the purpose of the town and country planning system. (10.70)

The Planning and Compulsory Purchase Bill continues to provide for a right to appear before and be heard by the person carrying out an examination into the development plan document. However, rather than this necessarily being in front of a formal public inquiry, with legal advocacy and cross-examination, there will be less intimidating public hearings and round-table sessions where it is sensible to hold them.

It should be a statutory requirement that local plans or local development frameworks must comply with the integrated spatial strategy. Wherever appropriate, the policies and targets in the integrated spatial strategy should also be reflected in the community strategy or plan. (10.76)

The Planning and Compulsory Purchase Bill provides that Local Development Documents must be in general conformity with the RSS. The relationship between the community strategy and the RSS and local development documents is the subject of a current research contract between ODPM and ENTEC to inform future guidance. However, it should be recognised that the community strategy goes far wider than spatial matters and needs to be concerned with local matters rather than the region wide and sub-regional spatial issues tackled by the RSS.

[Recommendations at 10.78-10.80 specific to devolved administrations and Northern Ireland]

We recommend that regional planning guidance and structure plans should both be converted into integrated spatial strategies with a comprehensive coverage of land use and environmental issues. There should be increasing co-operation between county and unitary authorities to develop integrated spatial strategies for sub-regions where these have greater functional coherence. (10.91)

The Planning and Compulsory Purchase Bill provides for the conversion of regional planning guidance into integrated Regional Spatial Strategies. It provides for the abolition of structure plans in order to reduce the tiers of plan making, which add to delay and confusion, and to facilitate tackling sub-regional issues on a functional basis across county boundaries where appropriate. In promotes co-operation between county and unitary authorities, amongst others, through the provision of joint committees to produce joint development documents and through the agency arrangements which the regional planning bodies will be able to negotiate with both types of authorities. The objective behind both sets of arrangements is planning for areas of functional coherence.

In South East England, the best solution, irrespective of whether elected regional authorities are created in England and given responsibilities for spatial planning, would be to concentrate strategic planning at only two levels: the South East super region (including London) and sub-regions no smaller than the areas for which structure plans are prepared at present. (10.93)

In our view for each region there should be only two-tiers of plan making; the regional with an important sub-regional dimension as part of it, and the local. To have three separate tiers, two strategic and one local as implied by this recommendation, would result in a continuation of the current delay and confusion which bedevils the existing three-tier system.

Furthermore, the experience of planning for the former SERPLAN area, which covered the South East super region, was that the area was simply too big for effective regional

planning. However, there are important planning issues at the interface between London and the surrounding region which is why pan-regional planning arrangements were established following the demise of SERPLAN. These involve the two regional planning bodies for the South East and the East of England and the Mayor of London.

We agree that the sub-regional dimension is a most important feature of regional planning in the South East, as elsewhere. This is recognised by the major sub- regional planning exercises being undertaken for the growth areas in the super region, three of which straddle county and regional boundaries (Thames Gateway, Milton Keynes/South Midlands and London/Stansted/Cambridge). These are critical to the delivery of the new plan: *Sustainable communities: building for the future*.

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