



Post-legislative Scrutiny of the Natural Environment and Rural Communities Act 2006

Presented to Parliament
by the Secretary of State for Environment, Food and Rural Affairs
by Command of Her Majesty

July 2017



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Memorandum to the Environment, Food and Rural Affairs Committee

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1. This memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“the Department”) for submission to the Environment, Food and Rural Affairs Committee (“the Committee”). It is published as part of the process set out in the document Post-Legislative Scrutiny – The Government’s Approach ¹(Cm 7320).
2. The memorandum summarises the provisions of the Natural Environment and Rural Communities Act 2006 (“the Act”) in relation to England and other Devolved Administrations where appropriate but provides the Committee with the Department’s preliminary assessment of the Act as applied to England only. The other Administrations of the United Kingdom were not asked to contribute to this memorandum.

1. Origin of the Act

3. The government set out its proposals for the countryside in the Rural White Paper, published in November 2000.
4. Following the creation of Defra in June 2001, the Secretary of State for Environment, Food and Rural Affairs initiated a number of steps designed to improve the focus and delivery of rural policy. These were a full review of the Rural White Paper, an improvement of the evidence base on rural affairs, and an independent review of the delivery of the government’s rural policies which was carried out by Lord Haskins.
5. Lord Haskins’s review was published in November 2003. The government’s initial response agreed with Lord Haskins that Defra’s delivery structures were confusing, too bureaucratic and centralised, and accepted the thrust of his recommendations.
6. The government published its full review of the Rural White Paper in January 2004, alongside a report called “Social and Economic Change and Diversity in Rural England” which was aimed at developing the evidence base for rural policy.

¹ <https://www.gov.uk/government/publications/post-legislative-scrutiny-the-governments-approach>

7. The government published its Rural Strategy in July 2004. This included a detailed response to Lord Haskins's recommendations and a commitment to publish a draft Bill in Spring 2005 to make the changes in the law needed to give effect to the Strategy.
8. The draft Bill (Draft Natural Environment and Rural Communities Bill, Cm 6460) was published on 10 February 2005. The Select Committee published its report on the Rural Strategy and the draft Bill on 26 March 2005 (HC 408-I, 408-II 2004-2005).²
9. The government's response to the Select Committee's report (Cm. 6574) was published in May 2005.
10. The Bill was introduced in Parliament on 19 May 2005 and the Natural Environment and Rural Communities Act received Royal Assent on 30 March 2006.
11. In relation to rights of way, following its decision that it could not implement section 34A of the Road Traffic Act 1988 (introduced by Schedule 7 to the Countryside and Rights of Way Act 2000), the government published a consultation paper in December 2003, in which a series of alternative measures for tackling problems arising from the use of rights of way by mechanically propelled vehicles were proposed. After considering more than 14,000 representations, the government set out its conclusions and legislative proposals in the "Framework for Action" in January 2005. These proposals gave rise to the main provisions of sections 66 and 67 of this Act.
12. The provisions on rights of way responded to a judgment by the House of Lords³ regarding the creation of rights of way for mechanically propelled vehicles. In that case, the House of Lords held that a right of way may arise where mechanically propelled vehicles have used a route for a 20-year period, even where that use is illegal. The Act altered the law so that illegal use of this kind would not create public rights of way.
13. In relation to the criteria for designating National Parks and the meaning of "natural beauty", the Act provided for the findings of a High Court judgment of 3 November 2005⁴ in a case relating to the designation of land as part of the New Forest National Park.

² www.publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/cmenvfru.htm

³ *Bakewell Management Ltd v Brandwood* [2004] UKHL 14, [2004] 2 AC 519

⁴ *Meyrick Estate Management Ltd v Secretary of State for Environment, Food and Rural Affairs* [2005] EWHC 2618 (Admin)

14. The Act amended certain other Acts, including the Local Government and Housing Act 1989, Norfolk and Suffolk Broads Act 1988, Schedule 7 to the Environment Act 1995, Parts 1 to 3 of the National Parks and Access to the Countryside Act 1949, the Countryside Act 1968, the Wildlife and Countryside Act 1981 and Part 7 of the Environment Protection Act 1990.

2. Summary of objectives

15. The Act's purpose is described as "*an Act to make provision about bodies concerned with the natural environment and rural communities; to make provision in connection with wildlife, sites of special scientific interest, National Parks and the Broads; to amend the law relating to rights of way; to make provision as to the Inland Waterways Amenity Advisory Council; to provide for flexible administrative arrangements in connection with functions relating to the environment and rural affairs and certain other functions; and for connected purposes*".

Part 1 – Natural England and the Commission for Rural Communities

16. Part 1 and Schedules 1 to 3 established two independent non-departmental public bodies: Natural England (Part 1, Chapters 1 and 3) and the Commission for Rural Communities (Part 1, Chapter 2). It also provided for the dissolution of two non-departmental public bodies, namely English Nature and the Countryside Agency. Functions from each of these, along with some of the functions of Defra's Rural Development Service, were brought together into Natural England.

Natural England

17. Upon its formation, Natural England brought together functions from English Nature and the Countryside Agency (as well as some functions from what was then Defra's Rural Development Service). Part 1 provided for the transfer of property, rights and liabilities in connection with the dissolution of existing non-departmental public bodies. It also conferred power to make transfers in the future between Natural England, the Commission for Rural Communities and a Minister of the Crown. Natural England's general purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development. Natural England has a review and research function which allows it to commission or support research, as well as an advisory role on matters relating to its general purpose. Its general implementation powers cover: carrying out proposals which appear to it to further its general purpose; the provision of financial and other assistance; and entering into management agreements with those who manage or use land to further its general purposes. Natural England has the ability to make and carry out experimental schemes with appropriate consultation. Natural England also publishes information,

provides consultancy and training services, has powers to charge for services and licences, and brings criminal proceedings. The powers of the Secretary of State extend to grants, guidance and direction.

18. Natural England is also authorised to carry out certain Defra functions by means of an agreement pursuant to section 78 of the Act. There are formal delegations from other statutory bodies (such as the Marine Management Organisation and the Joint Nature Conservation Committee) by means of agreements where legislation provides for this.

Commission for Rural Communities

19. The Commission for Rural Communities was established by this Act and came into existence on 1 October 2006 as an independent, non-departmental public body, accountable to government and primarily sponsored by Defra.
20. It was established to help ensure that policies, programmes and decisions took proper account of the circumstances of rural communities, with a particular focus on people suffering from social disadvantage and areas suffering from economic under-performance. Its work included promoting awareness of rural needs amongst decision makers across and beyond government, and meeting rural needs in ways that contribute to sustainable development. Rural needs were defined as the social and economic needs of persons in rural areas of England.
21. Although the Commission for Rural Communities was primarily sponsored by Defra, it also secured some project funding from other Departments to work on specific policy interests (for example, from the Department of Work and Pensions during 2010-2011).
22. The Commission's operational functions included: Representation, advice and monitoring; Research; and Information services⁵.
23. The Chairman of the Commission was appointed as the government's "Rural Advocate", charged with putting the case for rural people at the highest levels of government and beyond to ensure their needs and circumstances were properly understood. The Commission for Rural Communities supported this role through the Rural Advocate programme, enabling the Rural Advocate to gather "real life" examples from a diverse range of people and ensure that the outcomes and likely impacts of key policy issues on rural communities and businesses were understood. Evidence from the programme also influenced the work and strategic direction of the Commission for Rural Communities. The

⁵ <http://webarchive.nationalarchives.gov.uk/20110303145243/http://ruralcommunities.gov.uk>

Rural Advocate had meetings both with the Prime Minister and the Defra Secretary of State.

24. The Commission for Rural Communities comprised the Chairman, who was supported by ten Commissioners, appointed by Defra after open competition; and an Executive team led by the Chief Executive and Accounting Officer, with a team of directors and staff.
25. The roles of the Commissioners and the executive team were designed to be distinct but complementary to drive the Commission for Rural Communities forward. Commissioners were appointed to offer the Commission for Rural Communities a breadth of knowledge and experience, and advise on strategy and approve the Corporate Plan before submission to Defra Ministers for agreement.
26. The Commission for Rural Communities became the statutory successor to certain socio-economic functions of its predecessor, the Countryside Agency. Some of these functions can be traced back through predecessor bodies, over the course of the past 100 years, including to the Development Commission established in 1909.
27. The Commission for Rural Communities was abolished on 1 April 2013 by the Public Bodies (Abolition of the Commission for Rural Communities) Order 2012 (SI 2012 No. 2654). The intention to abolish the Commission for Rural Communities was announced by the Secretary of State for Environment, Food and Rural Affairs in the House of Commons on 29 June 2010. It was proposed that Defra Ministers would instead lead rural policy from within the Department and, to that end, Defra's Rural Communities Policy Unit was established from 1 April 2011.
28. The proposal to abolish the Commission for Rural Communities was debated in a range of Public Bodies Bill debates in the House of Lords, Public Bodies Bill Committee, and the House of Commons, and abolition was preceded by a ninety day consultation period.⁶

Part 2 – Nature Conservation in the UK

29. The Joint Nature Conservation Committee (JNCC) was established under the Environmental Protection Act 1990. Part 2 and Schedule 4 of the Natural

⁶ Government response to the consultation on the abolition of the Commission for Rural Communities can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/89445/Commission_for_Rural_Communities-consult-sumresp-120515.pdf

Environment and Rural Communities Act reconstituted the JNCC as an organisation with a UK-wide remit.

30. Sections 34 and 35 of the Act set out the functions of the statutory nature conservation bodies, including the JNCC in the UK, and ensured that those functions were carried out through the joint committee only where they related to matters that arose throughout the United Kingdom, or to matters of nature conservation overseas.
31. In the UK, in pursuit of its responsibilities under section 34 of the Act, the JNCC publishes and maintains a set of common standards for monitoring of protected sites across the UK as well as supporting a programme of research of value and interest to all four countries of the UK, particularly on data management, and the application of novel technology such as Earth Observation to monitoring.
32. Internationally, the JNCC provides scientific and technical advice to support UK negotiations and is a member of the UK delegations to Multilateral Environmental Agreements such as the Convention on Biological Diversity, CITES and the convention on migratory species. It also coordinates inputs from across the four nations of the UK to provide information on progress with international goals and targets such as the Convention on Biological Diversity's Strategic Plan 2011-2020.
33. The JNCC provides advice and support to protect biodiversity in the UK Overseas Territories, as set out in the 2012 White Paper "The Overseas Territories: Security, Success and Sustainability". Defra chairs a cross-departmental official-level group with responsibility for overseeing delivery of the government's objectives for the conservation and sustainable use of biodiversity in the Overseas Territories. The JNCC provides the Secretariat for the Group.
34. The JNCC also:
 - Supports the UK and its South Atlantic Overseas Territories in meeting their conservation obligations, including those of the Agreement on the Conservation of Albatrosses and Petrels;
 - Facilitates a Territory to Territory partnership between the Falklands Islands Government Institute and the Government of Montserrat to share data knowledge and skills from the South Atlantic to the Caribbean;
 - Convenes Research and Training Steering Group meetings to build capacity across the Overseas Territories on technical issues.

- Participates in the Darwin Plus Advisory committee to select projects in the Overseas Territories for funding from the Darwin Initiative.
 - Provides advice to the FCO on the Blue Belt programme, a manifesto commitment to establish a network of Blue Belts around the UK's Overseas Territories.
35. Section 36 sets out the functions of the statutory nature conservation bodies that must be carried out through the JNCC with respect to GB-wide advice and research on species protection under the Wildlife and Countryside Act.
 36. The Act made changes to the composition of the JNCC to include members from Northern Ireland and increased the number of independent members.
 37. The Act provided the JNCC with the power to form a company limited by guarantee. Among other things, this allowed it to employ its own staff.

Part 3 - Wildlife

38. Part 3 made provisions in respect of biodiversity, pesticides harmful to wildlife, the protection of birds and invasive non-native species. Schedules 5 and 6 made provision in relation to enforcement powers in connection with wildlife and time limits for proceedings in respect of certain wildlife offences.
39. Section 40 placed a duty on public authorities, in exercising their functions, to have regard to the purpose of conserving biodiversity. Public authorities were listed in the Act. Section 40 also placed a duty on Ministers of the Crown to have particular regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992. This section was replaced in Wales, with respect to all public bodies other than HMRC, by virtue of the Environment (Wales) Act 2016.
40. Section 41 required the Secretary of State, in consultation with Natural England, to publish lists of species and habitats of principal importance in England, to take steps to further their conservation, and to keep these lists under review. Section 42 provided similar provisions for such lists in Wales until these were omitted on 21 May 2016 by virtue of the Environment (Wales) Act 2016.
41. Section 43 to 46 of the Act allowed the Secretary of State to issue an order making it an offence to be in possession of a named pesticide or prescribed ingredient if it was necessary or expedient to do so in the interests of protecting wild birds or wild animals from harm. The Act allowed for enforcement powers to inspectors and regard to any relevant codes of practice.
42. Sections 47 to 49 provided minor extensions to the legal provision in the Wildlife and Countryside Act 1981 in relation to the protection of the nests of

certain birds as well as minor clarifications on captive birds and treatment of wild birds subject to re-introduction programmes. As such no additional implementation has been required.

43. Section 50 introduced section 14ZA into the Wildlife and Countryside Act 1981, prohibiting certain invasive non-native species from sale. Section 51 introduced section 14ZB into the Wildlife and Countryside Act 1981, allowing the Secretary of State to make or approve codes of practice in relation to invasive non-native species.
44. Section 52 of the Act and Schedule 5 provided enhanced powers for Wildlife Inspectors (any person authorised by the Secretary of State, under S19ZA of the 1981 Wildlife and Countryside Act) and the police to protect wildlife. Part 1 of the Schedule widened existing enforcement provisions contained in the 1981 Wildlife and Countryside Act. Part 2 extended similar powers to wildlife inspectors acting under four other Acts that dealt with wildlife licensing and protection: the Destructive Imported Animals Act 1932, the Conservation of Seals Act 1970, the Deer Act 1991 and the Protection of Badgers Act 1992. Part 3 provided the Secretary of State with the ability to issue codes of practice in connection with wildlife inspectors discharging their functions. Part 4 extended the powers of constables to obtain warrants under section 19(3) of the 1981 Wildlife and Countryside Act to the four other Acts mentioned above.
45. Schedule 6, introduced by section 53 of the Act, brought the wildlife legislation detailed in the Schedule into line with Part 1 of the 1981 Wildlife and Countryside Act. Summary proceedings for offences in the legislation had to be brought within six months of acquiring sufficient evidence to warrant proceedings and within two years of the commission of the offence. The aim of the extension to the time limit was to ensure effective investigations and that offenders can be prosecuted.

Part 4 – Sites of Special Scientific Interest

46. Part 4 addressed a small number of gaps and uncertainties identified for Sites of Special Scientific Interest (SSSIs) through amendments to the Countryside and Wildlife Act 1981. Specifically it created a new offence for certain authorities (broadly speaking, public bodies and their employees) to permit the carrying out of an operation which damages an SSSI without reasonable excuse. It also created a related offence of intentionally or recklessly destroying or damaging an SSSI's flora, fauna, or geographical or physiographical features without reasonable excuse.
47. Part 4 also dealt with the effects of failure to serve notices on all the correct persons when notifying or denotifying an SSSI. It empowered Natural England to put up notices and signs relating to SSSIs, and made it an offence to

intentionally or recklessly, and without reasonable excuse, damage, destroy or obscure those notices or signs.

Part 5 – National Parks and the Broads

48. The Act amended the National Parks and Access to the Countryside Act 1949 regarding criteria for designation, procedure for orders designating National Parks and expenditure by National Park authorities.
49. Part 5 responded to the High Court judgment of 3 November 2005 in the case of *Meyrick Estate Management Ltd v Secretary of State for Environment, Food and Rural Affairs* [2005] EWHC 2618 (Admin), to remove any doubt as to the factors which could be taken into account when designating a National Park. The amendment ensured that National Park purposes would be read into the design criteria by placing this on the face of the (amended) National Parks and Access to the Countryside Act 1949. Since this amendment, the South Downs National Park has been designated and the Lake District and Yorkshire Dales National Parks extended, both without legal challenge. This amendment has therefore reduced the risk of successful challenge.
50. The Act amended Schedule 7 to the Environment Act 1995 regarding members of National Park authorities by changing the prescribed ratio between classes of member, simplifying the ratio between local and national members, and extending the maximum term before reappointment from three years to four years for national members of National Park authorities.
51. The Act amended section 11A of the National Parks and Access to the Countryside Act 1949 by relaxing the constraint upon National Park authorities not to incur significant expenditure when seeking to foster economic and social well-being of local communities in a National Park.
52. The Act amended section 42 of the Wildlife and Countryside Act 1981 with regards to the notification of agricultural operations on moor and heath in National Parks.
53. The Act amended the duties under the Norfolk and Suffolk Broads Act 1988 when exercising functions in relation to the Broads, and also amended section 155(4) of the Local Government and Housing Act 1989 to enable emergency financial assistance to be given to the Broads Authority and to National Park authorities.

Part 6 – Rights of Way

54. Part 6 responded to a House of Lords judgement (*Bakewell Management Ltd v Brandwood* [2004] UKHL 14, [2004] 2 AC 519) which had determined that a right of way could arise where mechanically propelled vehicles had used a route for the 20-year period, even where that use was illegal (use of footpaths

or bridleways by mechanically propelled vehicles had been illegal since the 1930s). The Act therefore halted the implied creation of new public rights of way for mechanically propelled vehicles, preventing use of a right of way by a mechanically propelled vehicle post-1930 from giving rise to any future public right of way.

55. Part 6 also extinguished existing public rights of way for mechanically propelled vehicles, where those rights were not already recorded on the definitive map and statement, although this is subject to certain exceptions.
56. Property owners and others with an interest in land might have been relying on unrecorded public vehicular rights of way for access to that land. Part 6 ensured that, if the public right of way for mechanically propelled rights was extinguished, these people were provided with a private right of way to access the land by mechanically propelled vehicle.
57. All claims made under Part 3 of the Wildlife and Countryside Act 1981 to establish new rights for mechanically propelled vehicles lodged before 20 January 2005 (in England) or 19 May 2005 (in Wales) were preserved and dealt with under the old law. So too were applications lodged after the relevant date but at the determining stage by the surveying authority and applications lodged by landowners wanting to maintain access to their property by mechanically propelled vehicles.
58. Part 6 amended provisions of the Highways Act 1980 dealing with the creation of public rights by a period of use. One purpose of these changes was to make clear that use by non-mechanically propelled vehicles (such as pedal cycles) could still give rise to a new public right of way for non-mechanically propelled vehicles. Another was to clarify the date on which a public right to use a way was to be regarded as being brought into question (for the purpose of calculating the length of the period of use, and thus whether or not a new public right of way had been created) by an application to modify the definitive map and statement.
59. Part 6 included provision to enable National Park authorities to make traffic regulation orders and other orders regulating traffic, in relation to restricted byways, footpaths and bridleways and unsealed carriageways in National Parks.

Part 7 – Inland Waterways

60. Part 7 reconstituted the Inland Waterways Amenity Advisory Council, a statutory public body formed under section 110 of the Transport Act 1968, which provided independent advice covering the inland waterways managed by the then British Waterways. Part 7 replaced the Council's statutory advisory functions with new, wider terms of reference enabling it to advise government,

British Waterways and other navigation authorities and other interested persons about the inland waterways generally. The Council was subsequently renamed the Inland Waterways Advisory Council to reflect its new role. The Act did not change the Council's existing functions as a statutory consultee.

61. Part 7 was repealed on 2 July 2012 by The Inland Waterways Advisory Council (Abolition) Order 2012 (SI 2012/1658). This was in parallel to the transfer of statutory functions of British Waterways (in England and Wales) to the Canal and River Trust, an independent charity which was formed on 2 July 2012.

Part 8 – Flexible Administrative Arrangements

62. Chapter 1 enabled the Secretary of State to make agreements with bodies listed in Schedule 7 (“designated bodies”) for certain types of function to be performed by those bodies. Designated bodies had the power to authorise other designated bodies by agreement to perform their functions. In both situations the relevant function must be either a Defra or Defra-related one that was compatible with the purposes of the receiving body. For example, Natural England were authorised to carry out activities previously carried out by the Rural Development Service on behalf of the Secretary of State.
63. Owing to the wide-ranging number and function of designated bodies described in Chapter 1 and the lack of a central record of agreements made, it has not been possible to provide more information about how these provisions have been used by the department. We nevertheless consider these powers flexible and useful and have not sought to amend them since enactment.
64. Chapter 2 and Schedules 8, 9 and 10 conferred powers to establish boards for the purpose of helping to develop and promote agricultural and related industries. This Chapter also contained powers to abolish certain existing agricultural levy bodies that were within Defra's remit (namely, the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council). These provisions were intended to enable action to be taken in the light of the Radcliffe Review of Agricultural and Horticultural Levy Bodies (October 2005, PB 11427).
65. These agricultural levy bodies have been subject to the Public Bodies Reform Programme. Any legislation relating to these bodies has been scrutinised as part of that process. Further information on the Public Bodies Reform programme is available on Gov.uk⁷.

⁷ <https://www.gov.uk/guidance/public-bodies-reform#public-bodies-reform-programme-2010-to-2015>

66. Chapter 3 conferred a wide power to enable financial assistance to be given by the Secretary of State for any purposes connected with Defra activities. Grants have been made to a diverse portfolio of schemes including National Trails, Tree Planting with Schools, Championing Great British Food Tourism and support to Areas of Outstanding Natural Beauty. Since 2015, when the Department began to record grants made under the Act, £56.6 million has been awarded using the Act's provisions.

Part 9 - Miscellaneous

67. Various pieces of legislation, in addition to the Act dealing with the designation of National Parks, refer to areas of natural beauty. Section 99 clarified what might be taken to contribute to natural beauty for the purposes of such references. This section was included in the Act as part of the response to the Meyrick case mentioned at paragraph 49 above.
68. The section clarified that areas of land that were used for agriculture or woodlands, or as a park or whose flora, fauna or physiographical features were partly the product of human intervention in the landscape would not be excluded from being treated as an area of natural beauty (or outstanding natural beauty) for those reasons.
69. Section 100 made amendments to the powers under which the Environment Agency made byelaws relating to land drainage under Schedule 25 to the Water Resources Act 1991 and the powers under which land drainage authorities made byelaws under section 66 of the Land Drainage Act 1991. The relevant provisions of the Water Resources Act 1991 and the Land Drainage Act 1991 were subsequently amended by the Flood and Water Management Act 2010. Although section 100 of the Act remained in force, the provisions have no practical legal effect at present.
70. Section 101 provided for the abolition of certain defunct statutory committees.

Part 10 – Final Provisions

71. As well as providing standard provisions in relation to transitional arrangements, commencement and extent, Part 10 introduced two Schedules. Schedule 11 contained minor and consequential amendments and Schedule 12 contained repeals.
72. The provisions in this part of the Act have been addressed in the description above of the previous parts of the Act so have not been considered separately here.

Key amendments to the Act

73. The Commission for Rural Communities, established by the Act, and the Inland Waterways Advisory Council, referenced in the Act, no longer exist, having been abolished in 2013 and 2012, respectively. In addition, significant proportions of the Act have been superseded (see secondary legislation and specific provisions for details).

Extent of the Act

74. Provisions in the Act vary in their extent. The table below shows the situation in 2006. See Section 3 below for amendments.

Part	Subject	Extent
1	Natural England and the Commission for Rural Communities	England and Wales, but is England only, unless otherwise stated
2	Nature Conservation in the UK	England, Wales, Scotland and NI
3	Wildlife	England and Wales Sch 5 – extends to territorial waters Sec 52 & Sch 6 – extends to any place
4	Sites of Special Scientific Interest	England and Wales
5	National Parks and the Broads	England and Wales
6	Rights of Way	England and Wales
7	Inland Waterways	England, Wales and Scotland
8	Flexible Administrative Arrangements	England and Wales Chapter 2 – extends to Scotland and NI Chapter 3 – extends to NI, excluding devolved matters
9	Miscellaneous	Section 98 - England and Wales only Section 99 – UK
10	Final provisions	England, Wales, Scotland and NI, as appropriate

3. Implementation of the Act

75. This part of the memorandum is concerned with the implementation of the Act in England only, unless otherwise stated. The Act was fully implemented, except where detailed below. The Commencement Orders are listed in Annex A.

Part 3 – Wildlife

76. Section 40 has been amended eight times to ensure operability in Wales. Section 42 was amended by the Environment (Wales) Act 2016, Schedule 2 paragraph 9(30) and is now applied in Wales only to HMRC. Otherwise in

Wales the general duty on public authorities with respect to biodiversity and resilience of ecosystems duty is now in section 6 of the 2016 Act. Likewise section 42 (Biodiversity lists and action in Wales) has now been revoked and replaced by section 7 of the 2016 Act.

- 77. Section 43 has been amended once to update references to EU Regulations.
- 78. Sections 43 to 46 have not been implemented in England as no pesticides have been identified.

4. Secondary Legislation and Guidance

- 79. Subsequent legislation that has resulted in textual amendments to the Act is listed in Annex B. The following Acts and Statutory Instruments have been introduced which amended the Act:

Part 1 - Natural England

- 80. Natural England's duties and powers continue to be amended by ongoing legislative measures.

Part 1 - Commission for Rural Communities

- 81. The Commission for Rural Communities (Part 1, Chapter 2) was abolished on 1 April 2013 through the Public Bodies (Abolition of the Commission for Rural Communities) Order 2012 (S.I. 2012/2654). Alongside the secondary legislation and abolition of the Commission for Rural Communities, the government confirmed that Defra Ministers would be supported in their role as Rural Champions by an expanded Rural Communities Policy Unit. This unit, which existed until 1 April 2015, acted as a centre for rural expertise, supporting and co-ordinating activity of critical importance to rural communities across government.
- 82. The government published A Rural Statement⁸ on 12 September 2012. It confirmed the government's commitment to rural communities and set out the support for rural areas through a broad range of policies across Departments. The statement was based around three key priorities:
 - a. Economic growth – rural businesses to make a sustainable contribution to national growth
 - b. Talking directly to rural communities – government to engage directly with rural communities so that they can see that government is on their side

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69597/pb13814-rural-statement.pdf

- c. Quality of life – rural people to have fair access to public services and to be actively engaged in shaping the places in which they live.
83. There was a “transition period” from 29 June 2010 to 1 April 2013 when the Commission for Rural Communities was finally abolished.

Part 3 – Wildlife

84. To support implementation of sections 40 and 41 in England, Natural England has published lists of species and habitats of principal importance⁹ to guide public bodies and support implementation of the duty.
85. To date, no orders have been issued in England making possession of any named pesticides an offence under section 43.
86. As a result of section 50, the Wildlife and Countryside Act 1981 (Prohibition on Sale etc. of Invasive Non-native Plants) (England) Order 2014 came into force on 6 April 2014 banning from sale five highly invasive aquatic species.
87. A horticultural code of practice – “Helping to prevent the spread of invasive non-native species” was published jointly by Defra and the Welsh Government in 2011 under section 14ZB of the Wildlife and Countryside Act 1981. This is the only code so far published under section 14ZB. This code was drafted in consultation with trade bodies and conservation NGOs.
88. Defra initially produced detailed guidance in 2011. Subsequent policy sought to reduce the amount of guidance produced by government. In 2012, in consultation with the Department for Communities and Local Government, responsibilities for the protection of biodiversity were incorporated into the National Planning Policy Framework. Earlier, more detailed guidance for public bodies that had been published was withdrawn and replaced with simpler guidance in 2013.
89. There are a range of tools that help public bodies take account of the value of biodiversity and the natural environment more widely. In 2013, Defra supported the production of supplementary guidance to the Treasury Green Book¹⁰ to help government departments take account of the value of biodiversity and the natural environment in their policy appraisals. Other tools such as the biodiversity planning toolkit¹¹ and the National Ecosystem Approach Decision

⁹ [species and habitats of principal importance](#)

¹⁰ <https://www.gov.uk/government/publications/green-book-supplementary-guidance-environment>

¹¹ <http://www.biodiversityplanningtoolkit.com/>

Tree¹² are published independently and are available to support Local Authorities at their discretion.

90. Countryside Stewardship is delivered by Defra as part of the Rural Development Programme for England and provides financial incentives for farmers and land managers to look after their environment. This is one of the main mechanisms used to implement the commitment in the government's Biodiversity 2020 Strategy¹³ to maintain, restore and create priority habitats and to conserve priority species on land and makes a key contribution to the delivery of the government's National Pollinator Strategy¹⁴.

Part 7 – Inland Waterways

91. Following the Public Bodies Review in 2010, the Inland Waterways Advisory Council was abolished on 2 July 2012 by the Inland Waterways Advisory Council (Abolition) Order 2012 (S.I. 2012/1658).
92. This was in line with the government's plans to move management of inland waterways from British Waterways to the Canal and River Trust which meant there was no longer a need for a statutory advisory panel.

5. Legal issues

93. We are not aware of any legal issues relating to Parts 1, 2, 3, 4, 5, 7, 8, 9 or 10 with regards to England.

Part 6 – Rights of Way

94. As the use of mechanically propelled vehicles off road and on byways is a contentious issue, the provisions in Part 6 of the Act have given rise to a number of judicial reviews. The most significant that we are aware of are set out here.
95. The prevention of rights of way for mechanically propelled vehicles being ascertained and added to the definitive map and statement was effected by extinguishing rights of way for mechanically propelled vehicles that were not already shown on the definitive map and statement. This was subject to a number of exceptions or savings, one of which was where an application to add a right of way to the definitive map and statement had been submitted to the

¹² <http://neat.ecosystemsknowledge.net/>

¹³ <https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>

¹⁴ <https://www.gov.uk/government/publications/national-pollinator-strategy-for-bees-and-other-pollinators-in-england>

local authority before 20 January 2005. What constituted a valid application gave rise to two judicial reviews. The first was on the basis of whether an application that was not accompanied by copies of all the evidence adduced in the application was compliant with section 67(6) of the Act. The second turned on whether the map accompanying the application, which had to be “drawn to the prescribed scale” of 1/25,000, had to be based on an Ordnance Survey map of that scale or whether it could be based on an enlargement of a map of a smaller scale, for example 1:50,000.

96. Two further judicial reviews revolved around the exception that saved routes that were shown on the “list of streets” (the list of highways maintainable at public expense that local authorities are required to maintain under section 36(6) of the Highways Act 1980) and the form that the “list of streets” should take.
97. The fifth judicial review was about the process of consultation undertaken by a National Park Authority as part of the procedure for making a traffic regulation order.

6. Other reviews

98. We are not aware of any formal reviews relating to Parts 2, 4, 5, 6, 8, 9 and 10.

Part 1 – Natural England

99. A triennial review took place in 2013. Details of the review can be found on Gov.uk.¹⁵

Part 1 – Commission for Rural Communities

100. Before the abolition of the Commission for Rural Communities, the government undertook a ninety-day public consultation. A summary of comments received and the government response is available on Gov.uk.¹⁶ An ex-post evaluation of the Commission for Rural Communities was also undertaken.¹⁷ This found that:

- the Commission for Rural Communities had made progress in relation to all three of its statutory functions, but especially those linked to its role as adviser and advocate.

¹⁵ <https://www.gov.uk/government/publications/triennial-review-of-the-environment-agency-ea-and-natural-england-ne>

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/89445/Commission_for_Rural_Communities-consult-sumresp-120515.pdf

¹⁷ http://www.sqw.co.uk/files/3214/5055/3302/CRC_Report.pdf

- there was a valid question as to whether these functions ought to be resourced through the public purse or whether they ought to be being fulfilled by voluntary or charity sector bodies acting both individually and collectively.
- fundamental tensions at the core of the organisation, specifically whether an organisation that was accountable to one government department could also be “independent”; and whether and how it could act as a watchdog when it had no real sanctions.
- there were lessons identified from the work of the Commission for Rural Communities relating mainly to accountabilities and the process of effecting influence in the context of statutory functions that might jar with each other. The report recommended that these lessons should be taken into account if consideration is ever given to “something like” the Commission for Rural Communities being re-established (pg. 37, Table 8.1).

101. The proposal to abolish the Commission for Rural Communities was driven by a desire to remove duplication, improve efficiency and enable resources to be more effectively focused on securing fair, practical and affordable outcomes for rural communities in relation to priority policy areas. The government considered that policy functions should be subject to the direct oversight of Ministers, who are accountable to Parliament for the way they discharge this policy function. The government remains committed to ensuring that all policies and programmes properly take into account the needs of rural residents, businesses and communities.

Part 3 - Wildlife

102. In 2009, Defra commissioned research to review¹⁸ the impact of the section 40 biodiversity duty in England and Wales. The review concluded that public bodies would benefit from additional tools and guidance to support implementation.

103. There has been no formal review of sections 47 to 49.

104. In 2007, Defra carried out a public consultation exercise with stakeholders to determine which invasive non-native species to ban under sections 50-51, consulting on 28 species. Following this exercise and, after further consultation with the trade and NGOs, it was determined that five aquatic species merited a ban. The industry itself recognised that these five species were highly

¹⁸ Review can be found at:

<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=1744>

problematic and its main trade body had been advising its members that they refrain from selling these species prior to the ban.

105. The National Wildlife Crime Unit use the extended powers in sections 53-4 to bring prosecutions for wildlife crime. There are a number of cases each year in England and Wales where warrants are obtained under Part 4 for deer poaching and badger persecution cases. The extended powers in the Act have allowed the National Wildlife Crime Unit to take forward cases that it would not otherwise have been able to pursue.

Part 7 – Inland Waterways

106. A public consultation on the abolition of Inland Waterways Advisory Council closed on 14 November 2011 having set out the proposed arrangements for its abolition. The consultation sought views on the proposed abolition and considered arrangements to enable those with an interest in inland waterways to engage with government on waterways policy in the light of the creation of a new waterways charity in civil society.
107. Analysis of the responses showed that the majority of respondents thought that the Inland Waterways Advisory Council should be retained. Half then went on to suggest that, given the knowledge and expertise of its members, the Inland Waterways Advisory Council should be retained for a limited period of two years, while the Canal and River Trust was being established. However, the government maintained that the creation of the Canal and River Trust meant there was no longer a need for an organisation to provide advice for policy development.
108. The Inland Waterways Advisory Council was abolished following the introduction of the Inland Waterways Advisory Council (Abolition) Order 2012 in July 2012. No new statutory advisory body was created.

7. Preliminary assessment

109. The primary objective of the Act was to “make provision about bodies concerned with the natural environment and rural communities; to make provision in connection with wildlife, sites of special scientific interest, National Parks and the Broads; to amend the law relating to rights of way; to make provision as to the Inland Waterways Amenity Advisory Council; to provide for flexible administrative arrangements in connection with functions relating to the environment and rural affairs and certain other functions; and for connected purposes”.
110. Implementation of the Act was completed in full and its provisions can be considered successful in their aims. However, the principles and policy concepts within some Parts of the Act have evolved.

111. The Act established an independent body, Natural England, to bring together the functions of English Nature and certain functions delivered by the Countryside Agency and the Rural Development Service. The Act abolished England Nature and the Countryside Agency. Natural England was made responsible for conserving, enhancing and managing England's natural environment for the benefit of current and future generations, and working in close partnership with other organisations and bodies with a major role in relation to the natural environment.
112. The Act established an independent advocate and expert advisor for rural England, the Commission for Rural Communities. The Commission's particular focus concerned rural people suffering from social disadvantage and rural areas suffering from economic under-performance. It provided information, advice, monitoring and reporting to Government and others on issues and policies affecting rural needs. After the abolition of the Commission for Rural Communities, this activity was undertaken by the Rural Communities Policy Unit and the government's continued commitment to rural areas was set out in the Rural Statement published in 2012. This activity continues today through the Rural Policy Team in Defra.
113. The Act reconstituted the JNCC. The Act amended the Wildlife and Countryside Act 1981 with respect to biodiversity, pesticides, the protection of birds and invasive non-native species and altering enforcement powers with respect to wildlife protection. Compliance is monitored and these provisions are kept under review.
114. In practice, the biodiversity duty and associated lists of species and habitats have provided a focus for existing Defra and external public funding. The habitats and species list has been used by public bodies to target funding on conservation priorities for example, by Natural England and by the Heritage Lottery Fund. The duty and associated lists have also encouraged public bodies, such as Thames Water, to publish statements about how they are fulfilling their duties.
115. The Act addressed a small number of gaps and uncertainties identified in relation to the law on Sites of Special Scientific Interest
116. The changes brought into force by the Act removed any doubt as to the factors which may be taken into account when designating a National Park. The Act also amended the functions and the constitution of National Park authorities and the functions of the Broads Authority, and enabled emergency funding to be given to National Park authorities and the Broads Authority if need be. The intention of the provisions was to improve the governance of National Parks and the Broads Authority and Defra considers that this has been successful.

117. Part 6 of the Act has been successful in achieving its primary aims. The use of mechanically propelled vehicles on rights of way is a contentious issue and views are highly polarised. The majority of stakeholders and the public broadly support the measures in the Act. Those stakeholders who enjoy using motor vehicles off road and on byways resent the loss of routes on which they could legitimately engage in this pastime. Those stakeholders who are against the use of mechanically propelled vehicles on unsealed routes want the government to go further and take further legislative action.
118. There has been a significant amount of litigation in relation to Part 6 but this underlines how successful the Act has been in curtailing the scope to create and record rights for mechanically propelled vehicles over by byways and other off road routes, as the litigation has primarily been about parties seeking to establish where the boundaries lie for exceptions and savings. So far any litigation has been marginal to the impact of this legislation.
119. The Public Body Review 2010 aimed to reform a large number of public bodies, or quangos. This included the government's proposal to abolish the Inland Waterways Advisory Council in parallel to the transfer of statutory functions of British Waterways to the Canal & River Trust, an independent charity, which was formed on 2 July 2012. In Scotland, British Waterways continues to exist as a legal entity caring for the canals under the trading name 'Scottish Canals'.
120. The Act extended the Secretary of State's funding powers for functions within Defra's remit, and authorised other bodies (both public and other designated bodies) to carry out those functions.

Annex A Commencement Orders

SI	Title	Summary
Part 1 Ch 1: 2006/1176, art 4	The Natural Environment and Rural Communities Act 2006 (Commencement No. 1) Order 2006	S.1(1)(2)(3)(5), S.2, S.5, S.9, S.11(1)(2)(b), S.13, S.14, S.15(2)-(6), S.16 in force at 2.5.2006
2006/2541, art 2	The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.1(4), S.3, S.4, S.6, S.7, S.8, S.10, S.11(2)(a)(c)(3)-(7), S.12, S.15(1) in force at 1.10.2006
Part 1 Ch 2: 2006/2541, art 2	The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.17 to S.25 in force at 1.10.2006
Part 1 Ch 3: 2006/1176, art 4	The Natural Environment and Rural Communities Act 2006 (Commencement No. 1) Order 2006	S.29 in force at 2.5.2006
2006/2541, art 2	The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.26, S.27, S.28, S.30 in force at 1.10.2006
Part 2: 2006/2541 art 2	The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.31 to S.39, in force at 1.10.2006
Part 3: 2006/2541 art 2,	The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.40 to S.46, S.48 to S.51, S.54 in force at 1.10.2006
2006/1382 art 2	The Natural Environment and Rural Communities Act 2006 (Commencement No.2) Order 2006	S.47, S.52, S.53 in force at 31.5.2006

Part 4: 2006/2541 art 2,	The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.55, S.58 in force at 1.10.2006
2006/1382 art 2	The Natural Environment and Rural Communities Act 2006 (Commencement No. 2) Order 2006	S.56, S.57 in force at 31.5.2006
Part 5: 2006/2541 art 2,	The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.60, S.61(1), S.61(6), S.62 to S.65 in force at 1.10.2006
2007/816 art 3	The Natural Environment and Rural Communities Act 2006 (Commencement No. 4) Order 2007	S.61(1, S.61(2)-(5)) in force at 10.5.2007
Part 6: 2006/1176 art 6,	The Natural Environment and Rural Communities Act 2006 (Commencement No. 1) Order 2006	S.66 to S.71 in force at 2.5.2006 for England
2007/2540 art 2;	The Natural Environment and Rural Communities Act 2006 (Commencement No.1) (England) Order 2007	S.72 in force at 1.10.2007
Part 7: 2007/816 art 2(a)	The Natural Environment and Rural Communities Act 2006 (Commencement No. 4) Order 2007	S.73 to S.77 in force at 1.4.2007
Part 8: Ch 1: 2006/1382 art 2,	The Natural Environment and Rural Communities Act 2006 (Commencement No. 2) Order 2006	S.78 to S.86 in force at 31.5.2006
Ch 2 2006/2541 art 2	The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.87 to S.97 in force at 1.10.2006
Ch.3 2006/1176 art 5	The Natural Environment and Rural Communities Act 2006 (Commencement No.1) Order 2006	S.98 in force at 2.5.2006

Part 9: 2006/2541 art 2	The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.100 to S.101 in force at 1.10.2006
Part 10: 2006/1176 art 4 and art 6 2006/2541 art 2	The Natural Environment and Rural Communities Act 2006 (Commencement No.1) Order 2006 The Natural Environment and Rural Communities Act 2006 (Commencement No. 3 and Transitional Provisions) Order 2006	S.105(1) in force at 2.5.2006 (art 4 for E&W) S.105(2) in force at 2.5.2006 (art 6 for England) S.105(1)(2) in force at 1.10.2006

Annex B Secondary legislation

SI	Amendment Date	Title	Summary
2009/3345	12.1.2010	Marine and Coastal Access Act 2009	S.1(3)(3A)
	1.1.2010	Legal Services Act 2007	S.12(2)
2012/1662	1.7.2012	Public Bodies Act 2011	S.26(2)(c)(4)
	1.4.2013	The Natural Resources Body for Wales (Functions) Order 2013 (No. 755)	S.31(1)(b)
	21.5.2016	Environment (Wales) Act 2016 (anaw 3), s. 88 (2)(a)	S.40(A1)(1)(2)(4)(b)(c)(5)(a)(5)
2013/1506, reg 2(1)	1.9.2013	The Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013	S.43(3)(c)(d)
2011/1043	22.4.2011	The Treaty of Lisbon (Changes in Terminology) Order 2011	
2016/992	9.11.2016	The Secretaries of State for Business, Energy and Industrial Strategy, for International Trade and for Exiting the European Union and the Transfer of Functions (Education and Skills) Order 2012	S.78(1), S.79(1), S.80(3), S.82(a)(b), S.86(2)(2)(b)(2A), S.98(1), S.98(5)(5)(b)(5A)
2010/501	1.6.2010	The Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2010	S.81(2)(n)
	14.3.2012	Charities Act 2011	S.81(2)(n)
2009/229	5.3.2009	Secretary of State for Energy and Climate Change Order 2009	S.86(2)(2A), S.98(5)(5A)

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