

Written evidence submitted by the Open Spaces Society (AB39)

Summary

The Open Spaces Society welcomes the broad powers conferred by the Agriculture Bill for *supporting public access to and enjoyment of the countryside, farmland or woodland and better understanding of the environment* (clause 1(1)(b)). We ask the committee to ensure that:

- these powers will be employed by the government to deliver more and better public access, in the form of new or better public rights of way and greater access to access land (clause 1);
- grant assistance is made conditional on terms similar to the cross compliance currently imposed under the Common Agricultural Policy, and that grants are subject to more vigorous enforcement, greater penalties for breaches of the rules, and greater transparency to the enforcement process (clause 2);
- the government takes express powers to structure the payment of grants in relation to common land (clause 2).

Introduction

- 1 The Open Spaces Society is Britain's oldest national conservation body, founded in 1865. It campaigns to protect common land, village greens, open spaces and public paths and people's rights to enjoy them, in town and country throughout England and Wales. Its members are individuals, organisations and local authorities, and it is a registered charity.
- 2 The society, with other rights-of-way and access user-groups, has for the last two or more years been lobbying for the agricultural payments after Brexit to be directed to securing public goods, such as more and better public access.

- 3 Public paths are highways in law along which the public has the right to pass and repass. Too often paths are abused or neglected, and the highway authorities do not have the resources to uphold the law. We want to see a public path network which is fully recorded, well maintained and welcoming to the public. There are also many places where the network could be improved by linking up existing paths or creating safe, off-road routes. Also, some of the land which was designated as access land under the Countryside and Rights of Way Act 2000 has no access points, meaning that people cannot legally reach it. The Agriculture Bill provides a unique opportunity to right these wrongs.

Clause 1: grants for public access etc

- 4 We are pleased that clause 1(1)(b) enables the Secretary of State to give financial assistance in connection with *supporting public access to and enjoyment of the countryside, farmland or woodland and better understanding of the environment*.
- 5 We shall back amendments which clarify that *supporting public access* will give the Secretary of State scope to provide grants for any of the following purposes:
- creating new public access (eg new public rights of way or access land),
 - enhancing existing public access (eg managing existing rights of way to improve user experience or opportunities, such as mowing a headland path), and
 - promoting public access (such as funding notice-boards about local access opportunities).
- 6 We shall seek an assurance that the new access will be permanent and an integral part of the scheme, not an optional extra.
- 7 The bill does not provide any assurance that the Secretary of State *will* use the powers conferred on him, that the power in clause 1(1)(b) will be used, and still less that the power will be employed to deliver access. We shall therefore support amendments which place a legal duty on the Secretary of State to give financial assistance in connection with public access.

Clauses 2 and 3: cross compliance and regulation

- 8 Clauses 2 and 3 make provision about the conditioning, monitoring and enforcement of grant aid.
- 9 We commend the continuation and reinforcement of the present application of cross compliance to include public rights of way. At present, farmers in receipt of CAP subsidies must adhere to cross compliance: among the obligations of

cross compliance is following the existing legal obligations for the maintenance and protection of public paths.

- 10 **We wish to see the same cross compliance rules applied to all those who receive financial assistance under clause 1. We also wish to see those rules strengthened, so that there is more vigorous enforcement, greater penalties for breaches of the rules, and greater transparency to the enforcement process.**
- 11 Greater transparency would enable the public to:
 - identify whether farmers and landowners were in receipt of clause 1 financial assistance and whether such assistance included support for public access (and if so, details of the commitments entered into);
 - report where those commitments were in breach or there was a breach of cross compliance (whether in relation to rights of way or generally), and
 - be kept informed of the enforcement process (for example, so that a walker might know when enforcement action had been taken to reopen an obstructed path which the walker wishes to use).
- 12 All this may be possible under clauses 2 and 3 but none of it is required to be done. The public is entitled to a robust assurance that, where the Secretary of State offers financial assistance for the provision of public goods, not only that such goods are delivered in accordance with the terms of the agreement, but that there are strong disincentives to wilful non-compliance and, where the beneficiary is in breach of any condition, there are sufficient penalties.
- 13 **The bill should be amended expressly to enable conditions to be imposed as to any matter relating to the management of the land and of any farming operation carried out there.**
- 14 **There should be a duty on the Secretary of State, and not a power, in clause 2(7) to make regulations requiring the publication of data about grants given.**

Proposed amendment 1
On cross-compliance

Clause 2, page 2, line 27, at end insert “, and provision in relation to the observation of any obligations imposed by or under statute on persons to whom financial assistance is given arising from the management of land or water, or any farming operation on land”

Member’s explanatory statement

The scope of clause 2(2), taken with clause 2(3), does not obviously enable the imposition, on the recipient of financial assistance, of broad requirements similar to the present cross compliance—ie relating to the imposition of conditions having nothing directly to do with the financial assistance being given. The amendment seeks to confer a broader power for that purpose.

Proposed amendment 2
On publication of data

Clause 2, page 2, line 36, leave out "may" and insert "must"

Member’s explanatory statement

The amendment would impose a duty on the Secretary of State, and not a power, in clause 2(7), to make regulations requiring the publication of data about financial assistance given.

Clauses 2 and 3: common land

- 15 Common is land owned by one person but which is subject to the rights of others ('commoners') to take some product of the land—typically grazing with animals but also wood, peat, bracken or fish. It is a survival from the mediaeval era and is of immense historic, cultural, biological and landscape importance as well as being valuable for informal recreation. In England common land occupies around 3% of the total land area.
- 16 We are concerned that where financial assistance is to be given in relation to the management of common land, the bill makes no specific provision for the structure under which it is given.
- 17 For example, it may be appropriate to offer assistance to two or more (often many more) commoners acting jointly to deliver public goods.

- 18 The bill needs to make provision for assistance to be shared among several persons (whether the commoners, the landowner or others) and for conditions to be enforced against multiple parties.
- 19 **We consider that the Secretary of State should take express powers to vary the terms of any scheme for financial assistance given in relation to common land and to structure such assistance to make allowance for the special circumstances inherent in managing common land.**

Proposed amendment 3
On common land

Clause 2, page 2, line 30, at end insert—

“(4A) The Secretary of State may by regulations make provision as to the circumstances in which financial assistance may be given in relation to registered common land, any other land subject to rights of common, or land subject to shared grazing rights, including:

- (a) In what circumstances financial assistance may be allocated among two or more persons having an interest in such land;
- (b) how any financial assistance must be shared among those persons, and on what terms;
- (c) how any obligations arising from such financial assistance must be discharged by those persons,
- (d) how conditions may be enforced against those persons;
- (e) how financial assistance may be recovered from those persons;
- (f) providing for financial assistance to be offered to a voluntary unincorporated commoners’ association or other unincorporated body.”

Member’s explanatory statement

Clause 2 makes no specific provision for the structure under which financial assistance is given in relation to common land. This amendment (taken with amendment 4) confers express powers in regulations to vary the terms of any scheme for financial assistance given in relation to common land (or any land subject to shared grazing rights), and to structure such assistance to make allowance for the special circumstances inherent in managing common land.

Proposed amendment 4
On common land

Page 3, line 3, at end insert—

““registered common land” means land registered as common land in a register of common land kept under Part 1 of the Commons Act 2006 or under the Commons Registration Act 1965”

Member’s explanatory statement

See the explanatory statement for amendment 3.

Please see [here](#) for the Open Spaces Society’s proposals for support for public access as part of the post-Brexit agricultural funding.

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