



HOUSE OF LORDS

Select Committee on the Natural Environment  
and Rural Communities Act 2006

---

Report of Session 2017–19

## **The countryside at a crossroads:**

# **Is the Natural Environment and Rural Communities Act 2006 still fit for purpose?**

---

Ordered to be printed 13 March 2018 and published 22 March 2018

---

Published by the Authority of the House of Lords

### *Select Committee on the Natural Environment and Rural Communities Act 2006*

The Select Committee on the Natural Environment and Rural Communities Act 2006 was appointed by the House of Lords on 29 June 2017 “to consider and report on the Natural Environment and Rural Communities Act 2006”.

#### *Membership*

The Members of the Select Committee on the Natural Environment and Rural Communities Act 2006 were:

[The Earl of Arran](#)

[Baroness Byford](#)

[The Earl of Caithness](#)

[Lord Cameron of Dillington](#) (Chairman)

[Lord Cavendish of Furness](#) (from 23 October 2017)

[Viscount Chandos](#) (from 18 October 2017)

[Lord Faulkner of Worcester](#)

[Lord Foster of Bishop Auckland](#)

[Lord Harrison](#) (until 18 October 2017)

[The Countess of Mar](#)

[Baroness Parminter](#)

[Baroness Scott of Bybrook](#) (until 23 October 2017)

[Baroness Scott of Needham Market](#)

[Baroness Whitaker](#)

#### *Declaration of interests*

See Appendix 1.

A full list of Members’ interests can be found in the Register of Lords’ Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

#### *Publications*

All publications of the Committee are available at:

<http://www.parliament.uk/nerc-act-committee>

#### *Parliament Live*

Live coverage of debates and public sessions of the Committee’s meetings are available at:

<http://www.parliamentlive.tv>

#### *Further information*

Further information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is available at:

<http://www.parliament.uk/business/lords>

#### *Committee staff*

The staff who worked on this Committee were Matthew Smith (Clerk), Nathan Lechler (Policy Analyst to December 2017), Simon Keal (Policy Analyst from January 2018), Beth Raine (Parliamentary Office of Science and Technology Research Fellow, September 2017 to December 2017) and James Thomas (Committee Assistant).

Professor Maria Lee (University College London) and Professor Mark Shucksmith OBE (Newcastle University) both served as Specialist Advisers to the Committee.

#### *Contact details*

All correspondence should be addressed to the Select Committee on the Natural Environment and Rural Communities Act 2006, Committee Office, House of Lords, London SW1A 0PW.

Telephone 020 7219 7539. Email [hlnercact@parliament.uk](mailto:hlnercact@parliament.uk)

## CONTENTS

---

	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>Conclusions and recommendations</b>	<b>5</b>
<b>Chapter 1: Introduction and background</b>	<b>13</b>
Why hold an inquiry now?	13
Background to the Act	14
The Haskins Review and the 2004 Rural Strategy	14
Major provisions of the Act	15
Restructuring of organisations	15
Biodiversity	18
Rights of way	18
Territorial extent of the Act	19
Developments since 2006	19
Lawton Review and the Natural Environment White Paper	19
The Defra Triennial Review, June 2013	20
The closure of the Commission for Rural Communities	20
The Environment (Wales) Act 2016	21
Brexit	21
The Government's 25 Year Environment Plan	22
<b>Chapter 2: Brexit and the natural environment</b>	<b>24</b>
The accountability and enforcement capacity of the EU	24
A new environmental body?	25
Environmental monitoring and reporting following Brexit	27
<b>Chapter 3: The role of Natural England</b>	<b>30</b>
Background	30
The funding and independence of Natural England	31
The role of a non-departmental public body	31
Independence from Government	31
Funding and resources	33
Moving from a regulatory to a collaborative approach	36
Input into the development planning process	38
Net gain	42
The discretionary advice service	43
Access to the countryside	45
Capital investment and maintenance of routes	45
The promotion of public access	47
The long-term future of Natural England	49
<b>Chapter 4: The biodiversity duty</b>	<b>51</b>
Operation of the duty	51
Awareness and understanding of the biodiversity duty	51
Reporting requirements	52
The loss of biodiversity professionals, knowledge and resources	53
Wording of the duty	54
Enforceability of the duty	55
The changing context since 2006, and implications for the duty	56
Box 1: What is Natural Capital?	56

<b>Chapter 5: Rural communities</b>	<b>60</b>
Background	60
The difference between rural policy and rural proofing	60
The Commission for Rural Communities	61
Closure of the Commission for Rural Communities	61
Strengths and weaknesses of the CRC	62
The closure of the Regional Development Agencies and the RCPU	65
Rural policy making today	66
The work of Defra	66
Limitations and problems	67
The case for retaining rural policy within Defra	69
Where should rural policy sit within government?	71
Rural proofing	72
The challenge of delivering services for rural communities	72
Defra and rural proofing	73
Box 2: Rural housing and the failure of rural proofing	74
A role for the Cabinet Office?	75
<b>Chapter 6: Green lanes and rights of way</b>	<b>78</b>
The effect of the NERC Act 2006	78
Current issues	78
The use of Traffic Regulation Orders	79
<b>Appendix 1: List of Members and declarations of interest</b>	<b>82</b>
<b>Appendix 2: List of witnesses</b>	<b>85</b>
<b>Appendix 3: Call for evidence</b>	<b>90</b>
<b>Appendix 4: Acronyms and glossary</b>	<b>92</b>
<b>Appendix 5: Flowchart of previous organisations</b>	<b>94</b>

Evidence is published online at [www.parliament.uk/nerc-act-committee](http://www.parliament.uk/nerc-act-committee) and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

Twelve years have passed since the Natural Environment and Rural Communities (NERC) Act received Royal Assent in March 2006. This legislation built upon institutional changes that began with the creation of the Department for Environment, Food and Rural Affairs (Defra) in 2001. The Act introduced major structural changes, abolishing the Countryside Agency and English Nature and transferring many of their functions to a new body, Natural England, which was charged with conserving, enhancing and managing the natural environment. The Act also sought to promote the interests of rural areas by establishing an independent Commission for Rural Communities, charged with raising awareness of rural needs, and passed responsibility for some elements of rural delivery to the Regional Development Agencies.

Since 2006 many of these provisions have been hollowed out. Natural England has been subjected to severe budget cuts, leading to concerns regarding its ongoing ability to perform core regulatory functions. The Commission for Rural Communities has been abolished, and was replaced by a unit within Defra—the Rural Communities Policy Unit (RCPU)—which has itself subsequently been abolished. Rural society, the rural economy and our natural environment have not been well served by these changes.

The Act gave Natural England a broad remit, including the promotion of nature conservation, protection of biodiversity, conservation of the landscape and promotion of public access to the countryside. To deliver against this remit requires adequate resources and—within the recognised procedures applied to non-departmental public bodies—a good degree of independence from Government. Natural England currently enjoys neither of these essential prerequisites.

The Government must address this situation urgently. We recommend that Natural England should be funded to a level commensurate with the delivery of its full range of statutory duties and responsibilities. We share the concerns of witnesses who have told us that Natural England no longer has a distinctive voice, and urge the Government to take action in recognition of these concerns. We also make specific recommendations that seek to improve Natural England's performance of its planning obligations, particularly with regard to conserving the landscape.

The Commission for Rural Communities (CRC) performed an important role as an advocate for rural England. Abolition of the Commission has left a number of gaps in the Government's understanding of the needs of rural areas; of particular concern is the loss of the CRC's independent research capacity. More broadly the closure of the CRC and the RCPU, combined with the abolition of the Regional Development Agencies, means that most of the NERC Act's provisions pertaining to rural communities have now been annulled. This has had a profound negative impact upon the way in which the Government handles rural needs, and has diminished focus on the economic potential of rural areas, to the cost of us all.

This has been compounded still further by the consistent failure, over a number of years, to prioritise the 'rural affairs' element of the departmental remit of Defra. The current Minister and Rural Ambassador has been working hard to address this but the focus of the department has been consumed by its important work on agriculture and the environment, with a lack of emphasis placed upon the needs of rural communities as a whole and the wider, non-land based,

rural economy. Brexit will result in fundamental changes to the way in which agriculture and environment policy is developed and implemented, placing additional demands upon Defra. We therefore recommend that responsibility for rural policy should be transferred from Defra to the Ministry for Housing, Communities and Local Government. Local authorities deliver many of the key services that support rural vitality and, given the evidence, we think it is more logical that responsibility for rural communities should rest within the central Government department that is responsible for communities as a whole.

At present rural proofing—considering the likely impact of policy decisions on rural areas and, where necessary, adjusting the policy to take into account rural needs—is not being practised effectively. Defra seeks to promote rural proofing within Government, and to provide support to other departments, but we believe that this work would be better led from the Cabinet Office, with its cross-Government focus. We therefore recommend that responsibility for promoting and embedding rural proofing across Government departments should be assigned to the Cabinet Office, within a single purpose unit with the necessary resources and experience required to exert influence on all departments.

The NERC Act introduced a new duty requiring public authorities to “have regard” to biodiversity when exercising their functions. We believe that the duty is ineffective as it stands, as a result of limited awareness and understanding among public bodies, weak wording and the lack of clear reporting requirements and enforcement measures. We recommend that the NERC Act should be amended in order to add a reporting requirement to the duty; the Government should also consider strengthening the wording.

The ongoing loss of biodiversity is one concerning trend that has not changed since 2006, which is in part a reflection of the failure of the biodiversity duty, and of Natural England. The Government recently published a 25 year environment plan—*A Green Future*—which seeks to address this, placing an emphasis on natural capital. We welcome the prospect of further work to explore the role that the natural capital approach can play in supporting our natural environment and biodiversity. We also welcome the recently published revised draft of the National Planning Policy Framework.

Natural capital represents just one part of a wider set of changes that will profoundly alter the way in which we understand, approach and seek to manage our natural environment. The context that shaped the NERC Act 2006 no longer applies, and Brexit will bring further significant changes. We welcome the Government’s decision to create a new environmental body to hold it to account following Brexit, taking on some of the roles currently performed by the European Commission. This body must be independent from the Government; this independence should be safeguarded by making the body accountable to Parliament and providing finance from more than one Government department.

Our overall vision is for balanced protection and promotion of the natural environment and a reversal of the biodiversity decline. This must be coupled with better recognition of the potential of rural communities and the rural economy, and a greater effort from the Government to ensure that policy changes do not work to the detriment of rural areas. Taken together, we believe that our recommendations would help to ensure that the structures, provisions and priorities set out in the NERC Act were brought up-to-date and made fit for purpose for the significant challenges that lie ahead.

## CONCLUSIONS AND RECOMMENDATIONS

---

### Chapter Two: Brexit and the natural environment

1. The departure of the United Kingdom from the European Union will result in a governance gap for environmental protection in the UK. Potentially, this could diminish the extent to which the Government can be held accountable for its environmental promises and commitments. (Paragraph 67)
2. We welcome, therefore, the Government's decision to create a new environmental body to hold both it and other public bodies to account, and the anticipated consultation on filling the 'governance gap'. We recommend that the new body should be independent, accountable to Parliament, financed by more than one Government department and tasked with providing environmental oversight and scrutiny. (Paragraph 68)
3. The new body must be able to deal with issues raised by individuals in complaints, and should have the power and capacity to take the Government and other public bodies to court when appropriate to do so. Where as a result of such actions, the courts determine faults or breaches to have occurred, appropriate sanctions—including but not limited to fines—should be available. (Paragraph 69)
4. The Habitats Directive and the Birds Directive require EU member states to report on the measures they have taken to implement the provisions of the Directive, including on the conservation status of habitats and species. Although the fine detail of policies may be subject to future change it will be important, following Brexit, to retain similar reporting requirements on the conservation status of protected species and habitats. (Paragraph 77)
5. We therefore recommend that Defra and its agencies be required to report on the implementation of their legal obligations in respect of nature conservation, including specific requirements with respect to the conservation status of protected species and habitats. These reports must be made to the new environmental body proposed by the Government, which should then scrutinise the reports and publish informed commentary, analysis, and recommendations for action by the Government. (Paragraph 78)

### Chapter Three: The role of Natural England

6. Non-departmental public bodies, while playing a part in the processes of national government, should operate at arm's length from Ministers and departments. We share the concerns of witnesses who have told us that Natural England no longer has a distinctive voice. We urge the Government to recognise these concerns, and to take steps to enable Natural England to operate with the appropriate degree of independence. (Paragraph 94)
7. As a minimum requirement, we recommend that the Government should allow Natural England to re-establish its own, independent, press and communications function. (Paragraph 95)
8. Natural England should champion England's natural environment, and must have the authority, resources and capacity to deliver its general purpose, while working alongside farmers, landowners and NGOs. Successive reductions to its budget, however, have limited its ability to perform key functions, and reduced its wider influence. (Paragraph 104)



9. All of the objectives contained within the general purpose of Natural England are important; these functions were also important elements of the work of predecessor bodies to Natural England. Funding limitations have led to an increased focus on core regulatory functions and will, ultimately, lead to Natural England becoming unable to fulfil its general purpose. The Government must take steps to resolve this situation, particularly in light of the changes to environmental protection and management that will be brought about as a result of our departure from the European Union. We recommend that Natural England should be funded to a level commensurate with the delivery of its full range of statutory duties and responsibilities. This situation should be addressed as a matter of urgency. (Paragraph 105)
10. We note that the recently published 25-year environment plan promises the development of a Nature Recovery Network to deliver on recommendations from the Lawton Review. The Government must ensure that appropriate resources are devoted to this work. (Paragraph 106)
11. The development of partnerships and new, collaborative ways of working will be essential to delivering the strategy set out in Conservation 21. Natural England should continue to work effectively with stakeholders, incentivising and inspiring them towards positive action that will enhance our natural environment. This should complement, rather than diminish, the important regulatory backdrop that underpins the work of Natural England. (Paragraph 117)
12. We recommend that in reviewing its strategy and operations, Natural England should consider how to maintain an effective balance between its core functions of regulation and collaboration, and that the latter continues to be effectively backed up by the former when necessary. (Paragraph 118)
13. We are persuaded by the evidence that the quality of planning advice issued by Natural England has declined, largely as a result of resource constraints. While application response rates continue to be impressive, there appears to be an increasing reliance on standard advice which in some cases may itself not be up to date. (Paragraph 135)
14. The reduction of Natural England's role has left a vacuum which in many cases local authorities have been required to fill, without the adequate resources or expertise to do so. As Natural England has withdrawn, there has been little clarity as to the changing scope of its role or the expectations on local authorities. In the light of mutual resource pressures, Natural England should be clearer as to when it will play an active part in planning policy and decision-making, and when it will refer to other bodies. There should also be a renewed dialogue between Natural England, the Local Government Association and local authorities more generally as to the most effective role that NE can play in the planning process. (Paragraph 136)
15. We recommend that Natural England reviews its standard advice to planning authorities to ensure that it is up to date, and reviews it more regularly in future. We also recommend that Natural England reviews the extent of its reference to standard advice when considering planning applications. (Paragraph 137)
16. We also noted the evidence that Natural England has insufficient regard for landscapes when offering planning advice, though we accept its evidence that the issue may be one of resource constraints rather than of losing a focus



on landscape specifically. Nevertheless, with local government facing similar constraints, there is clearly a need for a body such as Natural England to retain and review its focus. (Paragraph 138)

17. Natural England should review its approach to considering landscapes when offering planning advice and considering planning applications, and consider if there is more it can do in this respect, particularly in light of the wider loss of expertise in landscape matters across the public sector. (Paragraph 139)
18. Additionally, the Government's review of National Parks and Areas of Outstanding Natural Beauty, anticipated in the 25-year environment plan, should give due emphasis to the importance of the planning system in protecting landscapes. (Paragraph 140)
19. We welcome the forthcoming consultation on strengthening requirements for biodiversity net gain in the planning system, as well as the forthcoming industry guidance. We would encourage the Government and Natural England to consider other measures in policy and guidance which would support net gain and associated environmental protection measures, taking into account the need for such measures to be practically deliverable and the fact that some environmental goods are not substitutable. (Paragraph 149)
20. We welcome the fact that Natural England has found means to generate income by the provision of planning advice, though its focus must continue to be on improving the process rather than generating revenue as a first priority. While Natural England discloses its income from discretionary advice in its national accounts, we believe further transparency would be welcome with regard to the uses it makes of its commercial income, perhaps through a separate declaration. (Paragraph 155)
21. Additionally, the NERC Act itself appears to limit the scope of Natural England's discretionary charging services. The Government should consider how these rules are applied to Natural England and whether they may unnecessarily limit the scope and potential of its discretionary activities. (Paragraph 156)
22. Natural England should consider carefully how it balances its resources between statutory, advisory and chargeable activities, and how it ensures avoidance of conflict of interest between its roles as paid advisor and statutory consultee. (Paragraph 157)
23. We note the concerns that have been expressed regarding the long-term funding and sustainability of the National Trails network. We recommend that Natural England and Defra work with the Ramblers, representatives of the tourism industry, and other appropriate interest groups, to develop proposals for long-term management and maintenance funding. This work should give due consideration to the potential for sponsorship of the Trails and, more widely, should consider the role that active partnerships of different interests could play in maintaining national and local routes. (Paragraph 163)
24. The Government is consulting upon a new system of farm and environmental payments to be applied following the withdrawal of the UK from the EU and the cessation of Common Agricultural Policy payments. We recommend that the Government should include payments for maintenance and enhancement of public access within this new system of public funding, although we

note that this could have implications for food production and the natural environment. (Paragraph 167)

25. The general purpose of Natural England, set out in the Natural Environment and Rural Communities Act 2006, includes responsibility for promoting access to the countryside. This element of the general purpose is not, at present, being delivered effectively. We believe that Natural England should have sufficient resources to deliver against all elements of its general purpose. It must also have the capacity to undertake effective promotional work and awareness raising activity. (Paragraph 174)
26. Our earlier recommendations seek to increase the funding, independence and capacity of Natural England. Public access to the countryside would benefit from enactment of these recommendations, and should be appropriately prioritised by Natural England following their implementation, with due regard for the protection and management of sensitive wildlife sites. (Paragraph 175)
27. As part of this proactive, balanced and responsible approach to promoting public access we also recommend that Natural England should revise and relaunch the Countryside Code. (Paragraph 176)
28. Natural England's role will change following the departure of the UK from the European Union. These changes will also have an impact upon the work of the Environment Agency and the Rural Payments Agency as, indeed, will the implementation of the 25-year environment plan. Accordingly, we recommend that Defra should commit to a longer-term review of the distinct functions, responsibilities and purposes of these bodies, and an examination of the case for any restructuring or rearrangement to deliver against new priorities. (Paragraph 181)

#### **Chapter Four: The biodiversity duty**

29. It is clear from the evidence we have heard that the biodiversity duty is ineffective as it stands, for a range of reasons including poor awareness, poor understanding, the weakness of the wording of the duty, the lack of a reporting requirement or enforceability, and the lack of biodiversity knowledge and resources. It may not be possible to correct all of these weaknesses in short order, but some action must be taken. (Paragraph 206)
30. The Government should consider changes to the wording of the duty, as the requirement to "have regard" for biodiversity is weak, unenforceable and lacks clear meaning. The stronger wording used in Scotland and Wales should be considered as alternatives if the evidence becomes clear that they have had a positive effect. (Paragraph 207)
31. The Natural Environment and Rural Communities Act 2006 should also be amended in order to introduce an obligation to report to the new environmental body on the implementation of the Section 40 biodiversity duty. Such a duty could apply either to all public bodies, or a smaller number of bodies with biodiversity responsibilities, to be listed by the Secretary of State. (Paragraph 208)
32. We further recommend that, following implementation of these changes, the Government should publish, and promote effectively, new guidance on implementation of the biodiversity duty. (Paragraph 209)

33. Natural capital is an important tool for environmental sustainability and for the support and enhancement of biodiversity. It is not yet, however, a fully comprehensive concept, and in particular may not yet be advanced enough to offer a framework for investment in land management. We believe, however, that as the concept expands it has strong potential to be applied more widely as a tool of environmental policy, and we welcome the provisions to take account of natural capital in the draft revised National Planning Policy Framework. (Paragraph 222)
34. We would encourage the Government to take concrete steps to fulfil the intentions set out in the 25-year environment plan to incorporate natural capital approaches into its environmental strategy. In particular, the Government should consider how the biodiversity duty contained in the NERC Act 2006 might be expanded or combined with a natural capital approach to enhance its effectiveness. This consideration should take into account the fact that limits of resource and understanding could mean it is not yet possible to establish a formal natural capital duty in law. The Government should also ensure that the Natural Capital Committee receives satisfactory resources to continue developing the concept and exploring its potential. (Paragraph 223)

#### **Chapter Five: Rural communities**

35. The Commission for Rural Communities lacked the teeth and powers to perform a watchdog role on behalf of rural communities. The Commission did, however, play an important part in ensuring that the Government, other public authorities, and Parliament, had access to detailed and unbiased research on rural communities, informed opinion as to the potential impact of policies, and independent insight into their needs. The loss of the Commission has diminished the Government's understanding of rural society, rural economies and rural communities, and the ability of Parliament and others to hold the Government to account. (Paragraph 247)
36. Of particular concern is the loss of the CRC's independent research capacity. The State of the Countryside reports, and other CRC research, provided a level of granularity, detail and understanding which is not being matched currently. We have consistently heard that this lack of detailed data makes it harder for the Government to design and implement policies that work for rural areas. It also makes it particularly difficult to monitor the impact of any such policies. (Paragraph 248)
37. The Government should be setting the agenda for the undertaking of research and data collection that can support the development, implementation and evaluation of rural policy. This is not happening at present. We recommend that the Government should produce a statement of priorities for rural research and understanding, focused upon the social and economic needs of rural communities, and should then commission new research accordingly. The statement of priorities should be assessed and revised on a regular basis. (Paragraph 249)
38. While the name of the Act is the Natural Environment and Rural Communities Act 2006, most of the Act's provisions pertaining to rural communities have been annulled with the dissolution of the Commission for Rural Communities, and the abolition of the Regional Development Agencies. This has had a profound negative impact upon the way in which the Government handles rural needs but, equally importantly, has diminished

the focus on the economic potential of rural areas and the level of support available to deliver that potential. The closure of the Rural Communities Policy Unit compounds the situation. Our remaining recommendations on these matters will, we believe, help to address this unfortunate situation. (Paragraph 255)

39. Responsibility for rural policy and rural communities does not sit well within Defra, with the department being predominantly focused upon the important environment, agriculture and food elements of its remit. This focus will intensify as a result of Brexit. We therefore recommend that responsibility for rural affairs should be transferred from the Department for Environment, Food and Rural Affairs to the Ministry of Housing, Communities and Local Government. This change would ensure that responsibility for rural communities sits within the central Government department that is responsible for communities as a whole as, indeed, it did prior to the creation of Defra. It would also ensure that the responsibility rested in the department which oversees local authorities, who are the key delivery agents for most services to rural communities. (Paragraph 279)
40. The delivery of services can be challenging—and sometimes more expensive—in rural areas as a result of population sparsity and more limited infrastructure. Policy changes by Government departments that fail to account for these challenges can have negative impacts for rural people. (Paragraph 295)
41. Each and every Government department should be seeking to take account of the circumstances facing rural communities when developing policy. At present, the responsibility for promoting rural proofing across Government rests with Defra, but Defra does not have the cross-Government influence or capacity required to embed rural proofing more widely. (Paragraph 296)
42. Rural proofing should be driven and promoted from the centre of Government and, as such, it is vital that the Cabinet Office takes the lead. We therefore recommend that responsibility for promoting and embedding rural proofing across all Government departments should be clearly assigned to the Cabinet Office, within a single purpose unit with the necessary resources and breadth of experience required to exert influence on all departments. (Paragraph 297)
43. Additionally, we recommend that the Government should establish a mechanism by which departments report, to the Cabinet Office, on the actions that they have taken to ensure that rural proofing takes place. The Government should revise and strengthen its rural proofing guidance, in order to facilitate much earlier engagement with rural communities and their representatives. The revised guidance should then be promoted properly, with workshops used to raise awareness across and beyond Whitehall. (Paragraph 298)

### **Chapter Six: Green lanes and rights of way**

44. We accept the evidence that the exemptions contained in the NERC Act 2006 may result in damage from motorised vehicles if green lanes are not sensitively managed. Unfortunately, local authority resource constraints mean that these routes are not always properly maintained, and the process of drawing up Traffic Regulation Orders can be slow and resource-consuming, and also creates the risk of legal action. Given that trail riders'

groups and protection groups alike welcomed the use of TROs in particular circumstances, we believe that improving these should be the first step in any new approach. (Paragraph 316)

45. The Government should take steps to simplify the process for—and thus reduce the costs of—establishing Traffic Regulation Orders, with the aim of securing better value, greater flexibility and applicability in the use of TROs to manage problems resulting from ‘green-laning’. This might include provision for more selective closures, reduction in bureaucracy in the application process and reduced, updated, advertising requirements. (Paragraph 317)



# The countryside at a crossroads: Is the Natural Environment and Rural Communities Act 2006 still fit for purpose?

## CHAPTER 1: INTRODUCTION AND BACKGROUND

---

1. This Committee, which was established to “consider and report on the Natural Environment and Rural Communities Act 2006”, was appointed by the House on 29 June 2017. We were given a reporting deadline of 31 March 2018.<sup>1</sup>

### Why hold an inquiry now?

2. Upon recommending the appointment of this Committee, the Liaison Committee of the House noted that over a decade had passed since the Natural Environment and Rural Communities Act received Royal Assent in March 2006. The Liaison Committee went on to highlight the fact that “there have been a number of legislative changes which have amended or undone some of the provisions of the Act”.<sup>2</sup>
3. The provisions of the Act are diverse; the introductory text of the Act describes them as follows:

“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”.<sup>3</sup>
4. Much has indeed changed in the period since the Act was passed and implemented. The Commission for Rural Communities (CRC), established by the Act and tasked with speaking up on behalf of rural people, has been abolished, raising questions over the extent to which Government decisions are taking account of rural circumstances and needs. The other significant body created by the Act, Natural England (NE), has been subject to significant funding reductions in recent years, leading to concerns over its ability to fulfil all elements of its wide-ranging remit.
5. One unfortunate trend that has not changed in the period since 2006 is the ongoing loss of biodiversity. Between 1970 and 2013 56% of UK species

---

1 HL Deb, 29 June 2017, [col 563](#)

2 Liaison Committee, *New Investigative committees in the 2017–18 Session* (2nd Report, Session 2016–17, HL Paper 144)

3 Natural Environment and Rural Communities Act 2006, [introduction](#)



declined, with 40% of species showing strong or moderate declines.<sup>4</sup> The *State of Nature 2016* report suggested that the UK had lost significantly more nature over the long term than the global average.<sup>5</sup> This is a significant cause for concern. The Government's recently published 25 Year Environment Plan seeks to address this issue, promoting the concept of natural capital and examining the potential for prioritising biodiversity 'net gain'.

6. Our work sought to take account of these changes and challenges, but also took place against the backdrop of Brexit, bringing with it the prospect of fundamental changes to the structures that currently govern much of our environmental decision making. We sought to recognise, also, that these bodies and structures do not operate in a vacuum and that our natural environment is shaped by a multitude of actors including farmers, landowners, local authorities, NGOs<sup>6</sup> and the general public. Many of these interests were represented during the course of our inquiry; we received 95 submissions of written evidence and heard oral evidence from 41 witnesses in 23 sessions. We are grateful to all those who contributed to the work of the Committee.
7. The changing context, combined with the ongoing developments set out above, made for a timely inquiry. We hope that our recommendations can help to meet the challenges that lie ahead.

### Background to the Act

#### *The Haskins Review and the 2004 Rural Strategy*

8. The origins of the Act can be traced back to the creation of the Department for Environment, Food and Rural Affairs (Defra) in June 2001. Following the establishment of the new department, the then 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 measures included an independent review of the delivery of the Government's rural policies, which was carried out by Lord Haskins.
9. Lord Haskins' review, published in November 2003, was critical of the non-agricultural aspects of Defra's rural policy work, noting that the department had a poorly understood remit, a lack of data upon which to base policy changes and an inability to take account of what people and institutions in rural areas really needed. The review concluded that delivery structures within Defra were too confusing and bureaucratic, and that too many different organisations were involved in rural delivery, making the policy landscape confusing for people and organisations in rural areas to navigate.<sup>7</sup>
10. Lord Haskins' recommendations therefore included a proposal to develop a more integrated approach, by rationalising agencies with overlapping agendas into one new agency responsible for sustainable land management. He also proposed that policy and delivery functions should be separated so

---

4 The State of Nature Partnership, *State of Nature 2016* (2016), p 6: <https://www.rspb.org.uk/globalassets/downloads/documents/conservation-projects/state-of-nature/state-of-nature-uk-report-2016.pdf> [accessed 13 March 2018]

5 *Ibid.*

6 Non-governmental organisations.

7 Lord Haskins, *Rural Delivery Review: A report on the delivery of government policies in rural England*, (2003): [http://www.tgsystems.org.uk/Gefag/haskins\\_full\\_report.pdf](http://www.tgsystems.org.uk/Gefag/haskins_full_report.pdf) [accessed 13 March 2018]

that Defra itself was providing policy direction while delivery functions were being managed at arm's length.<sup>8</sup>

11. The Government published a new Rural Strategy in July 2004, which included a detailed response to Lord Haskins' recommendations and a commitment to publish draft legislation in Spring 2005, in order to make the legal changes required to give effect to the Strategy. The Rural Strategy set out the Government's priorities for policy as follows:
  - Economic and social regeneration—supporting businesses of all kinds across rural England, but recognising and providing additional support in more deprived (often more remote) areas at risk of being left behind;
  - Social justice for all—tackling social exclusion and providing fair access to services and opportunities for all those living in rural areas;
  - Enhancing the value of the countryside.

It proposed that these priorities should be implemented through:

- A rationalisation of different rural grant funding programmes used by Defra;
  - More professional and streamlined advice support for rural people, businesses and organisations;
  - Clear definition of responsibilities for policy and delivery;
  - Providing fresh thinking on rural solutions to socio-economic problems;
  - Streamlining the organisations involved in environmental protection;
  - “Sustainable development proofing” delivery arrangements.<sup>9</sup>
12. A draft Bill<sup>10</sup> was published on 10 February 2005, and was subject to scrutiny by the House of Commons Environment, Food and Rural Affairs Committee. Subsequently, the Bill itself was introduced in Parliament on 19 May 2005. The Natural Environment and Rural Communities Act (“the NERC Act”) then received Royal Assent on 30 March 2006.

### Major provisions of the Act

#### *Restructuring of organisations*

13. Until 2006 much rural and environmental policy was delivered through two non-departmental public bodies; English Nature and the Countryside Agency. The role of English Nature was to manage National Nature Reserves, advise national and local government on conservation of the natural environment, designate Sites of Special Scientific Interest (SSSIs) and undertake scientific research into the environment. English Nature was formed in 1990 and was itself a successor body to the Nature Conservancy Council.<sup>11</sup>

---

<sup>8</sup> *Ibid.*

<sup>9</sup> Defra, ‘The Rural Strategy 2004’ (July 2004), p 5: <http://webarchive.nationalarchives.gov.uk/20050302105329/http://www.defra.gov.uk/rural/strategy/> [accessed 13 March 2018]

<sup>10</sup> Draft Natural Environment and Rural Communities Bill, Cm 6460, February 2005

<sup>11</sup> Appendix 5 of this report provides a diagram, illustrating the history of changes to these structures.

14. The Countryside Agency was also an amalgamation, having been formed in 1999 from the Countryside Commission, which had held responsibility for delivering landscape, access and recreation policies relating to National Parks and other major natural areas, and the Rural Development Commission, which had advised the Government on matters relating to the economic and social development of rural areas in England and had major grant-giving and land-buying powers that it could use to further these aims.
15. Additional functions were also delivered through the Rural Development Service, based within Defra, which was principally an implementation body delivering the England Rural Development Programme, a channel for a large number of EU agricultural funding schemes. The Service had grant giving powers and administered a number of environmental schemes.
16. The Haskins Review had determined that these mechanisms for delivering rural policy were “complex”, being the “collective legacy of many past governments and of changing priorities”. Lord Haskins found the arrangements to be “confused and overlapping”, with blurred accountability.<sup>12</sup>
17. Part One of the NERC Act carried out a major restructuring of these agencies, providing for the dissolution of English Nature and the Countryside Agency. Functions from each of these bodies, along with some of the functions of the Defra Rural Development Service, were brought together into NE.

#### *Natural England*

18. Section 2 of the Act states that the general purpose of Natural England 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”.<sup>13</sup> Section 2(2) goes on to state that:

“Natural England’s general purpose includes:

- (a) Promoting nature conservation and protecting biodiversity,
  - (b) Conserving and enhancing the landscape,
  - (c) Securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment,
  - (d) Promoting access to the countryside and open spaces and encouraging open-air recreation, and
  - (e) Contributing in other ways to social and economic well-being through management of the natural environment.”
19. Accordingly, NE took on those functions of the Countryside Agency that dealt with landscape, public access and recreation. We consider the work and impact of NE further in Chapter 3 of this report.

#### *The Commission for Rural Communities*

20. The NERC Act also created the Commission for Rural Communities (“the CRC”), which was spun out of a number of remaining functions of the

---

12 Lord Haskins, *Rural Delivery Review: A report on the delivery of government policies in rural England*, (2003): [http://www.tgsystems.org.uk/Gefag/haskins\\_full\\_report.pdf](http://www.tgsystems.org.uk/Gefag/haskins_full_report.pdf) [accessed 13 March 2018]

13 Natural Environment and Rural Communities Act 2006, [section 2](#)

Countryside Agency. Chapter Two of the Act established the CRC as an independent, non-departmental public body, accountable to the Government and primarily sponsored by Defra. Section 18 of the Act defined the general purpose of the Commission as being “to promote—

- (a) Awareness among relevant persons and the public of rural needs, and
- (b) Meeting rural needs in ways that contribute to sustainable development”.<sup>14</sup>

The CRC was required to have particular regard to people suffering from social disadvantage and areas suffering from economic underperformance.

21. The CRC was intended to have a tight focus on three roles:
- Advocate: The CRC was to represent rural communities and their specific issues before Parliament and Government. Moreover, the Chair of the CRC was also the official Rural Advocate, reporting in that role directly to the Prime Minister.
  - Adviser: Relatedly, the CRC was to provide expert advice to Parliament and Government on how to ensure that policy formulation and delivery worked as well for rural areas as it did for urban areas. The Commission conducted extensive research to support this function.
  - Watchdog: On an ad-hoc basis, the CRC was able to warn Government departments and other public bodies when their policies were failing rural communities.<sup>15</sup> Section 19 of the NERC Act also emphasised the role of the Commission in promoting rural proofing.<sup>16</sup>
22. The CRC was abolished in 2013 (see paragraph four). We consider the work of the CRC, and the impact of its abolition, further in Chapter 5 of this report.

*Other structural changes*

23. Chapter 3 of the Act addressed the wider impact of the abolition of English Nature and the Countryside Agency, allowing for the transfer of the designated property, rights and liabilities of the two organisations to NE or the CRC. Section 26 also allowed for some matters to be transferred to Regional Development Agencies (RDAs)<sup>17</sup>; some consideration of the impact of this change is provided in Chapter Five of our report.
24. Additionally, Part 2 of the Act reconstituted the Joint Nature Conservation Committee (JNCC)—first established under the Environmental Protection Act 1990—as an organisation with a UK-wide remit. The work of the JNCC did not feature prominently in the evidence that we received and, accordingly, we have reserved our commentary and recommendations in

---

14 Natural Environment and Rural Communities Act 2006, [section 18](#)

15 SQW, *Ex-post evaluation of the CRC: Report to the Department for Environment, Food and Rural Affairs* (December 2014), p 8: [http://www.sqw.co.uk/files/3214/5055/3302/CRC\\_Report.pdf](http://www.sqw.co.uk/files/3214/5055/3302/CRC_Report.pdf) [accessed 13 March 2018]

16 Natural Environment and Rural Communities Act 2006, [section 19](#)

17 Natural Environment and Rural Communities Act 2006, [section 26](#)

this report for those elements of the Act which were more widely addressed in our evidence-taking.<sup>18</sup>

25. Part Seven of the Act reconstituted and renamed the Inland Waterways Amenity Advisory Council, a statutory public body which was first formed under Section 110 of the Transport Act 1968 and was tasked with advising Government, British Waterways and other navigation authorities on inland waterways. The Inland Waterways Advisory Council—as it was renamed by the NERC Act—was subsequently abolished in July 2012.
26. The evidence that we received on the implications of Part Seven of the NERC Act, and the 2012 abolition of the Inland Waterways Advisory Council, was especially limited and, again, we have therefore reserved our scrutiny and recommendations for those elements of the NERC Act which figured more prominently during our inquiry.

### *Biodiversity*

27. Alongside the major restructuring of arm's length organisations, another important aspect of the Act was section 40, which required that any “public authority” must, “in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”.<sup>19</sup> A similar requirement on central Government and the National Assembly of Wales had earlier been laid down by the Countryside and Rights of Way Act 2000. The NERC Act repealed and replaced that provision with one that extended the duty to “have regard” to biodiversity to all public authorities.
28. The definition of “public authority” is wide; it includes central Government departments, local authorities, NHS Trusts, fire and police authorities, statutory undertakers and a range of other bodies. 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.
29. Section 41 of the Act required the Secretary of State, in consultation with NE, to publish lists of species and habitats of principal importance in England, to take steps to further their conservation and to keep those lists under review.<sup>20</sup> The list was last updated in August 2010.

### *Rights of way*

30. Over the years case law, including a House of Lords judgment<sup>21</sup>, had determined that a right of way for motor vehicles on a piece of land could be established simply by long and habitual use by such vehicles, even where that use was illegal. This was in contrast to several generations of Road Traffic Acts, which had created an offence of driving a vehicle on land other than roads without lawful authority. This apparent anomaly was generating concern from some user groups, concerned at environmental damage and degradation to routes.

---

18 Towards the end of our inquiry Natural England did notify us of one concern regarding the composition of the JNCC ([NER0095](#)).

19 Natural Environment and Rural Communities Act 2006, [section 40](#)

20 Natural Environment and Rural Communities Act 2006, [section 41](#)

21 *Bakewell Management Ltd v Brandwood* (2004) UKHL 14, (2004) 2 AC 519



31. Part 6 of the NERC Act clarified the law in this area, extinguishing<sup>22</sup> unofficial rights of way created through use by mechanically propelled vehicles since 1 December 1930 (when the first Road Traffic Act came into force) and preventing the use of a right of way by such vehicles since 1930 giving rise to any future creation of or claim to a right of way. Certain exemptions were provided for property owners who may have been relying on unrecorded public rights of way to access their land. Where such rights were extinguished by the Act, the property owners were provided with a private right of way to ensure continued access by motor vehicle.
32. We received extensive evidence on this part of the Act, and consider the issues raised in Chapter 6 of this report.

### **Territorial extent of the Act**

33. The Act initially had limited application beyond England and Wales and, in the period since 2006, some arrangements in Wales have been superseded by legislation passed by the National Assembly for Wales. Provisions on biodiversity protection (sections 40-41), for example, originally applied to England and Wales but were superseded in Wales by the Environment Act (Wales) 2016.<sup>23</sup>
34. Given the current limited application beyond England, therefore, much of our evidence related to legislation, policy and practice in England. We were provided with some insight into practices and policies in other parts of the UK, particularly when considering biodiversity issues, and draw upon these submissions where appropriate. Our recommendations are to the UK Government but, necessarily, would apply principally to England alone.

### **Developments since 2006**

35. The substantive chapters of this report contain discussion of major developments and changes since the Act received Royal Assent in 2006. By way of context, however, some of the key interim developments that have shaped our understanding of the Act are set out in brief detail here.

### *Lawton Review and the Natural Environment White Paper*

36. In 2009 the then Government commissioned Professor Sir John Lawton, Chairman of the Royal Commission on Environmental Pollution, to undertake a review of the management of wildlife sites across England. This review was published, following the change of Government, in September 2010, and concluded that the approach taken was highly fragmented, leading to difficulties in responding to new pressures such as climate and demographic change.<sup>24</sup>
37. The report made 24 recommendations described as a “repair manual to help re-build nature”. The Government responded to the Lawton Review with the publication of a white paper, *The Natural Choice: Securing the value of nature*,

---

22 Where those rights were not already recorded on the definitive map and statement, with certain exemptions.

23 The provisions that now apply in Wales, as defined in this Act, are discussed in more detail in Chapter Four of this report.

24 Sir John Lawton, ‘Making space for nature: A review of England’s Wildlife Sites and Ecological Network’ (September 2010): <http://webarchive.nationalarchives.gov.uk/20130402170324/http://archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf> [accessed 13 March 2018]

in June 2011. The approach taken within the white paper committed Natural England to a greater degree of joint working with related bodies (particularly the Environment Agency) on matters such as the provision of statutory advice to local authorities and developers, operation of the Environmental Stewardship Scheme and biodiversity recording. The paper also gave NE responsibility for designating 12 new ‘Nature Improvement Areas’.<sup>25</sup>

*The Defra Triennial Review, June 2013*

38. The Environment Agency, like NE, is a non-departmental public body (NDPB) with extensive responsibilities regarding the natural environment. The potential for closer joint working between the two organisations—or even a merger—has been raised in the period since NE was established in 2006. In 2013, Defra conducted a detailed review of the responsibilities and relationships of the two organisations.<sup>26</sup>
39. Businesses that participated in the review noted that they would benefit from a more integrated and effective customer interaction with the two bodies. The review concluded that, on balance, NE and the Environment Agency needed to collaborate more effectively but should not be merged. In particular, the review recommended that the two bodies work proactively together on their planning advice processes and functions, to provide a coherent offer to businesses and the public sector.
40. We considered the effect of both the Defra Triennial Review, and the Lawton Review, upon the work of NE during the course of our inquiry.

*The closure of the Commission for Rural Communities*

41. The intention to abolish the CRC was announced by the Secretary of State for Environment, Food and Rural Affairs in the House of Commons on 29 June 2010. The Government’s post-legislative memorandum on the NERC Act 2006 explains the reasoning behind this decision:

“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”.<sup>27</sup>

The Commission was then formally abolished on 1 April 2013, through the Public Bodies (Abolition of the Commission for Rural Communities) Order 2012 (S.I. 2012/2654).

42. In order to prepare for the closure of the independent Commission, Defra established a Rural Communities Policy Unit (RCPU) within the department

---

25 HM Government, *The natural choice: Securing the value of nature*, Cm 8082, June 2011, p 21: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228842/8082.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228842/8082.pdf) [accessed 13 March 2018]

26 Department for Environment, Food and Rural Affairs (Defra), *Triennial review of the Environment Agency and Natural England* (June 2013): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209382/triennial-rev-ea-ne.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209382/triennial-rev-ea-ne.pdf) [accessed 13 March 2018]

27 Defra, *Post-legislative Scrutiny of the Natural Environment and Rural Communities Act 2006*, Cm 9473, July 2017, p 20: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/632027/nerc-act-2006-post-legislative-scrutiny-9473-web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/632027/nerc-act-2006-post-legislative-scrutiny-9473-web.pdf) [accessed 13 March 2018]



in April 2011. This unit was intended to support Ministers in leading rural policy from within the department. The RCPU was, however, itself closed down in April 2015, leaving something of a gap in a policy field that had first been occupied by the Development Commission in 1909.<sup>28</sup> We consider the implications of this in more detail in Chapter 5 of this report.

### *The Environment (Wales) Act 2016*

43. As set out in paragraph 33, section 40 of the NERC Act originally applied in both England and Wales, but has since been replaced in Wales, with respect to all public bodies other than Her Majesty’s Revenue and Customs (HMRC), by the Environment (Wales) Act 2016. Section 6 of the 2016 Act has the effect of replacing the duty to “have regard” to biodiversity contained in the NERC Act with a new duty requiring a public authority to “seek to maintain and enhance biodiversity” and to “promote the resilience of ecosystems”, as well as introducing a requirement to report publicly on achievements every three years. This reporting requirement is not dissimilar to that contained in the Wildlife and Natural Environment (Scotland) Act (2011), which requires public bodies in Scotland to provide a publicly available report every three years on the actions that they have taken to meet the Scottish biodiversity duty.<sup>29</sup>
44. We consider the wording and application of the Welsh, and Scottish, biodiversity duties and reporting requirements further in Chapter 4. In doing so our intention was to draw out and develop comparisons to inform our recommendations on the section 40 NERC Act duty, which continues to apply in England.

### *Brexit*

45. The NERC Act was passed at a time when UK membership of the European Union (EU) and its legal framework were taken for granted. Across a wide range of relevant policy areas, including biodiversity monitoring and reporting, the prioritisation of different nature conservation objectives, and funding for rural development, the EU and its institutions have played an important role in shaping the application of the NERC Act and the activities of some of the institutions—particularly NE—created by the Act.
46. We recognised the potential impact of Brexit from the outset of our inquiry. Additionally, we were also mindful of wider work, taking place across the House, on the implications of Brexit. The EU Committee of the House has conducted a large number of inquiries into the impact of UK withdrawal from the EU, with reports including *Brexit: agriculture*, *Brexit: farm animal welfare*, and *Brexit: environment and climate change*.<sup>30</sup> The Science and Technology Committee has reported on the future for UK science after the referendum, and the Economic Affairs Committee conducted an inquiry into Brexit and the labour market.<sup>31</sup>

28 Appendix 5 contains an organisation chart setting out the history of changes to these structures.

29 The Scottish biodiversity duty requires all public bodies in Scotland to “further” the conservation of biodiversity.

30 European Union Committee, *Brexit: agriculture* (20th Report, Session 2016–2017, HL Paper 169), European Union Committee, *Brexit: farm animal welfare* (5th Report, Session 2017–19, HL Paper 15), European Union Committee, *Brexit: environment and climate change* (12th Report, Session 2016–17, HL Paper 109)

31 Science and Technology Committee, *A time for boldness: EU membership and UK science after the referendum* (1st Report, Session 2016–17, HL Paper 85), Economic Affairs Committee, *Brexit and the Labour Market* (1st Report, Session 2017–19, HL Paper 11)

47. In conducting our inquiry, therefore, we did not seek to undertake a detailed analysis of the potential implications of Brexit for wide swathes of rural and environmental policy. Instead, we looked at the structures and priorities created by the NERC Act and sought to understand how they might be affected by withdrawal from the EU. The next chapter sets out our findings and recommendations in relation to the natural environment, while the implications for rural communities are touched on in Chapter 5.

*The Government's 25 Year Environment Plan*

48. The Government published *A Green Future: Our 25 Year Plan to Improve the Environment*<sup>32</sup> on 11 January 2018. The majority of our evidence, therefore, was taken before the plan was published but, given the relevance to our work and the wider operations of bodies such as NE, we comment upon the themes raised where appropriate.
49. The plan outlines initial environmental proposals following the United Kingdom's planned departure from the EU in 2019, noting that this is a "once-in-a-lifetime" opportunity to reform agriculture, fisheries and the environment.<sup>33</sup> Through a series of '25-year goals', the plan sets out the Government's long-term objective to "hand over our planet to the next generation in a better condition than we inherited it".<sup>34</sup>
50. Included within these goals are cleaner air and water, reduced waste, and thriving plants and wildlife.<sup>35</sup> The plan also sets out proposals to improve soil health, protect crops and reduce the impact of pesticides.<sup>36</sup> Due to its long-term nature, the plan is intended to evolve over time; the Government states that it will "put in place regular and transparent reporting of progress against our new metrics, including to Parliament. We propose to report annually on the plan itself".<sup>37</sup> Furthermore, the plan promises an updated assessment in 2022, providing an up-to-date analysis of the environment following Brexit. The impact of Brexit is considered further in the next chapter.
51. An emphasis on natural capital<sup>38</sup> is applied throughout the plan, with the approach described as both ambitious and a world first.<sup>39</sup> This approach is aimed at boosting output and productivity through enhancing "the air, water, soil and ecosystems that support all forms of life", with the reasoning that these (elements of our natural capital) form an essential basis for economic growth and productivity in the long-term.<sup>40</sup> Although the natural capital approach forms a central basis of the 25-year plan, it is recognised that not all aspects of natural capital can be robustly valued—the contribution of wildlife, for example, is difficult to place an economic or monetary value

32 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/673203/25-year-environment-plan.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673203/25-year-environment-plan.pdf) [accessed 13 March 2018]

33 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 9

34 *Ibid.*

35 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 10:

36 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 12

37 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 138

38 Natural Capital is defined within the plan as "the sum of our ecosystems, species, freshwater, land, soils, minerals, our air and our seas. These are all elements of nature that either directly or indirectly bring value to people and the country at large. They do this in many ways but chiefly by providing us with food, clean air and water, wildlife, energy, wood, recreation and protection from hazards."

39 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 11

40 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 18

on, yet it is understood that it is worth protecting—and therefore it is used, within the plan, as a tool rather than an “absolute arbiter”.<sup>41</sup> We discuss natural capital in greater detail in Chapter Four of this report.

52. The plan also promotes the principle of ‘net environmental gain’ within the planning system, in order that the natural environment does not diminish in an era of increased housebuilding. This could have significant implications for local planning authorities, and we consider this further in Chapter Three of this report.<sup>42</sup>

---

41 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 20

42 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 33

## **CHAPTER 2: BREXIT AND THE NATURAL ENVIRONMENT**

---

53. Throughout the course of our inquiry it was clear that the context provided by EU law had been a critical factor in shaping UK structures of environmental monitoring, planning and accountability. Membership of the EU has helped to define our environmental policies, priorities and standards—although it is important to emphasise that the UK has been a leader in setting standards across a wide range of not only European but global environmental and animal welfare policy areas.
54. Much relevant European law has been transcribed into UK domestic law, and the EU (Withdrawal) Bill, currently before Parliament, seeks to ensure that the law remains essentially the same on the day after Brexit as it was on the day before. Nonetheless, departure from the EU will significantly alter the context in which organisations created by the NERC Act—particularly Natural England—are carrying out their work. Additionally, departure from the EU could provide new opportunities to develop better approaches to land management and food production that support the natural environment.

### **The accountability and enforcement capacity of the EU**

55. At present, the structures of the EU provide a mechanism for enforcement of standards and requirements set out in EU law. The European Commission monitors member state compliance with, and implementation of, commitments made under EU law. In circumstances where a member state fails to comply with such laws, the Commission can use enforcement powers including formal notices and reasoned opinions; ultimately, a state can be taken before the Court of Justice of the European Union (CJEU), with the possibility of sanctions, including large fines, being applied in the event of any breaches. The Commission is able to address issues raised in complaints from individual citizens or non-governmental organisations (NGOs), providing an informal route for public access to enforcement.
56. This structure of accountability and enforcement has been of particular importance in the environmental context. We were told of a recent case that had been raised with the Commission regarding “the damaging practice of burning blanket bogs ... without the appropriate assessment required by the Habitats Directive”.<sup>43</sup> As a result, the European Commission is taking steps to require appropriate action from UK authorities to address this issue.<sup>44</sup>
57. Following the withdrawal of the UK from the EU, however, this avenue for monitoring, compliance, and addressing issues raised by environmental NGOs will no longer be available. This was raised as a consistent issue across the evidence we heard. The British Ecological Society told us:

“While the EU (Withdrawal) Bill may transfer the letter of the law, the loss of the supervisory, enforcement and scrutiny functions of the European Commission and the Court of Justice of the European Union, without adequate replacement by domestic alternatives, risks undermining the effectiveness of legislation and therefore maintenance, let alone improvement of environmental standards”.<sup>45</sup>

---

43 Written evidence from RSPB ([NER0051](#))

44 *Ibid.*

45 Written evidence from British Ecological Society ([NER0068](#))

In a similar vein, the Association of Local Government Ecologists (ALGE) told us that new structures and legislation must include sufficient provision for enforcement and scrutiny, as currently provided by the Commission and CJEU.<sup>46</sup> Wildlife and Countryside Link stated that the loss of the scrutiny and enforcement role performed by the CJEU risked undermining the maintenance of good environmental standards in the UK, going on to argue that: “The structures established by the NERC Act were created within the context of the UK’s membership [of the EU]. These structures are not sufficient to secure the necessary environmental standards post-Brexit”.<sup>47</sup>

58. Previously, the Government had suggested that Parliamentary scrutiny and the judicial review function would provide sufficient mechanisms for civil society to challenge the application of environmental legislation post-Brexit. This view was offered to us when we heard from Defra officials in July 2017.<sup>48</sup> Witnesses, however, argued that this assessment was flawed; we were told that “this misunderstands both the breadth of functions currently performed by the EU institutions and the limitations of judicial review”.<sup>49</sup>
59. Accordingly, we were repeatedly told<sup>50</sup> that the accountability functions of EU institutions needed to be replicated through new UK institutions, in order to avoid a “governance gap”.<sup>51</sup>

*A new environmental body?*

60. During the course of our inquiry thinking within Government on this issue evolved and, in November 2017, the Secretary of State for Environment, Food and Rural Affairs told the House of Commons Environmental Audit Committee that:

“Outside the European Union the question is what replaces the Commission, how do we have the ECJ as a role replicated. This is an absolutely important question. My thinking is that we should consult on what type of body it is believed would be appropriate to replace the role that the Commission and the Court have played ... The need for a body or bodies has been clearly identified ... It is right we should take some time to reflect on ... what the right balance is between ensuring people continue to have recourse to the courts through judicial review ... but also recognising that you may well need an agency, a body, a commission that has the power potentially to fine or otherwise hold Government to account and certainly to hold public bodies other than Government to account”.<sup>52</sup>

The 25-year environment plan sets out the Government’s intention to consult on the precise make-up of the new body.<sup>53</sup>

---

46 Written evidence from Association of Local Government Ecologists ([NER0048](#))

47 Written evidence from Wildlife and Countryside Link ([NER0078](#))

48 [Q 8](#) (Shirley Trundle CBE)

49 Written evidence from RSPB ([NER0051](#))

50 See evidence from CLA ([NER0026](#)), Cotswold District Council ([NER0056](#)), RSPB ([NER0051](#)), [Q 55](#) (Guy Smith) and [Q 66](#) (Prof Dieter Helm CBE)

51 Written evidence from RSPB ([NER0051](#))

52 Oral evidence taken before the House of Commons Environmental Audit Committee, 1 November 2017 (Session 2017–19), [QQ 1-2](#) (Michael Gove MP)

53 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018)

61. Our witnesses were clear and consistent in arguing that any such new body needed to enjoy sufficient independence from Government<sup>54</sup> and should be clearly separate from organisations—including NE and the Environment Agency—whose functions and work might fall within its oversight.<sup>55</sup> The requirement was for a new, independent body to replicate some of the environmental protection functions currently carried out by the European Commission.
62. David Baldock of the Institute for European Environmental Policy (IEEP) told us:
- “The body’s role would ... be to publish reports, to review legislation, to pursue complaints and to oversee free and accessible mechanisms for civil society, maintaining the avenues that civil society has, both as individuals and as groups, to play a role in implementation and to have an avenue for complaints in securing environmental justice. The body would be able to turn to the courts if it felt that was necessary”.<sup>56</sup>
63. Stephen Trotter, of the Wildlife Trusts, emphasised the need for independence:
- “From our perspective, an independent, impartial, adequately-resourced monitoring and enforcement authority is needed to undertake this role. We must not forget that while the European Commission has not been perfect, it has been vital in safeguarding some European standards and approaches that we have in the UK”.<sup>57</sup>
64. Independence from Government will be vital to the successful operation of such a body. Inevitably, however, the running costs of such an organisation would need to be met in whole or part by the Government, posing a potential risk to this independence. The Secretary of State told us that he expected the funding of the new body to be provided by Defra, but that it would be responsible to Parliament.<sup>58</sup> Mr Gove also suggested that one potential model to follow would be the Committee on Climate Change (CCC), and that the new body would “be able to point out when, in the formulation or implementation of policy, Government was not living up to the environmental principles and ambitions that we had set ourselves and that Parliament had agreed”.<sup>59</sup>
65. The CCC was established by an Act of Parliament<sup>60</sup> and with a statutory remit; it is funded by Defra, the Department for Business, Energy and Industrial Strategy, and the governments of Northern Ireland, Scotland and Wales. The CCC is accountable to Parliament.
66. We too believe that this could be a useful model to follow and note—importantly—that the diffuse funding model of the CCC helps to ensure a degree of independence from Government, while also providing a degree of resilience against future budget reductions. The CCC is a high-level body, with resources that are significant but not lavish; it has a staff of around 30. We were told that it enjoys “credibility ... gravitas and analytical

---

54 Written evidence from CIEEM ([NER0030](#)), [Q 87](#) (Chris Corrigan, Stephen Trotter)

55 [Q 66](#) (Prof Dieter Helm CBE), [Q 188](#) (Andrew Sells) and [Q 169](#) (David Baldock)

56 [Q 169](#) (David Baldock)

57 [Q 87](#) (Stephen Trotter)

58 [Q 205](#) (Michael Gove MP)

59 [Q 205](#) (Michael Gove MP)

60 [Climate Change Act 2008](#)



detachment”.<sup>61</sup> These are qualities that we would hope to see replicated in the new environmental protection body.

67. **The departure of the United Kingdom from the European Union will result in a governance gap for environmental protection in the UK. Potentially, this could diminish the extent to which the Government can be held accountable for its environmental promises and commitments.**
68. **We welcome, therefore, the Government’s decision to create a new environmental body to hold both it and other public bodies to account, and the anticipated consultation on filling the ‘governance gap’. We recommend that the new body should be independent, accountable to Parliament, financed by more than one Government department and tasked with providing environmental oversight and scrutiny.**
69. **The new body must be able to deal with issues raised by individuals in complaints, and should have the power and capacity to take the Government and other public bodies to court when appropriate to do so. Where as a result of such actions, the courts determine faults or breaches to have occurred, appropriate sanctions—including but not limited to fines—should be available.**

#### **Environmental monitoring and reporting following Brexit**

70. European law imposes biodiversity and habitat monitoring and reporting obligations on member states. Article 12 of the EU Birds Directive, for example, requires member states to report on implementation of the Directive, while Article 17 of the Habitats Directive sets out a similar reporting requirement. The reporting format set out for the Habitats Directive requires a separate analysis for each species and each habitat in each “biogeographic region”; the latest UK report covers some 202 habitats and species.<sup>62</sup>
71. We were told that the Habitats Directive—in conjunction with other international agreements—had “set the context for biodiversity conservation” and had “been welcomed as being realistic, rigorous and evidence based”.<sup>63</sup> The “seamless transmission” of provisions from the Habitats Directive and the Birds Directive into British law was highlighted as being of particular importance for post-Brexit environmental protection.<sup>64</sup>
72. While the substantive provisions of both of these directives are likely to be transposed into UK law as a result of the passage of the EU (Withdrawal) Bill, the requirement to report to EU bodies will no longer apply following Brexit. Guy Smith, Vice-President of the National Farmers’ Union (NFU), noted that the effect of the Bill would be to cut and paste European directives into British law, but that, in the absence of the European institutions tasked with overseeing such directives, “operational issues” could result.<sup>65</sup>
73. Reporting requirements—and European environmental legislation more generally—have been an important factor in helping to shape the priorities

---

61 [Q 169](#) (David Baldock)

62 Joint Nature Conservation Committee, *UK General Implementation Report* (2013): [http://jncc.defra.gov.uk/pdf/A17\\_2013\\_Gen\\_Imp%20Rpt.pdf](http://jncc.defra.gov.uk/pdf/A17_2013_Gen_Imp%20Rpt.pdf) [accessed 13 March 2018]

63 Written evidence from Field Studies Council ([NER0003](#))

64 Written evidence from Peter Schofield ([NER0009](#))

65 [Q 55](#) (Guy Smith)



of Natural England and ensuring a continued focus on biodiversity, habitat and species protection.<sup>66</sup> In the absence of continued European reporting requirements, therefore, there is the potential for the emphasis placed on biodiversity monitoring, recording and reporting to diminish over time.

74. One possible approach to addressing this situation would be to alter the legislative remit of Natural England, in order to insert additional responsibilities for the monitoring and provision of credible data and evidence on biodiversity. This possibility was suggested to us in evidence.<sup>67</sup>

75. However, the creation of the new independent environmental body, tasked with providing oversight and accountability on the actions and policies of the Government as regards the environment, offers an additional possibility. The IEEP told us that:

“Should there be a new body of the kind that we talked about ... it should have a remit to try to ensure that there is adequate monitoring, reporting and transparency. Indeed, it would be desirable to see more transparency and engagement than we have at the moment ... As long as the reporting and transparency can ensure that everyone is fully informed so that no one goes off in diverse and undesirable directions, a new body could help to oversee that”.<sup>68</sup>

76. The creation of a new independent environmental body provides an opportunity to shape, define and enhance new reporting requirements for biodiversity. We believe that the remit of the new body should include scrutiny of environmental and biodiversity monitoring reporting undertaken by the Government, Natural England and other relevant bodies. This would help to address some of the issues raised by the loss of the provisions applied within the Habitats and Birds directives.

77. **The Habitats Directive and the Birds Directive require EU member states to report on the measures they have taken to implement the provisions of the Directive, including on the conservation status of habitats and species. Although the fine detail of policies may be subject to future change it will be important, following Brexit, to retain similar reporting requirements on the conservation status of protected species and habitats.**

78. **We therefore recommend that Defra and its agencies be required to report on the implementation of their legal obligations in respect of nature conservation, including specific requirements with respect to the conservation status of protected species and habitats. These reports must be made to the new environmental body proposed by the Government, which should then scrutinise the reports and publish informed commentary, analysis, and recommendations for action by the Government.**

79. **The Government’s stated ambition to move towards a ‘net environmental gain’ approach within the planning system could, over the longer-term, offer wider benefits for the protected species and habitats, and biodiversity more generally. The approach set out**

---

66 [Q 172](#) (David Baldock)

67 [Q 173](#) (Martin Nesbit)

68 [Q 173](#) (David Baldock)

**in the 25-year plan would also require additional monitoring and reporting tools. We consider the net gain approach further in the next chapter.**

## CHAPTER 3: THE ROLE OF NATURAL ENGLAND

---

### Background

80. One of the key changes brought about by the passage of the NERC Act was the creation of Natural England. The new organisation began work in October 2006, with the then Chairman, Sir Martin Doughty, stating that:

“The creation of Natural England is a landmark moment for the natural environment. No other organisation in Europe matches the breadth of our legislative remit, and the scale of our challenge”.<sup>69</sup>

81. As stated in Chapter 1 of this report, section 2 of the NERC Act gave the following general purpose to NE:

“To ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development”.

Section 2(2) stated that the general purpose included the following objectives:

- a) Promoting nature conservation and protecting biodiversity,
- b) Conserving and enhancing the landscape,
- c) Securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment,
- d) Promoting access to the countryside and open spaces and encouraging open-air recreation, and
- e) Contributing in other ways to social and economic well-being through management of the natural environment.”

82. We received extensive evidence regarding the success, or otherwise, of NE in delivering against its general purpose and the objectives contained therein. We heard praise for flagship projects such as the English Coast Path<sup>70</sup>, but criticism of other areas of NE operation. Of particular concern to us is the ongoing decline of biodiversity (as detailed in paragraph 5) which, notwithstanding the help of many NGOs, farmers and land managers, the work of Natural England has failed to arrest or reverse, despite the priority accorded to protecting biodiversity within the general purpose of the organisation.
83. Two consistent—and connected—themes were present across much of this evidence; namely the funding and resources given to Natural England to carry out its work, and the level of independence that NE enjoyed from Defra and Government more generally. We were told that funding cuts, and

---

69 ‘Government agency urges us back to nature’ *The Guardian* (11 October 2006): <https://www.theguardian.com/environment/2006/oct/11/climatechange.climatechangeenvironment1> [accessed 13 March 2018]

70 [Q 27](#) (Nick Johannsen) and [Q 34](#) (Harry Bowell)

increasing central control, were limiting the ability of NE to fulfil its general purpose.<sup>71</sup> We begin by considering these overarching issues.

## The funding and independence of Natural England

### *The role of a non-departmental public body*

84. NDPBs have different roles, including those that advise ministers and others which carry out executive or regulatory functions. They work within a strategic framework set out by ministers.<sup>72</sup> The Government defines an NDPB as being a “body which has a role in the processes of national government, but is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm’s length from ministers”.<sup>73</sup> Cabinet Office guidance<sup>74</sup> states that an existing public body has to meet one of the following three tests in order to remain at arm’s length from Government:

- It performs a technical function
- Its activities require political impartiality
- It needs to act independently to establish facts.

85. Accordingly, NE, as an NDPB, is intended to operate within a strategic framework defined by ministers but with a degree of detachment and independence from Government. We were told that its ability to perform this role had diminished over time.

### *Independence from Government*

86. The Chairman of Natural England, Andrew Sells, told the Committee that there was “an inherent contradiction in being a non-departmental body when you are wholly accountable to that department for the money and the way you spend it”.<sup>75</sup> Mr Sells explained that NE had around 500 statutory duties or responsibilities, “many of which have an appeal to the Secretary of State and some straight to the High Court”.<sup>76</sup> In addition, NE carries out a great deal of work for Defra under contract.<sup>77</sup>

87. A good number of our witnesses believed that NE was lacking independence from Government, and that this affected its ability to deliver against its general purpose. David White suggested that NE did not have the degree of independence that was enjoyed by predecessor bodies.<sup>78</sup> The Wildlife Trusts stated that they were “concerned by the change in Natural England’s relationship with central Government and the suspicion that its independence

71 Including evidence from: ALGE ([NER0048](#)), Norfolk CC ([NER0042](#)), Cotswold DC ([NER0056](#)), Ove Arup and Partners Ltd ([NER0069](#)), Cranborne Chase AONB ([NER0071](#)), Greater Lincolnshire Nature Partnership ([NER0044](#)), Open Space Society ([NER0074](#)), RSPB ([NER0051](#)), CIEEM ([NER0030](#)), Wildlife Trusts ([NER0080](#)), [QQ 160-161](#) (Merrick Denton-Thompson OBE), [Q 79](#) (Stephen Trotter), [Q 173](#) (David Baldock), [Q 25](#) (Nick Johannsen), [Q 89](#) (Dr Stephanie Wray & Dr Jo Judge)

72 Cabinet Office, ‘Guidance: Public bodies’, (19 February 2013): <https://www.gov.uk/guidance/public-bodies-reform#ndpbs-executive-agencies-and-non-ministerial-departments> [accessed 13 March 2018]

73 *Ibid.*

74 *Ibid.*

75 [Q 185](#) (Andrew Sells)

76 [Q 185](#) (Andrew Sells)

77 [Q 185](#) (Andrew Sells)

78 Written evidence from David White ([NER0034](#))

and its ability to speak in public has been reduced”.<sup>79</sup> Dr Nigel Stone, former Chief Executive of Exmoor National Park Authority, went further, arguing that Natural England “have been made spineless. They have basically been put in a position in which they are not really encouraged or allowed even to provide any constructive criticism”.<sup>80</sup>

88. The RSPB identified “loss of independence” as one of a number of key barriers to effective delivery of the critical functions of NE, expressing particular concern regarding the impact of government deregulation targets and pressure placed upon NE to reduce its regulatory oversight.<sup>81</sup> They went on to suggest that there were structural weaknesses that compromised the independence of NE:

“NE was intended to be an independent champion for wildlife; however the structures under which it was established restrict its independence. The agency is reliant on government for its funding and reports to government rather than parliament, this already raises the potential for NE to be influenced by political priorities”.<sup>82</sup>

89. The Chairman of NE, when asked what one recommendation he would like to see this Committee make, told us: “I would like us to have a little more freedom to do what we think we should do and be allowed to get on with it”.<sup>83</sup> We support this point of view.

90. The creation of the ‘gov.uk’ website in 2012, and the loss of a distinct online presence—in addition to the loss of its own press office—were seen as further compromising the autonomy of NE. While information about the work and operations of Natural England is still readily accessible online, this information is now contained within the wider Defra and gov.uk platforms. The Open Spaces Society argued that:

“Natural England has regrettably been sucked into Defra. It no longer has its own website, nor does it issue its own press releases. It has no independent voice as the government’s adviser and champion on wildlife. We no longer hear from it beyond the odd blog ... This lack of independence causes us deep concern; government needs a critical friend”.<sup>84</sup>

The Ramblers noted that, in light of this loss of a distinct presence, they were working directly with NE to seek to “amplify its message” in respect of promoting responsible access to the countryside.<sup>85</sup>

91. We put this issue to the Secretary of State, who told us that despite the loss of press, publicity and communications functions, the Board and Chairman of Natural England were well equipped to ensure the independence of NE:

“The chairman of Natural England needs no PR department to get his view across—his voice is heard loud and clear. One of the things we have had to do is try to make sure that, across the Defra family,

79 Written evidence from Wildlife Trusts ([NER0080](#))

80 [Q 29](#) (Dr Nigel Stone)

81 Written evidence from RSPB ([NER0051](#))

82 *Ibid.*

83 [Q 196](#) (Andrew Sells)

84 Written evidence from Open Spaces Society ([NER0074](#))

85 [Q 151](#) (Alison Hallas)

individual silos of activity that form the corporate services functions—PR, accounts and personnel—can be brought together. Ultimately, Natural England’s board is robust and independent. Its chairman is both of those in spades”.<sup>86</sup>

92. Notwithstanding this assurance, we share some of the concerns that have been put to us. The independence of Natural England should be safeguarded through its strategic framework, structures and resources, rather than through the capacity and personality of individuals who work within this framework. While the current Chairman is well placed to ensure the appropriate degree of independence, it cannot be assumed that this will always hold true for his successors.
93. In seeking to ensure that the natural environment is “conserved, enhanced and managed for the benefit of present and future generations” Natural England will sometimes be required to challenge the work of other public bodies and Government departments. At a time of almost unprecedented demand for housebuilding and development, it is essential that the natural environment has a strong, robust and independent champion, able to speak truth to power. We note that other NDPBs sponsored by Defra, including the Environment Agency, have retained their own press office, and believe that Natural England should be similarly well equipped.
94. **Non-departmental public bodies, while playing a part in the processes of national government, should operate at arm’s length from Ministers and departments. We share the concerns of witnesses who have told us that Natural England no longer has a distinctive voice. We urge the Government to recognise these concerns, and to take steps to enable Natural England to operate with the appropriate degree of independence.**
95. **As a minimum requirement, we recommend that the Government should allow Natural England to re-establish its own, independent, press and communications function.**

#### *Funding and resources*

96. The question of independence cannot be divorced from that of resources. We repeatedly heard that NE had been forced to narrow its focus in recent years as a result of ongoing budget cuts, and that this was having a detrimental effect on its ability to fulfil its general purpose.
97. Natural England’s budget for 2017/18 is £112 million, of which £90 million is pay related.<sup>87</sup> This compares with an overall budget of over £200 million in 2006/07, suggesting a budget cut of over 44% in an 11-year period.<sup>88</sup> Alan Law, Chief Strategy Officer at NE, told us that in seeking to manage “a very significant reduction” in funding NE had:

“...gone through a series of steps to make savings along the way that do not impact on outcomes. We have consolidated our back-office functions into the core department, we have cut our number of offices and, as

86 [Q 202](#) (Michael Gove MP)

87 Supplementary written evidence from Natural England ([NER0092](#)). Budget figure as at May 2017.

88 Supplementary written evidence from Natural England ([NER0092](#)). Natural England told us that this was “as near a like to like basis as we can track”.



we have shrunk, we have moved a greater proportion of our staff on to front-line services, but you can do that for only so long”.<sup>89</sup>

98. The steps taken to manage these budget cuts—particularly the emphasis placed upon increasing the proportion of staff in front-line services—are commendable. We received extensive evidence, however, highlighting concerns about the impact of these cuts upon the day-to-day operation of NE.<sup>90</sup>

99. This evidence consistently suggested a retreat from non-statutory or non-binding areas of work and an increased focus on core regulatory functions, to the detriment of the wider natural environment. The Open Spaces Society told us that there was:

“A fundamental tension between undertaking its regulatory function and fulfilling its general purposes as laid down in the Natural Environment and Rural Communities Act 2006. Limited resources are increasingly being re-directed to the former, leaving its wider functions wanting”.<sup>91</sup>

Cranborne Chase AONB suggested that “wildlife” staff appeared to have been retained at NE at the expense of those working in other areas of operation, particularly landscape professionals.<sup>92</sup> Norfolk County Council offered a similar assessment, noting that NE could provide planning consultation responses on biodiversity matters, but was not properly fulfilling its role as a statutory consultee on landscape issues.<sup>93</sup>

100. A number of other witnesses told us that funding cuts had had an effect upon biodiversity and wildlife functions too. Ove Arup and Partners Ltd argued that NE has appropriate powers to perform its functions, but as a result of “poor decision making” by previous governments, “cost cutting has ensured that Natural England has nowhere near the resources required to perform its functions”.<sup>94</sup> They went on to note that NE generally only offered detailed comments on planning applications when “higher value resources” such as SSSIs or European protected sites were likely to be affected.<sup>95</sup> Lincolnshire Wildlife Trust highlighted the same trend, and suggested that this was at odds with the principles set out by the Lawton Review.<sup>96</sup>

101. The vision set out by the Lawton Review was one of landscape-scale conservation delivered through the concept of “more, bigger, better, joined” sites.<sup>97</sup> The Wildlife Trusts and Lincolnshire Wildlife Trust, however, argued that budgetary cuts were making it impossible for NE to deliver on the wider Lawton agenda.<sup>98</sup> We note that the recently published 25-year environment

89 Q 190 (Alan Law)

90 Including written evidence from: Association of Local Environmental Records Centres (NER0066); Bat Conservation Trust (NER0061); British Ecological Society (NER0068); Dorset Local Nature Partnership (NER0059) and The Wildlife Trusts (NER0080)

91 Written evidence from Open Spaces Society (NER0074)

92 Written evidence from Cranborne Chase AONB (NER0071)

93 Written evidence from Norfolk County Council (NER0042). We consider the role of Natural England as a planning consultee in more detail later in this chapter.

94 Written evidence from Ove Arup and Partners Ltd (NER0069)

95 *Ibid.*

96 Written evidence from Lincolnshire Wildlife Trust (NER0064)

97 Defra, *Making Space for Nature: A review of England's Wildlife Sites and Ecological Network* (September 2010), p 66: <http://webarchive.nationalarchives.gov.uk/20130402170324/http://archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf> [accessed 13 March 2018]

98 Written evidence from The Wildlife Trusts (NER0080) and Lincolnshire Wildlife Trust (NER0064)

plan promises the development of a Nature Recovery Network to deliver on the recommendations from Professor Lawton<sup>99</sup>; appropriate resources must be devoted to this work.

102. ALGE suggested that NE did not have sufficient resources to perform its roles as adviser, statutory consultee and licensing organisation, resulting in “delays, criticism of services and, ultimately, a loss of confidence in the way in which it is executing its duties”.<sup>100</sup> The UK Environmental Law Association highlighted occasions when the “diminished organisation” had been unable to meet operational demand for services such as species protection and licensing.<sup>101</sup>

103. Concerns regarding the impact of funding cuts, and the diminishing nature of the influence wielded by Natural England, were well summarised by the Landscape Institute (LI):

“The LI considers that, in terms of collaborating with other agencies that direct national policy, Natural England has insufficient authority and inadequate resources to deliver the very wide range of integrated environmental benefits that its purposes require. It has annually lost scientific expertise and funding to the extent that it has become unable or unwilling to formulate national policies to secure the conservation and enhancement of the landscape ... In particular, it has been unable to secure and safeguard a coherent ecological network to overcome the damaging fragmentation of habitats across the whole country ... the status of Natural England has been incrementally diminished, so that it struggles to impose essential constraints on developments that will inevitably give rise to environmental damage. We fear it has less and less influence on its partners ... despite the promises of the current and preceding governments to be the first generation to leave the environment in a better state than they found it”.<sup>102</sup>

104. **Natural England should champion England’s natural environment, and must have the authority, resources and capacity to deliver its general purpose, while working alongside farmers, landowners and NGOs. Successive reductions to its budget, however, have limited its ability to perform key functions, and reduced its wider influence.**

105. **All of the objectives contained within the general purpose of Natural England are important; these functions were also important elements of the work of predecessor bodies to Natural England. Funding limitations have led to an increased focus on core regulatory functions and will, ultimately, lead to Natural England becoming unable to fulfil its general purpose. The Government must take steps to resolve this situation, particularly in light of the changes to environmental protection and management that will be brought about as a result of our departure from the European Union. We recommend that Natural England should be funded to a level commensurate with the delivery of its full range of statutory duties and responsibilities. This situation should be addressed as a matter of urgency.**

---

99 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 56

100 Written evidence from ALGE ([NER0048](#))

101 Written evidence from UK Environmental Law Association ([NER0053](#))

102 Written evidence from Landscape Institute ([NER0070](#))



106. **We note that the recently published 25-year environment plan promises the development of a Nature Recovery Network to deliver on recommendations from the Lawton Review. The Government must ensure that appropriate resources are devoted to this work.**

**Moving from a regulatory to a collaborative approach**

107. Following publication of the Lawton Review 12 Nature Improvement Areas (NIAs) were established to create joined-up and resilient ecological networks at a landscape scale. The NIAs are run by partnerships of local authorities, local communities with landowners, the private sector and conservation organisations. In light of the success and lessons learned from these projects, Natural England’s Conservation Strategy, *Conservation 21*, was published in 2016. It notes that nature conservation has “achieved much” over the past 60 years, including the development of a “vast body of knowledge about habitats, species and landscapes”, the development of a comprehensive legislative framework for environmental protection, and the development of incentives to support the management of certain areas.<sup>103</sup>
108. Nevertheless, it notes that there is much more to do, and that “research shows that wildlife continues to decline and landscapes continue to be degraded”. The strategy reflects upon the need for a balanced approach to protection of species, and notes that the decline results in part from “an insular approach to conservation—one based foremost on protection, and on conservation being separate to rather than integrated with other land uses”.<sup>104</sup> As a result, it states that “we need a new approach—a more useful way of looking at our relationship with nature ... delivering better long term outcomes for the environment by understanding people’s interests and needs, and working towards a shared vision”.<sup>105</sup>
109. The strategy implies that, while regulation may play a role in the protection of the natural environment, its objectives can only be achieved by persuasion and collaboration. It states that
- “we know we can’t achieve our ambition by simply imposing and policing rules and regulations. We have to inspire people to create change—helping people recognise the relevance of the natural environment to their day to day lives and the choices they make, and inspiring them to be more imaginative and ambitious for the natural world around them”.<sup>106</sup>
110. This intention was confirmed in oral evidence from representatives of NE. Alan Law stated that:
- “Conservation 21 is an attempt to say that if we still aim, as we must, to deliver our full purpose ... we need to do it in a different way. It needs to involve greater reliance on partnerships and working with others and operating one-to-many and at a landscape scale rather than seeking to do one-to-one delivery on the ground across the piece”.<sup>107</sup>

---

103 Natural England, *Conservation 21: Natural England’s Conservation Strategy for the 21st Century* (October 2016), p 3: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/562046/conservation-21.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562046/conservation-21.pdf) [accessed 13 March 2018]

104 *Ibid.*

105 Natural England, *Conservation 21: Natural England’s Conservation Strategy for the 21st Century* (October 2016), p 4

106 Natural England, *Conservation 21: Natural England’s Conservation Strategy for the 21st Century* (October 2016), p 7

107 [Q 190](#) (Alan Law)

111. The strategy, and its apparent intention to move away from a focus on direct regulation, met with a mixed response. The Natural Environment Research Council told us that the publication of the strategy is to be welcomed “as a tool for engagement and stimulating innovative solutions to environmental problems”.<sup>108</sup> The Country Land and Business Association (CLA) suggested that in recent years NE “has got much more receptive to the needs of farmers and other rural land managers. It is taking a long time, but it takes a long time for these things to change”.<sup>109</sup>
112. By contrast, ALGE argued that, “although Natural England have published their strategy *Conservation 21*, our members are not clear on specifically what work is being taken forward or how they may engage with it”.<sup>110</sup> Similarly, the Open Spaces Society stated that “while we are delighted that ... *Conservation 21* has as one of its three guiding principles ‘putting people at the heart of the environment’, we have seen no evidence of how this is being achieved”.<sup>111</sup>
113. We heard concerns that the strategy signalled a move away from regulatory enforcement:
- “NE has failed to use its enforcement powers to secure compliance where landowners persistently do not secure positive management ... *Conservation 21* signals a further reduction in the use of their regulatory powers in favour of voluntary approaches, which are frequently less effective at delivering results”.<sup>112</sup>
114. Chris Corrigan, Director of RSPB England elaborated on this point, telling us that it was important to have “the ability and preparedness to use that regulatory stick. For us, an independent regulator is an important part of the conservation toolkit ... of course, we want that collaboration ... but you have to have the stick to back that up when that approach fails”.<sup>113</sup> This view was echoed by The Wildlife Trusts, who argued that *Conservation 21* signalled a move away from the compliance and enforcement role that only a statutory body can deliver.<sup>114</sup>
115. Alan Law of NE told us that “our role is very much to identify where there are opportunities to restore and enhance the environment, and to engage with business, local communities and landowners to achieve those aims, rather than identifying where there has been a problem and seeking to apply regulation to remedy it”.<sup>115</sup> He denied, however, that Natural England was abandoning regulation altogether:
- “I would challenge those who have made the statement about a lack of regulation to give examples of where that lack of regulation is borne out, because I have seen very few specifics referenced. We have regulatory powers and we use them to object in the planning system and to designate sites”.<sup>116</sup>

---

108 Written evidence from Natural Environment Research Council ([NER0029](#))

109 [Q 52](#) (Christopher Price)

110 Written evidence from the Association of Local Government Ecologists ([NER0048](#))

111 Written evidence from Open Spaces Society ([NER0074](#))

112 Written evidence from RSPB ([NER0051](#))

113 [Q 80](#) (Chris Corrigan)

114 Written evidence from The Wildlife Trusts ([NER0080](#))

115 [Q 4](#) (Alan Law)

116 [Q 190](#) (Alan Law)

116. When questioned about the balance between its statutory regulatory duties and its relational approach, Mr Law told us that “this question implies that it is a choice between one and the other—that you have to regulate or you engage in relationship work. It is more how you go about doing that ... that does not mean to say that you do not do the regulation; it is about how you do the regulation”. He cited as an example the changed approach to great crested newts, which had previously been the subject of a strict licensing procedure which was ineffectual and difficult to administer. Mr Law added that a licensing regime continued but it was done “at a landscape scale and a plan scale with the local authority” involving upfront planning of habitat provision.<sup>117</sup>
117. **The development of partnerships and new, collaborative ways of working will be essential to delivering the strategy set out in Conservation 21. Natural England should continue to work effectively with stakeholders, incentivising and inspiring them towards positive action that will enhance our natural environment. This should complement, rather than diminish, the important regulatory backdrop that underpins the work of Natural England.**
118. **We recommend that in reviewing its strategy and operations, Natural England should consider how to maintain an effective balance between its core functions of regulation and collaboration, and that the latter continues to be effectively backed up by the former when necessary.**

#### **Input into the development planning process**

119. Section 4(1) of the NERC Act 2006 requires that: “Natural England must, at the request of a public authority, give advice to that authority on any matter relating to Natural England’s general purpose”.<sup>118</sup> Section 4 (4) goes on to state: “Natural England may give advice to any person on any matter relating to its general purpose - (a) at the request of that person, or (b) if Natural England thinks it appropriate to do so, on its own initiative”.<sup>119</sup>
120. Natural England is responsible for a range of mandatory and voluntary planning functions relating to the impact of development on the environment. It is a consultee on most local and neighbourhood plans, and on many planning applications. Among others, grounds for consulting NE on local and neighbourhood plans include if a sustainability appraisal or strategic environmental assessment is required; if it affects protected sites and areas, or the best and most versatile agricultural land; and if it affects protected species.<sup>120</sup>
121. Grounds for consulting on planning applications are similar, including if an application requires an Environmental Impact Assessment; if it will result in the loss of over 20 hectares of the best and most versatile agricultural land;

---

117 [Q 187](#) (Alan Law)

118 Natural Environment and Rural Communities Act 2006, [section 4](#)

119 *Ibid.*

120 Defra, *Guidance, Local planning authorities, transport authorities and agencies: get environmental advice on planning* (29 March 2015): <https://www.gov.uk/guidance/local-planning-authorities-get-environmental-advice> [accessed 13 March 2018]

if it is in or is likely to affect a SSSI; or if it reclaims to agricultural use land that was previously used for mining or waste management.<sup>121</sup>

122. Developers may seek pre-application advice from Natural England, though this is not mandatory except in the case of nationally significant infrastructure projects.<sup>122</sup> Similarly to the advice for local planning authorities, NE recommends that developers seek advice if a proposal is likely to affect protected sites and areas, protected species, and the best and most versatile agricultural land or ancient woodland. It also recommends that developers seek advice where the development may include environmental opportunities that could be achieved as ‘green infrastructure’, and biodiversity improvements of the site and surrounding area.<sup>123</sup>
123. A number of submissions and witnesses noted that NE had insufficient resources to perform its statutory and advisory functions in relation to the planning system. The Wildlife Trusts stated that “in our view, reductions in resourcing levels have undoubtedly had a critical impact on Natural England’s performance and capability to achieve its statutory functions”.<sup>124</sup> Wildlife and Countryside Link stated that “based on recent assessments, Natural England has struggled to fulfil its mandate ... due to these cuts Natural England does not have the resources or sufficient numbers of suitably skilled and experienced staff to perform its functions fully and effectively”.<sup>125</sup>
124. NE publishes standard advice on how local authorities should review planning applications affecting protected species or protected sites and areas. We heard evidence from a number of organisations that NE had a tendency only to provide bespoke advice on planning applications where a European or domestic protected area, or a protected species, was likely to be affected.<sup>126</sup>
125. Sheffield City Council stated that “there is too much reliance on standing advice, which is open to interpretation. Clarification is often sought from NE on points made in the standing advice”.<sup>127</sup> ALGE echoed this view, stating that the reliance on standing advice “does not give ALGE confidence that Natural England’s planning function is being properly met”.<sup>128</sup> It also noted that the advice was becoming outdated, a point supported by Cotswold District Council, which noted as an example that existing standing advice conflicted with the new European protected species licensing policy.<sup>129</sup>
126. We also heard evidence that as NE’s role in advising and commenting on planning applications had diminished, local authorities were effectively taking on additional responsibilities which they did not have the resources or expertise to handle. ALGE told us that “lack of capacity and resources at Natural England often means that others are having to fill the gap—either local authority officers or officers from other statutory agencies—as there is still the need for this expertise”.

---

121 Defra, *Guidance, Local planning authorities, transport authorities and agencies: get environmental advice on planning* (29 March 2015)

122 As required by the Planning Act 2008, [section 42](#).

123 Defra, *Guidance, Developers: get environmental advice on your planning proposals* (29 March 2015)

124 Written evidence from Wildlife Trusts ([NER0080](#))

125 Written evidence from Wildlife and Countryside Link ([NER0078](#))

126 This issue was raised by, inter alia, ALGE ([NER0048](#)), CIEEM ([NER0030](#)), Staffordshire County Council ([NER0077](#)), Cotswold District Council ([NER0056](#)) and Sheffield City Council ([NER0054](#))

127 Written evidence from Sheffield City Council ([NER0054](#))

128 Written evidence from Association of Local Government Ecologists ([NER0048](#))

129 Written evidence from Cotswold District Council ([NER0056](#))

127. ALGE went on to add that local authorities had often depended on the Environment Agency for advice on issues such as protected species or land management issues, “when in truth these should be the prime responsibility of NE to respond, intervene, investigate and resolve”.<sup>130</sup> The County Councils Network drew attention to the significant reductions in funding of local authorities and stated that “the question of resource must be addressed to ensure that the environment receives sufficient protection”.<sup>131</sup>
128. Problems were also highlighted whereby Natural England was still viewed as the senior advisory authority when in practice decisions were being referred to other bodies. The Landscape Institute told us that “issues exist where Natural England raises no objections in response to development proposals for sites within an AONB. Even in cases where the applicant is referred to consult the relevant AONB (which is agreed protocol), applicants see Natural England as the senior authority and follow their decision”.<sup>132</sup>
129. Defra told us that NE had consistently responded to over 12,800 planning application consultations over the last three years, and that 97% of these in 2016–17 were responded to within the agreed timeframe. They also noted, however, that this number included “no comment” and “no further comment” responses, and that since autumn 2013 NE had employed standing advice for protected species, and most responses would refer to this standing advice.<sup>133</sup>
130. Elaborating on this subject, Alan Law stated that:
- “We have always delivered more “no comment” or general responses than we have bespoke advice ... We try to filter out the “no comments”, then filter out those which are generic and can be picked up through generic advice, and then focus our time and effort on where there is the greatest added value and benefit from our providing a bespoke response ... we are trying to keep the amount of bespoke advice that we issue as constant as we can.
- We are also trying ... to get more engaged in the strategic planning up front and reduce the number of planning applications further on down the line which may be at odds with the environment”.<sup>134</sup>
131. Relatedly, the Landscape Institute expressed concern that NE did not pay due regard to the landscape impact of development, even in the case of nationally important protected landscapes. It noted that it had seen advice issued which referred such matters back to local authorities or staff at the relevant National Park Authority, and that “this becomes even more of an issue because at the same time the skills associated with the landscape have largely been lost from local government”.<sup>135</sup> A 2011 survey suggested that over 50% of landscape roles in the public sector had been lost in the previous 15 years.<sup>136</sup>

---

130 Written evidence from Association of Local Government Ecologists ([NER0048](#))

131 Written evidence from County Councils Network ([NER0086](#))

132 Written evidence from Landscape Institute ([NER0070](#))

133 Written evidence from Defra ([NER0025](#))

134 [Q 192](#) (Alan Law)

135 Written evidence from the Landscape Institute ([NER0070](#))

136 *Ibid.*



132. Norfolk County Council echoed this point, stating that Natural England “does not adequately represent its landscape role within the planning process. Instead, it comments on biodiversity and refers applications to the AONB team for comments on landscape, using a standardised letter. However, NE is the statutory consultee so our opinion can be seen to carry less weight than NE”. They went on to add that if Natural England registers no objection to the impacts of development on biodiversity, this is usually taken as its approval of all aspects of the application, including landscape aspects.<sup>137</sup>
133. Alan Law acknowledged that the organisation had faced resource challenges in relation to landscape advice, but not that it had reduced its focus:
- “I do not think we have reduced our focus on landscape. We have less resource across the breadth of our remit, so there are fewer people in biodiversity and in landscape or access, so they are all affected ... the combination of reductions within local government and within delivery bodies is a challenging one, but I do not think that is unique to landscape”.<sup>138</sup>
134. We note that the Government’s 25-year environment plan provides an undertaking to conserve and enhance the natural beauty of our landscapes by reviewing National Parks and AONBs, including reviewing whether more designations are required in future. We welcome this review in the context of our evidence suggesting that landscape is a relatively low priority with limited resources in NE and planning authorities.
135. **We are persuaded by the evidence that the quality of planning advice issued by Natural England has declined, largely as a result of resource constraints. While application response rates continue to be impressive, there appears to be an increasing reliance on standard advice which in some cases may itself not be up to date.**
136. **The reduction of Natural England’s role has left a vacuum which in many cases local authorities have been required to fill, without the adequate resources or expertise to do so. As Natural England has withdrawn, there has been little clarity as to the changing scope of its role or the expectations on local authorities. In the light of mutual resource pressures, Natural England should be clearer as to when it will play an active part in planning policy and decision-making, and when it will refer to other bodies. There should also be a renewed dialogue between Natural England, the Local Government Association and local authorities more generally as to the most effective role that NE can play in the planning process.**
137. **We recommend that Natural England reviews its standard advice to planning authorities to ensure that it is up to date, and reviews it more regularly in future. We also recommend that Natural England reviews the extent of its reference to standard advice when considering planning applications.**
138. **We also noted the evidence that Natural England has insufficient regard for landscapes when offering planning advice, though we accept its evidence that the issue may be one of resource constraints**

---

137 Written evidence from Norfolk County Council ([NER0042](#))

138 [Q 193](#) (Alan Law)



**rather than of losing a focus on landscape specifically. Nevertheless, with local government facing similar constraints, there is clearly a need for a body such as Natural England to retain and review its focus.**

139. **Natural England should review its approach to considering landscapes when offering planning advice and considering planning applications, and consider if there is more it can do in this respect, particularly in light of the wider loss of expertise in landscape matters across the public sector.**
140. **Additionally, the Government’s review of National Parks and Areas of Outstanding Natural Beauty, anticipated in the 25-year environment plan, should give due emphasis to the importance of the planning system in protecting landscapes.**

*Net gain*

141. We heard evidence that the planning system should be used to deliver “net gain” in biodiversity in new developments—in other words that development leaves local biodiversity in an improved state overall. The Landscape Institute criticised national planning policy for failing to place sufficient emphasis on biodiversity net gain, stating that it is only referenced in passing in the current version of the National Planning Policy Framework (NPPF) with a stipulation that sustainable investment must involve “moving from a net loss of biodiversity to achieving net gains for nature”.<sup>139</sup>
142. Natural England noted in written evidence to the Committee that there are biodiversity net gain good practice principles for local authorities and developers, and UK guidance on net gain is currently being developed jointly by a number of professional bodies.<sup>140</sup> It added that “strengthening biodiversity duties, and related land use planning guidance, could aid the implementation of that approach”.<sup>141</sup>
143. Ove Arup and Partners Ltd told us that, despite the requirement for net gain in the NPPF, “there has been little response to this requirement by Local Planning Authorities even in those producing updated Local Plans, which suggests that there is a lack of understanding of the terms, i.e. a lack of capacity within the Local Planning Authorities. Little regard is paid to ... how elements such as net gain will be achieved and implemented”.<sup>142</sup>
144. In its 25-year environment plan, the Government commits to ensuring that “existing requirements for net gain for biodiversity in national planning policy are strengthened, including consulting on whether they should be mandated alongside any exemptions that may be necessary”. It adds that “our immediate ambition is to work in partnership with other Government bodies, local planning authorities and developers to mainstream the use of existing biodiversity net gain approaches within the planning system, update the tools that underpin them and reduce process costs on developers”.<sup>143</sup>

---

139 Written evidence from Landscape Institute ([NER0070](#))

140 Written evidence from Natural England ([NER0082](#))

141 *Ibid.*

142 Written evidence from Ove Arup and Partners Ltd ([NER0069](#))

143 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), pp 33–34

145. On 6 March 2018 the Government published a revised draft of the NPPF for consultation. The draft includes a new stipulation that local plans should “identify and pursue opportunities for securing measurable net gains for biodiversity”. If adopted, this would be the first time that local authorities have been required to make specific provision for biodiversity net gain in local plans.<sup>144</sup>
146. The draft also strengthens the requirement to refuse development which would result in the loss or deterioration of irreplaceable habitats. The current version states that such development should be refused “unless the need for, and benefits of, the development in that location clearly outweigh the loss”<sup>145</sup> whereas the draft revised version states that it should be refused “unless there are wholly exceptional reasons, and a suitable mitigation strategy exists”.<sup>146</sup>
147. In addition, CIRIA, IEMA and CIEEM<sup>147</sup> have developed best practice principles for how UK industry can help deliver biodiversity net gain outcomes. These principles will be used to produce practical guidance for industry on delivering biodiversity net gain.<sup>148</sup>
148. We did not receive substantive evidence on the potential problems and practical issues that may need to be addressed in relation to strengthened net gain requirements including, for example, the question of environmental goods which are impossible to substitute, and the other protections which may be necessary in this regard. We trust that these issues will be addressed through the consultation, and welcome the strengthened requirement in the draft revised NPPF to refuse development resulting in the loss of irreplaceable habitats unless there are exceptional circumstances.
149. **We welcome the forthcoming consultation on strengthening requirements for biodiversity net gain in the planning system, as well as the forthcoming industry guidance. We would encourage the Government and Natural England to consider other measures in policy and guidance which would support net gain and associated environmental protection measures, taking into account the need for such measures to be practically deliverable and the fact that some environmental goods are not substitutable.**

*The discretionary advice service*

150. NE has sought in recent years to address its diminishing resources by introducing a wider number of chargeable services, including pre-application advice services for developers. Alan Law explained that:

“Until five years ago, Natural England did not have the facility to charge, so we secured a facility to offer a range of discretionary advice services ... the benefit for the private sector is that it gets our advice early, before

---

144 HM Government, *National Planning Policy Framework: draft text for consultation* (6 March 2018), p 49: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685289/Draft\\_revised\\_National\\_Planning\\_Policy\\_Framework.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/685289/Draft_revised_National_Planning_Policy_Framework.pdf) [accessed 13 March 2018]

145 HM Government, *National Planning Policy Framework: draft text for consultation* (6 March 2018), p 28

146 HM Government, *National Planning Policy Framework: draft text for consultation* (6 March 2018), pp 49–50

147 Construction Industry Research and Information Association, Institute of Environmental Management & Assessment; Chartered Institute of Ecology and Environmental Management.

148 CIEEM, ‘Biodiversity Net Gain - Principles and Guidance for UK Construction and Developments’: <https://www.cieem.net/biodiversity-net-gain-principles-and-guidance-for-uk-construction-and-developments> [accessed 13 March 2018]

it has come to the point of firming up some of its investment plans. The benefit for us is that by providing that advice early on a full cost recovery basis we can save ourselves subsequent statutory advice time”.<sup>149</sup>

151. In a subsequent evidence session, Mr Law also stated that the service generates between £3 million and £4 million of income for Natural England each year.<sup>150</sup> NE told us that it is also “using other external funding sources to help improve the natural environment in a challenging context for Government funding. The NERC Act powers have helped Natural England develop its new approach to charging for discretionary advice services”.<sup>151</sup>
152. Elaborating on this point, we heard that NE plans to develop its charging base in future, for example for a wider range of activities on land it manages or for statutory services.<sup>152</sup> We also heard some concern about the expansion of Natural England’s chargeable services, however. Lincolnshire Wildlife Trust stated:
- “The principle of engaging early with developers to get the development right from the outset is a sound one, and Natural England should do this, but it should not be constrained by charging if it is the right thing to do for the natural environment and nor should it be at the expense of responding to wider forward and development control planning to ensure biodiversity is taken into account”.<sup>153</sup>
153. The Bat Conservation Trust also expressed concern, stating that it had heard from staff that resources may be increasingly orientated towards work where there is a financial incentive rather than a conservation concern.<sup>154</sup> The RSPB noted that NE was rapidly increasing its commercial income and hoped to increase it to £12 million per year by 2020. It stated that “whilst we recognise the desire to supplement reductions in grant in aid funding, paid consultancy work must not be allowed to distract from their core function”.<sup>155</sup>
154. Natural England told us that they could benefit from amendments to the NERC Act which would enable them to widen their charging activities. They stated that “the definition of services (which we can charge for) in section 11 is potentially limiting given the wider range of activities we might pursue and get income for, consistent with our general purpose. It is now Treasury policy that charging schemes should be introduced by way of a Statutory Instrument; however the NERC Act does not contain broad, general powers for Statutory Instruments to be created for this purpose”.<sup>156</sup>
155. **We welcome the fact that Natural England has found means to generate income by the provision of planning advice, though its focus must continue to be on improving the process rather than generating revenue as a first priority. While Natural England discloses its income from discretionary advice in its national accounts, we believe further**

---

149 [Q 5](#) (Alan Law)

150 [Q 192](#) (Alan Law)

151 Written evidence from Natural England ([NER0082](#))

152 *Ibid.*

153 Written evidence from Lincolnshire Wildlife Trust ([NER0064](#))

154 Written evidence from Bat Conservation Trust ([NER0061](#))

155 Written evidence from RSPB ([NER0051](#)); see also written evidence from Wildlife and Countryside Link ([NER0078](#))

156 Written evidence from Natural England ([NER0082](#))

**transparency would be welcome with regard to the uses it makes of its commercial income, perhaps through a separate declaration.**

156. **Additionally, the NERC Act itself appears to limit the scope of Natural England’s discretionary charging services. The Government should consider how these rules are applied to Natural England and whether they may unnecessarily limit the scope and potential of its discretionary activities.**
157. **Natural England should consider carefully how it balances its resources between statutory, advisory and chargeable activities, and how it ensures avoidance of conflict of interest between its roles as paid advisor and statutory consultee.**

#### *Access to the countryside*

158. One element of the general purpose of NE, as described in paragraph 18, is to promote access to the countryside and open spaces, and to encourage open-air recreation. The work and role of Natural England in this context builds upon the Countryside and Rights of Way Act 2000 (the CRoW Act), which revolutionised access to the countryside and, since implementation, has led to marked improvements to public access. The CRoW Act provided a new right of public access to areas of open land comprising mountain, moor, heath, down, and registered common land. It also provided safeguards intended to take into account the needs of landowners, occupiers and wildlife, thus seeking to address the ‘trade-offs’ that need to be made when promoting access.

#### *Capital investment and maintenance of routes*

159. The public access work of Natural England has, in recent years, focused upon national projects, notably delivery of the England Coast Path, which is a key project. This project will create a walking route around the whole English coast, alongside secure rights of access to beaches. We were told that 314 miles of the path are currently open; the intention is for the full 2,700-mile path to be open by 2020.<sup>157</sup> Once opened, this will be the longest continuous coast path in the world.
160. The work undertaken by NE on this project was widely praised in the evidence that we received.<sup>158</sup> North Yorkshire County Council stated that the coastal path project was a “great example of how Natural England can promote better access for public good”<sup>159</sup> while Wildlife and Countryside Link noted that this work “indicates that where a project is properly resourced Natural England is able to deliver it”.<sup>160</sup>
161. We were told, however, that funding had only been allocated by Defra for creation of the English Coast Path, and not for its long-term maintenance.<sup>161</sup> A wider, related issue concerned long-term funding for the maintenance of

---

157 Written evidence from Natural England ([NER0082](#))

158 [Q 27](#) (Nick Johannsen) and [Q 34](#) (Harry Bowell)

159 Written evidence North Yorkshire County Council ([NER0081](#))

160 Written evidence from Wildlife and Countryside Link ([NER0078](#))

161 Written evidence from East Riding of Yorkshire & Kingston Upon Hull Joint Access Forum ([NER0031](#))

the 13 National Trails in England.<sup>162</sup> NE had reduced funding for National Trails by 30% since 2012, and a three-year funding deal agreed in 2013 had not been renewed in 2016. Defra had provided funding for the 2017/18 financial year but, beyond this, the financial sustainability of National Trails was problematic.<sup>163</sup>

162. We were told that 83 million people visit the National Trails each year, and that visitor spending is worth an estimated £533 million per year to the economy.<sup>164</sup> Maintenance of the Trails is therefore important. NE acknowledged that their funding of this work had reduced in recent years, and that a sustainable future model was needed:

“Our work on access, like much of our remit, we have had to contract as budgets have gone down ... We spend in the order of £1.8 million a year on maintenance of the existing access infrastructure, but we spend more on the development of the new England coastal path, which is the big flagship piece. We need to help the bodies that we work with on the ground in terms of maintaining existing infrastructure to move to a slightly different model. Those existing national trails are prime for sponsorship, and a model that is dependent simply on central government funding paying for that maintenance on the ground does not look sustainable in the current climate, so we need to work with those partnerships to get them into a different funding model”.<sup>165</sup>

The Ramblers also acknowledged the need for a sustainable long-term funding model, and expressed an interest in being part of this solution.<sup>166</sup>

163. **We note the concerns that have been expressed regarding the long-term funding and sustainability of the National Trails network. We recommend that Natural England and Defra work with the Ramblers, representatives of the tourism industry, and other appropriate interest groups, to develop proposals for long-term management and maintenance funding. This work should give due consideration to the potential for sponsorship of the Trails and, more widely, should consider the role that active partnerships of different interests could play in maintaining national and local routes.**

164. The issue of long-term maintenance of public access routes expands more broadly than the 13 National Trails. The Secretary of State has signalled his intention to develop a new approach to environmental land management payments following Brexit and departure from the Common Agricultural Policy (CAP).<sup>167</sup> This new approach to farm payments will be focused upon providing public money for public goods, as the Secretary of State explained:

“I believe that the principal public good to which public money should be devoted is environmental enhancement. I also think that public access, properly designed, is another real good, because the broader the

---

162 The 13 National Trails are: Cleveland Way, Cotswold Way, Hadrian’s Wall Path, North Downs Way, Offa’s Dyke Path, Peddars Way and Norfolk Coast Path, Pennine Bridleway, Pennine Way, South Downs Way, South West Coast Path, Thames Path, The Ridgeway, Yorkshire Wolds Way. The English Coast Path will also have the status of a National Trail once completed.

163 Written evidence from South West Coast Path Association ([NER0045](#))

164 *Ibid.*

165 [Q 187](#) (Alan Law)

166 [Q 152](#) (Alison Hallas)

167 [Q 204](#) (Michael Gove MP)



understanding of rural life, food production and agriculture is among all our citizens, the more effectively rural-proofing will take place at national level in the political conversation”.<sup>168</sup>

165. In February the Government published a consultation paper setting out these proposals in more detail.<sup>169</sup> This identifies public access as one of a number of public goods that could be delivered as part of the new arrangements:

“We will replace the Common Agricultural Policy with a new system which pays public money for public goods. A new environmental land management system will be the cornerstone of our agricultural and land management policy. We will support farmers and land managers to deliver substantial environmental improvements, securing public and business benefits from the farmed environment. Other public goods we could support include animal welfare, promoting agricultural productivity, public access, and supporting rural and upland resilience”.<sup>170</sup>

The paper goes on to note that a forthcoming Agriculture Bill could include legislative provisions to create new schemes for supporting public access.<sup>171</sup> The consultation closes in May 2018.

166. Our witnesses were also of the view that any new system of farm or environmental payments should give a degree of priority to public access and maintenance of routes. A number of Local Access Forums argued that Brexit presented an opportunity for public access to be reinstated into national agri-environment schemes; Norfolk Local Access Forum suggested that post-Brexit funding should provide for investment and maintenance of existing rights of way.<sup>172</sup>
167. **The Government is consulting upon a new system of farm and environmental payments to be applied following the withdrawal of the UK from the EU and the cessation of Common Agricultural Policy payments. We recommend that the Government should include payments for maintenance and enhancement of public access within this new system of public funding, although we note that this could have implications for food production and the natural environment.**

*The promotion of public access*

168. In addition to the infrastructure issues set out above, we heard criticism of the part NE plays in promoting public access to the countryside. We note, in this context, that the 25-year environment plan attaches some importance to the need to connect people with the environment, while also stating that, currently, “the number of people who spend little or no time in natural spaces is too high”.<sup>173</sup>

---

168 *Ibid.*

169 Defra, *Health and Harmony: The future for food, farming and the environment in a Green Brexit*, Cm 9577, February 2018: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684003/future-farming-environment-consult-document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684003/future-farming-environment-consult-document.pdf) [accessed 13 March 2018]

170 Defra, *Health and Harmony: The future for food, farming and the environment in a Green Brexit*, Cm 9577, February 2018, p 31

171 *Ibid.*

172 Written evidence from Broads Local Access Forum (NER0047), East Riding of Yorkshire & Kingston Upon Hull Joint Access Forum (NER0031) and Norfolk Local Access Forum (NER0041)

173 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 72



169. We were told that NE was dominated by conservation and biodiversity issues, to the detriment of promoting access.<sup>174</sup> The Gloucestershire Local Access Forum suggested that the support provided by Natural England to local access forums had reduced significantly in recent years; similar arguments were made by the Norfolk Local Access Forum and the Broads Local Access Forum, who suggested that this was part of a shift towards fewer resources being allocated to the management of access to the countryside across Government as a whole.<sup>175</sup> The Mid & West Berks Access Forum echoed this view, but went further, suggesting that public access “perhaps ... needs to be transferred to a public access department within Defra, to the Department of Transport or even a new body”.<sup>176</sup>
170. Norfolk County Council argued that NE does not have the resources for promotional work, and instead sees its role as being to “enable” access.<sup>177</sup> The Ramblers told us that the prime area where resources had been reduced in recent years was for promotional activity in relation to responsible access in the countryside.<sup>178</sup> This view was echoed by the NFU, who argued that the Countryside Code (originally produced by the Countryside Agency) needed to be revised, updated and properly promoted:
- “It is essential that NE do more to promote how the general public can responsibly enjoy the countryside. In recent years NE and other bodies have done less to promote responsible use of the countryside, but we believe that this trend should be reversed and more should be done. We would advocate that NE promotes responsible use of the countryside by revising and re-launching the Countryside Code and other guidance on responsible use”.<sup>179</sup>
171. We believe that these criticisms are, in part, a result of some of the issues discussed earlier in this Chapter. Diminishing amounts of funding, combined with a reduced capacity for publicity and awareness raising, has limited the part that Natural England can play in delivering against their responsibilities for promoting public access to the countryside. This situation needs to be addressed.
172. It is important to note that public access, which is to be welcomed for many reasons, needs to be balanced against the needs and demands of farming practices, wildlife, natural habitats and biodiversity. Rotherham Metropolitan Borough Council told us that “Many sites, species and habitats are sensitive and so public access may need to be restricted or reduced and this should be recognised. There are plenty of sites that can sustain higher visitor pressure but these are typically less sensitive sites such as public parks and country parks”.<sup>180</sup>
173. This point of view was partly echoed by The Wildlife Trusts, which stated that arrangements for enabling access to the countryside “remain generally appropriate” but that they had some concerns about the approach Natural England had taken to introducing coastal access under the Marine and

---

174 Written evidence from New Forest Access Forum ([NER0011](#))

175 Written evidence from Mid & West Berks Local Access Forum ([NER0027](#)), Norfolk Local Access Forum ([NER0041](#)) and Broads Local Access Forum ([NER0047](#))

176 Written evidence from Mid & West Berks Local Access Forum ([NER0027](#))

177 Written evidence from Norfolk County Council ([NER0042](#))

178 [Q 151](#) (Alison Hallas and Stephen Russell)

179 Written evidence from the NFU ([NER0076](#))

180 Written evidence from Rotherham Metropolitan Borough Council ([NER0072](#))

Coastal Access Act 2009. It stated that “whilst we welcome and strongly support the principle of opening new public access to our coasts, there are concerns that proposals for some coastal habitats risk causing unsustainable levels of recreational disturbance to some highly sensitive sites and species”.<sup>181</sup>

174. **The general purpose of Natural England, set out in the Natural Environment and Rural Communities Act 2006, includes responsibility for promoting access to the countryside. This element of the general purpose is not, at present, being delivered effectively. We believe that Natural England should have sufficient resources to deliver against all elements of its general purpose. It must also have the capacity to undertake effective promotional work and awareness raising activity.**
175. **Our earlier recommendations seek to increase the funding, independence and capacity of Natural England. Public access to the countryside would benefit from enactment of these recommendations, and should be appropriately prioritised by Natural England following their implementation, with due regard for the protection and management of sensitive wildlife sites.**
176. **As part of this proactive, balanced and responsible approach to promoting public access we also recommend that Natural England should revise and relaunch the Countryside Code.**

#### **The long-term future of Natural England**

177. The Triennial Review commissioned by Defra in 2013 (see Chapter One) concluded that, on balance, the Environment Agency and Natural England should be retained as separate organisations. Since 2013, however, the context within which both of these agencies work has changed considerably, and will change still further as a result of Brexit. New approaches and ways of working will also be required to deliver upon the ambitious agenda contained within the 25-year environment plan.
178. Professor Dieter Helm CBE, Chairman of the Natural Capital Committee, suggested that a re-structuring of organisations operating in this field should take place. Professor Helm argued that the functions of the Environment Agency should be broken up, with a small Environmental Protection Agency retained to enforce environmental protection and pollution laws. Remaining (non-flooding) functions, coupled with much of the work currently undertaken by NE, would then be subsumed into a new body, established on a statutory basis, tasked with delivering the 25-year environment plan.<sup>182</sup>
179. We put the case for structural change to the Secretary of State, who acknowledged the potential rationale for such a course of action, but felt that it was not appropriate at the present time:

“He [Professor Helm] makes an impeccable intellectual case for having an environmental protection agency—a revamped Environment Agency—and for some of the delivery functions with respect to water and flood prevention being taken on by water companies and others.

181 Written evidence from The Wildlife Trusts ([NER0080](#))

182 [Q 64](#) (Dieter Helm CBE). Under Professor Helm’s proposals the work undertaken by the Environment Agency on flood protection would be undertaken by a national statutory undertaker, akin to the National Grid, with input from the water companies and Ofwat.

There is only so much that even the best government departments can do at one time. This is a responsibility for Ministers who will come after [Lord Gardiner of Kimble] and me to address. We want it, but we have a lot on our plates at the moment. It means that that sort of restructuring is for a future day, rather than for the near horizon".<sup>183</sup>

180. We agree with the Secretary of State. We believe that there is a longer-term case for examining the fitness for purpose of Natural England, the Environment Agency and, additionally, the Rural Payments Agency, given the anticipated changes to farm payments.
181. **Natural England's role will change following the departure of the UK from the European Union. These changes will also have an impact upon the work of the Environment Agency and the Rural Payments Agency as, indeed, will the implementation of the 25-year environment plan. Accordingly, we recommend that Defra should commit to a longer-term review of the distinct functions, responsibilities and purposes of these bodies, and an examination of the case for any restructuring or rearrangement to deliver against new priorities.**

## CHAPTER 4: THE BIODIVERSITY DUTY

---

### Operation of the duty

182. Section 40 of the NERC Act requires that any public authority “must ... have regard ... to the purpose of conserving biodiversity”. It goes on to state that “Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat”.<sup>184</sup> Section 40 is commonly known as the biodiversity duty. Section 41 of the Act requires the Secretary of State to publish a list of species and habitats which are of “principal importance” for the purpose of conserving biodiversity.<sup>185</sup>
183. A general theme from the evidence we heard was that the duty to “have regard” to biodiversity had been ineffective, and that the state of biodiversity continues to decline. It was considered to have had little practical impact for a range of reasons, including low awareness, poor understanding, a lack of reporting requirements, a lack of biodiversity knowledge and resources, weak wording and lack of enforceability.
184. The species and habitats referenced by the duty do not exist in isolation from the wider natural environment. Dr Nick Fox OBE has suggested that “Conservation should be about maintaining high levels of biodiversity, which is the sign of a healthy habitat. Biodiversity is not just about species diversity, but the structural diversity of habitats and the range of trophic levels. It’s not about encouraging the biggest population of any one species, but ensuring that each is in balance with the habitat and the resources”.<sup>186</sup>

### *Awareness and understanding of the biodiversity duty*

185. While surveys indicate local authorities are formally aware of the duty,<sup>187</sup> we were told that awareness is much more limited in the wider public sphere. Cotswold District Council informed us that there was limited understanding even within local authorities:
- “Most biodiversity-related work is still either carried out by or referred to the local authority Biodiversity Officer/Ecologist rather than being seen as an issue for all departments to consider. Corporate plans might refer to conserving the natural environment, but there are very few examples of specific actions relating to biodiversity”.<sup>188</sup>
186. This point was supported by the Greater Lincolnshire Nature Partnership (GLNP), which stated that it had worked closely with local authorities and internal drainage boards and that “on frequent occasions senior (and junior) staff, in relevant departments, have been unaware of the duty, requiring the GLNP to explain it to them”.<sup>189</sup>
187. Wildlife and Countryside Link suggested that there was a similar situation in central Government, arguing that the duty “is predominantly seen as a Defra objective and when it is considered in other departments it is often taken as a

---

184 Natural Environment and Rural Communities Act 2006, [section 40](#)

185 Natural Environment and Rural Communities Act 2006, [section 41](#)

186 Dr Nick Fox, quoted in Charlie Pye-Smith, ‘The facts of rural life: Why we need better wildlife management’ (2015), p 7: <http://charliepyesmith.com/wp-content/uploads/2016/11/Facts-of-Rural-Life-Final-SinglePages.pdf> [accessed 13 March 2018]

187 Supplementary written evidence from Defra ([NER0084](#))

188 Written evidence from Cotswold District Council ([NER0056](#))

189 Written evidence from Greater Lincolnshire Nature Partnership ([NER0044](#))

relatively low-level ambition which can be addressed with a correspondingly low level commitment”.<sup>190</sup> Martin Nesbit of the IEEP, a former director of Defra, stated that:

“I was never particularly conscious that my department was under the duty imposed upon it by Section 40. I suspect that perhaps one or two of the dozen or so people around the table at senior management meetings might have been aware of Section 40, but it was not something where people would say, ‘I had better think about our obligations under Section 40 of the NERC Act before making this decision’”.<sup>191</sup>

188. We were told that the Government was not taking enough action to promote awareness and understanding of the duty, and that while reference was made to raising the profile of the duty in the 2011 Natural Environment White Paper, “this was not included in the commitments at the end of the white paper and has not been reported on in subsequent updates. Reference to this statement in the [White Paper] is the sole reference to the duty in the England Biodiversity Strategy”.<sup>192</sup>

189. The Wildlife Trusts echoed this point, noting that the Defra *Guidance for Public Authorities on Implementing the Biodiversity Duty* had been withdrawn in 2015 and that the only guidance to replace it is now held on the gov.uk website. The Wildlife Trusts stated that:

“We consider this to be an inadequate replacement and of little help to those genuinely seeking advice. It has certainly done little, if anything, to take forward the recommendations of the review to improve the understanding of the duty and the responsibilities of public bodies”.<sup>193</sup>

190. This evidence was echoed by many others,<sup>194</sup> including the National Farmers’ Union which stated that NE technical guidance had been “simplified to the point that it has become meaningless for the intended audience”.<sup>195</sup> Sheffield City Council supported the view that understanding was poor even where there was a level of awareness of the Act.<sup>196</sup>

### *Reporting requirements*

191. We were told that the lack of specific reporting requirements attached to the duty meant that it was impossible to quantify its practical impact.<sup>197</sup> The Association of Local Government Ecologists told us: “The lack of any reporting requirement and reward/penalty for implementing/not demonstrating the duty of regard means there is little incentive for any local authority, with limited resources, to implement this duty to any significant degree”.<sup>198</sup>

190 Written evidence from Wildlife and Countryside Link ([NER0078](#))

191 [Q 174](#) (Martin Nesbit)

192 Written evidence from RSPB ([NER0051](#))

193 Written evidence from The Wildlife Trusts ([NER0080](#))

194 Written evidence from British Ecological Society ([NER0068](#)), The Wildlife Trusts ([NER0080](#)), RSPB ([NER0051](#)), CLA ([NER0026](#)), CIEEM ([NER0030](#)), ALGE ([NER0066](#)) and Field Studies Council ([NER0030](#))

195 Written evidence from NFU ([NER0076](#))

196 Written evidence from Sheffield City Council ([NER0054](#))

197 Written evidence from Doncaster Metropolitan Borough Council ([NER0046](#)), Shropshire County Council ([NER0055](#)), ALGE ([NER0048](#)) and British Ecological Society ([NER0068](#))

198 Written evidence from Association of Local Government Ecologists ([NER0048](#))

192. The British Ecological Society made a similar point, noting that in Scotland and Wales there was a requirement for public bodies to report on their similar biodiversity duties at three-yearly intervals, and that this “could provide a simple way of strengthening the English duty ... while introducing a legal reporting requirement will not automatically lead to full implementation of the biodiversity duty, it provides a clear measure of success”.<sup>199</sup> Martin Nesbit suggested that any new reporting requirement could apply to a specified list of authorities, to be determined by the Secretary of State, in order to avoid the regulatory burden becoming too onerous or widespread.<sup>200</sup>
193. The Welsh Government told us that their new reporting requirement “provides an element of accountability as public authorities must demonstrate what they have done to comply with the duty” and that they anticipated the reporting requirement would help to improve adherence to the duty.<sup>201</sup> Responding to the suggestion that such a reporting duty might be introduced for England, Defra informed us that “whilst it is plausible that additional provisions, such as a reporting requirement, might strengthen the duty, Defra would want to take a broad perspective and assess any such changes against alternative mechanisms for securing biodiversity gain”.<sup>202</sup>
194. We also heard that since the Act was passed in 2006 a number of biodiversity reporting requirements which previously applied to local authorities had been removed. These included an expectation for local authorities to report against their performance in managing local wildlife sites, as a result of obligations set out in National Indicator 197. The British Ecological Society stated that “while this indicator was relatively weak given that it was not related to planning, it was discontinued in 2010, and there are now no requirements on public authorities to report on any aspect of biodiversity performance”.<sup>203</sup>
195. The RSPB also voiced “considerable concern” that this and other requirements, including Biodiversity Action Plan targets, were no longer in place. It stated that “it is now considerably less clear what is expected of Public Authorities and what we are collectively trying to deliver for biodiversity”.<sup>204</sup>

*The loss of biodiversity professionals, knowledge and resources*

196. ALGE and others highlighted research indicating that biodiversity work areas had experienced cuts of at least 60%, and that only one third of planning authorities in England now had access to their own ‘in-house’ ecologist.<sup>205</sup> In relation to the loss of ecologists, the RSPB stated that “we are concerned that this vitally important source of expertise has diminished rather than grown since 2010, and implementation of the duty will have suffered as a result”.<sup>206</sup>
197. Wildlife and Countryside Link expressed concern, in light of the reduction in trained ecologists, that “the majority of local authority planners lack ecological qualifications and had very little ecological training. Without the provision

---

199 Written evidence from British Ecological Society ([NER0068](#))

200 [Q 174](#) (Martin Nesbit)

201 Written evidence from the Welsh Government ([NER0093](#))

202 Supplementary written evidence from Defra ([NER0079](#))

203 Written evidence from British Ecological Society ([NER0068](#))

204 Written evidence from RSPB ([NER0051](#))

205 Written evidence from ALGE ([NER0048](#)), RSPB ([NER0051](#)) and Wildlife and Countryside Link ([NER0078](#))

206 Written evidence from RSPB ([NER0051](#))



of adequate ecological expertise and data, planning decisions are likely to be seriously flawed”.<sup>207</sup> This point was supported by the Chartered Institute of Ecology and Environmental Management (CIEEM) which stated that “planners are ill-qualified to make biodiversity decisions and are not competent to do so; they do not claim to be so either but the requirement falls to them due to lack of resources”.<sup>208</sup>

198. Similar points were made by Ove Arup & Partners, who stated that “many Local Planning Authority documents come across as empty gestures in the direction of biodiversity”, and that “where ecological capacity is lacking, these decisions are left to the developer’s discretion, with consequences rarely positive for biodiversity”.<sup>209</sup> The Association for Local Environmental Records Centres pointed out that only 70% of local authorities that could access locally collected biodiversity data were actually using them. They stated that “what is unknown is how local authorities who do not have access to this information manage to fully take biodiversity into account, under the duty set out in the Act”.<sup>210</sup>

### *Wording of the duty*

199. We were consistently told that the wording of the biodiversity duty (to “have regard”) was too weak to be effective. We heard evidence<sup>211</sup> that the stronger wording of the respective biodiversity duties in Scotland (to “further” biodiversity) and Wales (“must seek to maintain and enhance biodiversity” and “promote the resilience of ecosystems”) might have greater impact when combined with the reporting requirements discussed above, though neither duty has been in place long enough to provide substantive evidence.
200. Wildlife and Countryside Link noted that the duties in Scotland and Wales were comparatively stronger than that in England, and therefore recommended that English requirements should be strengthened.<sup>212</sup> The Welsh Government explained that their new duty “encourages public authorities to mainstream biodiversity across the delivery of their functions and integrate it at an early stage in decision making”.<sup>213</sup> Dr Jo Judge of the National Biodiversity Network said that “Scotland is slightly better and further in conservation, but the Environment (Wales) Act that came in last year takes it further with not only taking care of but enhancing biodiversity”.<sup>214</sup>
201. NE expressed scepticism as to whether the Scottish duty would be more effective in practice, stating that “when tested in the planning process, although the wording was stronger, it did not prove to have any more bite”.<sup>215</sup> ALGE were somewhat sympathetic to this argument, stating that “experience from Scotland would suggest that the duty still doesn’t carry much weight” and that a much greater inhibiting factor was the lack of resources to fully implement the duty in any of the three nations.<sup>216</sup>

---

207 Written evidence from Wildlife and Countryside Link ([NER0078](#))

208 Written evidence from CIEEM ([NER0030](#))

209 Written evidence from Ove Arup & Partners Ltd ([NER0069](#))

210 Written evidence from Association of Local Environmental Records Centres ([NER0066](#))

211 Written evidence from Doncaster Metropolitan Borough Council ([NER0046](#)), Shropshire County Council ([NER0055](#)), Wildlife and Countryside Link ([NER0078](#)), The Wildlife Trusts ([NER0080](#)), RSPB ([NER0051](#)), UKELA ([NER0053](#)) and Sheffield City Council ([NER0054](#))

212 Written evidence from Wildlife and Countryside Link ([NER0078](#))

213 Written evidence from the Welsh Government ([NER0093](#))

214 [Q 92](#) (Dr Jo Judge)

215 [Q 189](#) (Alan Law)

216 Written evidence from ALGE ([NER0048](#))

202. CIEEM made the same point, stating that “the duty in Scotland and Wales is better than the requirement in England. However, there is still the issue that the requirements need underpinning by the appropriate resources for delivery and implementation”.<sup>217</sup> Chris Corrigan told us that “you could make the wording stronger, and the Welsh and Scottish examples are good examples of that. I would say that is necessary but not enough”.<sup>218</sup>

*Enforceability of the duty*

203. The final key theme of evidence relating to the biodiversity duty was its lack of enforceability. Shropshire County Council suggested that “there seems little point in raising awareness of this Act when any public body can simply say that they have ‘had regard to biodiversity’ but they have chosen not to undertake any work to enhance biodiversity”.<sup>219</sup>

204. In supporting its case for the weak enforceability of the duty, The Wildlife Trusts cited a 2008 Judicial Review to challenge a planning decision to approve warehousing and a lorry park at West Thurrock marshes:

“Their challenge centred on the fact that the developer (a public body) had failed to have sufficient regard for the existing biodiversity value of the site and had not satisfactorily applied the biodiversity duty. Dismissing the application to overturn the planning permission, the judge hearing the case (Mr Justice Mitting) described the Biodiversity Duty as being a ‘weak one’. This is a clear indication that the duty carries little legal weight”.<sup>220</sup>

205. Overall, it is evident that the duty might have had an initial positive impact by dint of raising awareness, within local authorities and other public bodies, of the need to have regard to biodiversity when taking decisions. Since 2006, however, the multiple deficiencies and weaknesses of the duty have become apparent. Given the progress made towards stronger wording and—importantly—extended reporting requirements in other parts of the UK, it is now clear that England is in danger of being ‘left behind’. This does not sit well with the level of ambition set out in the Government’s 25-year environment plan and, as such, the case for strengthening the biodiversity duty is clear.

206. **It is clear from the evidence we have heard that the biodiversity duty is ineffective as it stands, for a range of reasons including poor awareness, poor understanding, the weakness of the wording of the duty, the lack of a reporting requirement or enforceability, and the lack of biodiversity knowledge and resources. It may not be possible to correct all of these weaknesses in short order, but some action must be taken.**

207. **The Government should consider changes to the wording of the duty, as the requirement to “have regard” for biodiversity is weak, unenforceable and lacks clear meaning. The stronger wording used in Scotland and Wales should be considered as alternatives if the evidence becomes clear that they have had a positive effect.**

---

217 Written evidence from CIEEM ([NER0030](#))

218 [Q 85](#) (Chris Corrigan)

219 Written evidence from Shropshire Council ([NER0055](#))

220 Written evidence from the Wildlife Trusts ([NER0080](#))

208. **The Natural Environment and Rural Communities Act 2006 should also be amended in order to introduce an obligation to report to the new environmental body on the implementation of the Section 40 biodiversity duty. Such a duty could apply either to all public bodies, or a smaller number of bodies with biodiversity responsibilities, to be listed by the Secretary of State.**
209. **We further recommend that, following implementation of these changes, the Government should publish, and promote effectively, new guidance on implementation of the biodiversity duty.**

#### **The changing context since 2006, and implications for the duty**

210. Approaches to conservation have changed substantially since 2006, and we heard that this might be reflected in a revised approach to implementing and enforcing a biodiversity duty. In particular, the British Ecological Society noted that “the concepts of ‘ecosystem services’ (the benefits people derive from the natural world e.g. food, flood protection or recreation) and ‘natural capital’ (the stock of natural assets from which these benefits flow, e.g. clean air, water or soil) have become increasingly influential in ecological science and environmental policy”.<sup>221</sup>

#### **Box 1: What is Natural Capital?**

In evidence to the Committee, Professor Dieter Helm described natural capital as “just one of the three pillars of the capital of any economy”, along with human capital and manufactured capital. He added that “it is absolutely core to any economy... and to economic growth. It is capital, so it is about assets and the state of assets”. On the question of measurement, he stated that “the crucial thing in natural capital is to work out which bits really matter and to focus on the measurement of those”.

The Government’s 25 year environment plan *A Green Future* states that natural capital is “the sum of our ecosystems, species, freshwater, land, soils, minerals, our air and our seas. These are all elements of nature that either directly or indirectly bring value to people and the country at large. They do this in many ways but chiefly by providing us with food, clean air and water, wildlife, energy, wood, recreation and protection from hazards”.

The plan also states that “the value of natural capital is routinely understated”, estimating that, for example, if England’s woods and forests were assessed using a natural capital approach, the value of the services they deliver would be an estimated £2.3bn. Only a small proportion of this, at around 10%, is in timber values, with the remainder coming from other benefits such as human recreation and carbon sequestration. It adds that “this value is not captured by traditional accounting methods and is too often ignored in management and policy decisions”.

With a natural capital approach, the Government’s Plan states that “we are more likely to take better and more efficient decisions that can support environmental enhancement and help deliver benefits such as reduced long-term flood risk, increases in wildlife, and a boost to long-term prosperity”.

Source: [Q 59](#) (Prof Dieter Helm CBE) and HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 19

221 Written evidence from British Ecological Society ([NER0068](#))

211. The Society went on to highlight that Natural England’s Conservation Strategy includes “growing natural capital” as one of its key principles, but that “a duty to conserve natural capital or ecosystem services is not currently enshrined in English legislation”.<sup>222</sup> It also observed that neither natural capital or ecosystem services are synonymous with biodiversity:

“The relationship between biodiversity, ecosystem processes and the provision of ecosystem services is complex and uncertain, as is the relationship between natural capital ‘assets’ and benefits. Biodiversity can be understood as both an element of natural capital that underpins the provision of services (and is therefore integral to the maintenance of those assets), and as an output, or benefit in its own right”.<sup>223</sup>

212. Professor Helm made reference to the Natural Capital Committee, which was created following the publication of the 2011 Defra White Paper *The Natural Choice*, and which acts as an independent advisory body to the Government on natural capital issues.<sup>224</sup>

213. Professor Helm took the view that the 25-year environment plan<sup>225</sup> should be put on a statutory basis, but that “this plan will never be achieved unless a single body is given the statutory duty to deliver that outcome: the improvement of natural capital”.<sup>226</sup> He also suggested that a natural capital duty or commitment might be a more effective means of incorporating a biodiversity duty:

“It is hard to think about improving natural capital without improving biodiversity. It is an absolutely central part of it. The trouble with having the objective of biodiversity as currently pursued is that it is not clear what it means ... I do not think that in a natural capital world we would downgrade biodiversity. We would upgrade it. It is very downgraded within the existing framework”.<sup>227</sup>

214. Dr Stephanie Wray of the Chartered Institute of Ecology and Environmental Management welcomed the natural capital approach as a way of improving biodiversity. She told us that “using that approach we can be better understood; we can talk to people in clear terms about the things the environment provides for us rather than talking to other scientists about biodiversity”.<sup>228</sup> She also stated that she would “strongly advocate that the [section 40] duty should be extended to include natural capital”.<sup>229</sup>

215. Dr Judge of the National Biodiversity Network concurred, telling us that “natural capital ... can play a real part in helping us to conserve biodiversity”.<sup>230</sup> She was more sceptical, however, about the immediate prospects of introducing a natural capital duty, stating that “it comes down to resources. At the moment it would be something that public authorities probably would not be able to do because they do not have the experience or the budget. If

---

222 Written evidence from British Ecological Society ([NER0068](#))

223 *Ibid.*

224 [Q 59](#) (Professor Dieter Helm CBE)

225 At that time unpublished.

226 [Q 61](#) (Professor Dieter Helm CBE)

227 *Ibid.*

228 [Q 91](#) (Dr Stephanie Wray)

229 *Ibid.*

230 [Q 91](#) (Dr Jo Judge)

that was all in place then, yes, I think it could play a part, but it is not an easy or quick thing to do”.<sup>231</sup>

216. Stephen Trotter, of The Wildlife Trusts, told us that the natural capital concept could be used as part of a framework for future land management revenue generation following the UK’s departure from the EU:

“Yes, we have to help farmers, landowners and farm managers to invest in their own sites ... we need to explore some of the ideas which [the Natural Capital Committee] has produced on how we can find new income streams for land management”.<sup>232</sup>

217. Mr Trotter added that:

“In the future, post the CAP, if land management payments are linked to clear objectives that we need farmers to deliver, whether that is pollinators, trees or soil restoration, it is incredibly powerful to say ‘right, that’s the goal. You work out how you deliver it’. It could be really effective”.<sup>233</sup>

This point was echoed by Dr Wray, who told us: “I would look for an approach to land management ... which would deliver public benefits, public goods for public money, and look to restore damaged ecosystems”.<sup>234</sup>

218. Dr Hugh Ellis of the Town and Country Planning Association (TCPA) expressed more scepticism about the natural capital concept, stating that “the development of natural capital as an idea could be very powerful”, but that “many of the landscapes that I value extremely highly would feature nowhere on a valuation derived from some form of natural capital”.<sup>235</sup> He added that “I think it can make a contribution, but if you try to use it as a technocratic way of separating values from decisions about the environment and people’s feelings about the environment, it will fail”.<sup>236</sup>

219. The Government’s recently published plan, *A Green Future: Our 25 Year Plan to Improve the Environment*, states that “we will also set gold standards in protecting and growing natural capital—leading the world in using this approach as a tool in decision-making”.<sup>237</sup> It also goes on to state that:

“Over coming years the UK intends to use a ‘natural capital’ approach as a tool to help us make key choices and long-term decisions ... when we use a natural capital approach, we are more likely to take better and more efficient decisions that can support environmental enhancement and help deliver benefits such as reduced long-term flood risk, increases in wildlife, and a boost to long-term prosperity”.<sup>238</sup>

While adopting this approach, the Plan also acknowledges that not all aspects of natural capital can be robustly valued at present and, as such,

---

231 *Ibid.*

232 [Q 82](#) (Stephen Trotter)

233 [Q 83](#) (Stephen Trotter)

234 [Q 92](#) (Dr Stephanie Wray)

235 [Q 101](#) (Dr Hugh Ellis)

236 *Ibid.*

237 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 9

238 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 19



the natural capital approach needs to be regarded as a tool, rather than an absolute arbiter.<sup>239</sup>

220. It subsequently states that actions taken to implement the plan will include “working with interested parties to improve and expand the range of tools and guidance that support biodiversity net gain approaches, including through the future incorporation of natural capital measures”.<sup>240</sup> It does not refer to specific measures to enhance or incorporate the biodiversity duty into a natural capital duty, and earlier written evidence to this Committee from Defra—published before the launch of the 25-year plan—suggested that:

“Whilst future policy ambitions ... may require further action on mainstreaming biodiversity or wider consideration of natural capital in public sector decision making, there is a range of measures available to take forward these ambitions, and the department does not see any immediate requirement to modify the duty itself”.<sup>241</sup>

221. The Government’s draft revised National Planning Policy Framework, published in March 2018, includes new references to natural capital in the planning system. It states that planning policies should recognise “the intrinsic character and beauty of the countryside, and the wider benefits from natural capital” and that planning authorities should “plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries”.<sup>242</sup>

222. **Natural capital is an important tool for environmental sustainability and for the support and enhancement of biodiversity. It is not yet, however, a fully comprehensive concept, and in particular may not yet be advanced enough to offer a framework for investment in land management. We believe, however, that as the concept expands it has strong potential to be applied more widely as a tool of environmental policy, and we welcome the provisions to take account of natural capital in the draft revised National Planning Policy Framework.**

223. **We would encourage the Government to take concrete steps to fulfil the intentions set out in the 25-year environment plan to incorporate natural capital approaches into its environmental strategy. In particular, the Government should consider how the biodiversity duty contained in the NERC Act 2006 might be expanded or combined with a natural capital approach to enhance its effectiveness. This consideration should take into account the fact that limits of resource and understanding could mean it is not yet possible to establish a formal natural capital duty in law. The Government should also ensure that the Natural Capital Committee receives satisfactory resources to continue developing the concept and exploring its potential.**

---

239 *Ibid.*

240 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (11 January 2018), p 34: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/673203/25-year-environment-plan.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673203/25-year-environment-plan.pdf) [accessed 13 March 2018]

241 Written evidence from Department for Environment, Food and Rural Affairs ([NER0079](#))

242 Ministry of Housing, Communities & Local Government, *National Planning Policy Framework: draft text for consultation* (6 March 2018), p 48: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685289/Draft\\_revised\\_National\\_Planning\\_Policy\\_Framework.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/685289/Draft_revised_National_Planning_Policy_Framework.pdf) [accessed 13 March 2018]



## CHAPTER 5: RURAL COMMUNITIES

---

### Background

224. Within this chapter we consider the impact that the Commission for Rural Communities (CRC) had during its operation, and the situation since its closure. We also reflect on the operation and closures of other bodies in recent years, consider rural policy in the current climate and provide an assessment of the extent to which ‘rural proofing’ is embedded within policy making.

### The difference between rural policy and rural proofing

225. Before discussing rural communities in detail, it is important to recognise the difference between ‘rural policy’ and ‘rural proofing’. In our estimation, rural policy can be taken to encompass those policies that affect non-land based aspects of rural life. Relevant policy areas would include communities (including market towns and villages); social exclusion and deprivation, transport, housing and, above all, the provision of support to the non-land based economy, which represents over 90% of the total rural economy.<sup>243</sup>

226. On the other hand, rural proofing is essentially “considering the likely impact of policy decisions on rural areas, and, where necessary, adjusting the policy to take into account the particular needs of those who live in, work in, or enjoy the countryside”.<sup>244</sup> Rural proofing mostly involves those policies that have no specific geographic focus but have major rural impacts—education, health, welfare, industrial strategy, justice and even taxation.

227. A 2017 Defra report on rural proofing stated that: “Rural proofing aims to understand the impacts of government policy intervention and to ensure fair and equitable policy outcomes for rural areas. Rural proofing is about finding the best ways to deliver policies in rural areas. This could mean that implementation might need to be designed and delivered differently compared to urban areas. It is possible to overcome undesirable policy impacts in rural areas by designing and delivering proportionate solutions.”<sup>245</sup> The OECD’s Rural Policy Review of England in 2011 argued that a rural policy which expects rural communities’ needs to be met by mainstream policies of numerous ministries can only work if “consideration of rural needs and concerns take place early and at all stages of policy development through the use of rural-proofing”.<sup>246</sup>

---

243 Defra, *Statistical Digest for Rural England* (February 2018), pp 52–67: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/682889/02\\_Statistical\\_Digest\\_of\\_Rural\\_England\\_2018\\_February\\_edition.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/682889/02_Statistical_Digest_of_Rural_England_2018_February_edition.pdf) [accessed 13 March 2018]

244 OECD, ‘OECD Rural Policy Reviews: England, United Kingdom 2011’ (January 2011), p 120: [https://www.keepeek.com/Digital-Asset-Management/oecd/urban-rural-and-regional-development/oecd-rural-policy-reviews-england-united-kingdom-2010\\_9789264094444-en#page111](https://www.keepeek.com/Digital-Asset-Management/oecd/urban-rural-and-regional-development/oecd-rural-policy-reviews-england-united-kingdom-2010_9789264094444-en#page111) [accessed 13 March 2018]

245 Defra, *Practical guidance to assess impacts of policies on rural areas* (March 2017): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/600450/rural-proofing-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600450/rural-proofing-guidance.pdf) [accessed 13 March 2018]

246 OECD, ‘OECD Rural Policy Reviews: England, United Kingdom 2011’ (January 2011), p 108: [https://www.keepeek.com/Digital-Asset-Management/oecd/urban-rural-and-regional-development/oecd-rural-policy-reviews-england-united-kingdom-2010\\_9789264094444-en#page111](https://www.keepeek.com/Digital-Asset-Management/oecd/urban-rural-and-regional-development/oecd-rural-policy-reviews-england-united-kingdom-2010_9789264094444-en#page111) [accessed 13 March 2018]

228. The term ‘rural proofing’ was first adopted by the Government in 2000, in the rural White Paper ‘Our Countryside: the future, a fair deal for rural England’.<sup>247</sup>

### **The Commission for Rural Communities**

229. The CRC was formally established on 1 October 2006 following the enactment of the Natural Environment and Rural Communities Act 2006.<sup>248</sup> Funded by Government, its aim was to ensure that “policies, programmes and decisions take proper account of the circumstances of rural communities”,<sup>249</sup> having particular regard to people suffering from social disadvantage and areas suffering from economic underperformance.

230. Part One of the NERC Act set out the remit of the CRC, which can be broadly described as follows:

- Advocate: acting as a voice for rural people, businesses and communities;
- Expert adviser: giving evidence-based, objective advice to government and others; and
- Independent watchdog: monitoring and reporting on the delivery of policies nationally, regionally and locally.<sup>250</sup>

231. These three functions enabled the Commission to act as a voice for rural communities. Its role as an advocate ensured rural issues were well represented before Parliament and Government, with the Chair of the CRC reporting directly to the Prime Minister, while its role as adviser ensured a degree of commitment to rural proofing by advising how policy formation and delivery could work as well for rural areas as they did for urban. Much of the CRC’s role as adviser was delivered through its up-to-date, detailed reporting on the rural economy, through its ‘State of the Countryside’ reports and through ad hoc in-depth research either commissioned by Defra or launched on its own initiative.

232. Finally, its role as watchdog enabled a longer-term view, through monitoring of the way in which policies were developed, adopted and implemented and the extent to which these policies were meeting rural needs. The CRC was able to warn Government departments and other public bodies when their policies were failing rural communities, although it did not have any enforcement or regulatory powers.

### *Closure of the Commission for Rural Communities*

233. As mentioned briefly in Chapter 1, the CRC was closed in April 2013; the abolition of the Commission had originally been announced in June 2010. The 2010 announcement led to a clear winding down in the Commission’s operations. Upon initiation, the CRC’s annual budget was over £9 million; this declined to £6 million in 2010/11 and £500,000 in 2011/12 and 2012/13,

---

247 Department of the Environment, Transport and the Regions, *Our Countryside: the future, a fair deal for rural England* CM 4909, November 2000, p 158: <http://www.tourisminsights.info/ONLINEPUB/DEFRA/DEFRA%20PDFS/RURAL%20WHITE%20PAPER%20-%20FULL%20REPORT.pdf> [accessed 13 March 2018]

248 Commission for Rural Communities, ‘About us’: <http://webarchive.nationalarchives.gov.uk/20110303155316/http://ruralcommunities.gov.uk/about/> [accessed 13 March 2018]

249 *Ibid.*

250 *Ibid.*

once plans for its abolition had been formalised.<sup>251</sup> During its six and a half years of operation, the Commission spent £37.4m<sup>252</sup> executing the three core functions listed above. By way of comparison, at its peak the budget of the Countryside Agency (the predecessor body to the CRC) was over £110m.<sup>253</sup> It should be noted that the CRC, in contrast to the Countryside Agency, had no delivery powers. In accordance with Lord Haskins' review, the responsibility for delivery was passed to the RDAs.

234. The view taken in 2010 was that the CRC's functions were primarily concerned with informing and advising on policy, and that policy advice would be best placed within Government departments. Indeed, following the Commission's closure, the Government established the RCPU within Defra to oversee rural policy and "operate as a centre of rural expertise, supporting and co-ordinating activity within and beyond Defra".<sup>254</sup> The RCPU was also intended to ensure that all Government departments were effectively rural proofing policies before decisions were made. The RCPU's initial work following the CRC's abolition was scrutinised by the House of Commons EFRA Committee.<sup>255</sup>

### *Strengths and weaknesses of the CRC*

235. Many witnesses bemoaned the loss of the Commission. Graham Biggs MBE, Chief Executive of the Rural Services Network, told us that "you do not realise how good they are until they have gone", going on to state that "there is no doubt in my mind that it did some very good and original work".<sup>256</sup> The former Chairman of the Commission, Dr Stuart Burgess CBE, told the Committee that "the most important of the CRC's achievements was that it gave a rural voice to almost 12 million people living in rural England".<sup>257</sup>
236. In particular, it is clear that the qualitative and quantitative research conducted by the CRC was carried out to a high standard and, subsequently, has been sorely missed.<sup>258</sup> The Commission was known for its 'State of the Countryside' reports, which described the "condition of rural England through the latest available facts and figures".<sup>259</sup> Many witnesses spoke highly of the reports, describing them as helpful, and an essential source of rich and granular data.<sup>260</sup> Their more specific research was also praised. The Commission reported on many issues ranging from rural broadband through to rural social housing. The Tenant Farmers Association suggested that the 2010 uplands report was one of the best pieces of work that the

251 SQW, *Ex-post evaluation of the CRC: Report to the Department for Environment, Food and Rural Affairs* (December 2014), p 33: [http://www.sqw.co.uk/files/3214/5055/3302/CRC\\_Report.pdf](http://www.sqw.co.uk/files/3214/5055/3302/CRC_Report.pdf) [accessed 13 March 2018]

252 *Ibid.*

253 Countryside Agency, *Annual Report and Accounts 2004/5* (19 July 2005): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235206/0374.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235206/0374.pdf). [accessed 13 March 2018] It is important to note, though, that some of the functions delivered by the Countryside Agency were subsequently taken on by Natural England, rather than the CRC.

254 HC Deb, 1 April 2011, [cols 41–42WS](#)

255 EFRA Committee, *Rural Communities* (2013): HC 602 <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/inquiries/parliament-2010/rural-communities/> [accessed 13 March 2018]

256 [Q 128](#) (Graham Biggs MBE)

257 [Q 18](#) (Dr Stuart Burgess CBE)

258 See written evidence from Rural England CIC ([NER0006](#)), Dr Gordon Morris ([NER0018](#)) and Lord Bishop of St Albans and Bishop of Hereford ([NER0043](#))

259 Commission for Rural Communities, 'State of the countryside 2010': <http://webarchive.nationalarchives.gov.uk/20110303181543/http://ruralcommunities.gov.uk/files/sotc/sotc2010.pdf>

260 See written evidence from Dr Gordon Morris ([NER0018](#)), CLA ([NER0026](#)) and Hastoe ([NER0067](#))

CRC conducted—the report received considerable praise for its breadth of engagement with rural people and its consequent reflection of their thoughts, aspirations and concerns.<sup>261</sup>

237. The research work produced by the Commission has not been matched since it was abolished. We heard that the CRC’s closure had “led to a vacuum in the commissioning and provision of independent research”<sup>262</sup>, while Rural England CIC suggested that there is now a “real dearth of exploratory research, which seeks to understand the rural implications of social and economic trends or the rural implications of public policy developments”.<sup>263</sup>
238. Dr Burgess stressed that since the CRC’s closure, emphasis on social and economic issues and the needs of the countryside was lacking, suggesting that many rural needs and concerns had been side-lined; he felt that research and analysis commissioned by Defra was being driven by political priorities and lacked the independence embodied by the Commission.<sup>264</sup>
239. Defra told us that, as a department, they do not commission extensive amounts of research. They went on to say that they do, however, analyse data and research published from independent sources.<sup>265</sup> This was regarded as disappointing by one witness, who argued that reviewing existing evidence was not the same as Defra commissioning its own research.<sup>266</sup>
240. This predominant theme of rural research, data and insight being diminished since the abolition of the CRC was echoed throughout the inquiry by a number of witnesses. Hastoe Housing Association, for example, told us that the amount of delivery of affordable housing in rural areas is now unknown, because communities with a population of less than 3,000 are not monitored.<sup>267</sup> This position was confirmed in a response to a Parliamentary question for written answer asked by the Bishop of St Albans in September 2017.<sup>268</sup>
241. Hastoe went on to emphasise the importance of data collection: “We need to collect data for rural communities. Not having data is not helpful”.<sup>269</sup> This echoes an important point made by the OECD in its review of rural policy in England; effective rural-proofing requires data, information and analyses that are relevant and accurate at the lowest possible geographic level, and that are accessible and affordable to the public.<sup>270</sup>
242. An additional strength of the CRC, we were told, was its role as an advocate for rural communities. Its work in this area was regarded as valuable and was again emphasised by a feeling among witnesses that it was not being replicated since its demise. A number of witnesses missed the CRC’s ability to unite the patchwork of voices coming from different parts of rural society

---

261 [Q 74](#) (George Dunn)

262 Written evidence from Rural Coalition ([NER0037](#))

263 Written evidence from Rural England CIC ([NER0006](#))

264 [Q 20](#) (Dr Stuart Burgess CBE)

265 [Q 1](#) (Shirley Trundle CBE)

266 Written evidence from Shropshire Council ([NER0055](#))

267 [Q 132](#) (Sue Chalkley OBE)

268 Written answer by Lord Bourne of Aberystwyth (25 September 2017), [HL1625](#)

269 [Q 136](#) (Sue Chalkley OBE)

270 OECD, *Rural Policy Reviews: England, United Kingdom 2011* (January 2011) p 182: [https://www.keepeek.com/Digital-Asset-Management/oecd/urban-rural-and-regional-development/oecd-rural-policy-reviews-england-united-kingdom-2010\\_9789264094444-en#page111](https://www.keepeek.com/Digital-Asset-Management/oecd/urban-rural-and-regional-development/oecd-rural-policy-reviews-england-united-kingdom-2010_9789264094444-en#page111) [accessed 13 March 2018]

and speak to power with one voice, particularly with regard to the social and economic needs of the countryside.<sup>271</sup>

243. We heard that, since the closure of the CRC, the advocacy role had fallen back onto the voluntary sector. A number of bodies are now trying to fill the gap, but they are either under resourced or relying heavily on voluntary input from members. We were told that this meant the rural position was not being expressed in a co-ordinated way and, consequently, was being diminished, overlooked, and often undervalued.<sup>272</sup> Additionally, these bodies are hampered in their ability to paint an accurate picture of rural life because of the aforementioned lack of deep, wide data on rural issues since the closure of the CRC.<sup>273</sup>
244. All this, we were told, was translating into a more urban focus on policy and potentially less of a voice for those in rural areas.<sup>274</sup> The example of broadband was given more than once: “There is an urban metric used to understand the provision of broadband, and you need a rural voice in there to understand it”.<sup>275</sup>
245. One solution proposed by several witnesses was for the Government to commission and pay for evidence from Britain’s universities.<sup>276</sup> This, they argued, would have the benefit of being both expert and independent, although it would not resolve the issue of the agenda being determined by the Government, and the related issue of such research being available in the public domain.
246. Although the CRC’s core functions of ‘advocate’ and ‘expert adviser’ were widely praised, we heard less praise for its third function as ‘independent watchdog’. There was a general agreement that because the Commission was only able to ‘warn’ government departments and public bodies, rather than enforce, it lacked power when seeking to implement some of its conclusions. We were told that the CRC lacked teeth,<sup>277</sup> while the Commission’s former Chairman suggested that it would have been helpful to have the power to deliver more.<sup>278</sup> These views were reinforced by the Countryside Alliance, who explained that the Commission did not have the power to hold government to account, adding that there was no duty on any department to consult with the CRC over the development of rural policy.<sup>279</sup>
247. **The Commission for Rural Communities lacked the teeth and powers to perform a watchdog role on behalf of rural communities. The Commission did, however, play an important part in ensuring that the Government, other public authorities, and Parliament, had access to detailed and unbiased research on rural communities, informed opinion as to the potential impact of policies, and independent insight into their needs. The loss of the Commission has diminished the**

---

271 [Q 18](#) (Dr Stuart Burgess CBE), written evidence from the Rural Coalition ([NER0037](#)), Town and Country Planning Association ([NER0085](#))

272 [Q 118](#) (Margaret Clark CBE)

273 [Q 129](#) (Sue Chalkley OBE)

274 Written evidence from NFU ([NER0076](#))

275 [Q 50](#) (Guy Smith), see also [Q 29](#) (Dr Nigel Stone), [Q 39](#) (Tim Bonner)

276 See evidence from Lord Bishops of St Albans and Bishop of Hereford ([NER0043](#)), Shropshire Council ([NER0055](#)) and Rural England CIC ([NER0006](#))

277 [Q 118](#) (Margaret Clark CBE)

278 [Q 23](#) (Dr Stuart Burgess CBE)

279 [Q 38](#) (Tim Bonner)



**Government's understanding of rural society, rural economies and rural communities, and the ability of Parliament and others to hold the Government to account.**

248. **Of particular concern is the loss of the CRC's independent research capacity. The State of the Countryside reports, and other CRC research, provided a level of granularity, detail and understanding which is not being matched currently. We have consistently heard that this lack of detailed data makes it harder for the Government to design and implement policies that work for rural areas. It also makes it particularly difficult to monitor the impact of any such policies.**
249. **The Government should be setting the agenda for the undertaking of research and data collection that can support the development, implementation and evaluation of rural policy. This is not happening at present. We recommend that the Government should produce a statement of priorities for rural research and understanding, focused upon the social and economic needs of rural communities, and should then commission new research accordingly. The statement of priorities should be assessed and revised on a regular basis.**

#### **The closure of the Regional Development Agencies and the RCPU**

250. As mentioned in Chapter 1, section 26 of the NERC Act provided for some of the functions of the former Countryside Agency (which was abolished by the same Act) to be transferred to the RDAs. Dividing England into nine regions, eight of these non-departmental public bodies had been established following the Regional Development Agencies Act 1998, with a ninth London Development Agency following in July 2000.<sup>280</sup> The RDAs were intended to promote economic development and regeneration, and worked in partnership with local authorities, businesses and others. Section 4 of the 1998 Act made clear that the purposes of the RDAs applied in equal measure to both the urban and rural parts of each region.<sup>281</sup>
251. The NERC Act therefore allowed for social and economic development schemes previously run by the Countryside Agency, such as the Market Towns Initiative and the Vital Villages programme, to be transferred and continued by the RDAs. This allowed a degree of continuity but, more importantly, ensured a continued focus on the economies of rural areas that spread beyond the usual areas of agriculture and farming.
252. However, the RDAs have also now been closed down, with this decision taking effect on 31 March 2012.<sup>282</sup> Some of the broad functions of the RDAs have been replaced by new Local Enterprise Partnerships (LEPs), but these lack the resources, capacity, and geographical scope of their predecessors, and also tend to have a largely urban focus. While there are certain commonalities between urban and rural economies, the context within which they operate is distinct, and specific rural circumstances do need to be accounted for in the interests of economic development. These commonly include a lack of reliable broadband, lack of transport connectivity, housing issues, skills shortages and problems accessing training.

280 Department for Business, Innovation and Skills, *Closing the RDAs* (July 2012), p 12: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/34749/12-986-closing-rdas-lessons-from-transition-and-closure-programme.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34749/12-986-closing-rdas-lessons-from-transition-and-closure-programme.pdf) [accessed 13 March 2018]

281 Regional Development Agencies Act 1998, [section 4](#)

282 Department for Business, Innovation and Skills, *Closing the RDAs* (July 2012), p 5



253. We were told that the universal coverage provided by the RDAs was much missed,<sup>283</sup> and that the RDAs had achieved a fairer balance between urban and rural interests than is now found among the LEPs.<sup>284</sup> The CLA noted that the RDAs' effectiveness was boosted by being public bodies with actual staff, unlike the LEPs which are primarily driven by volunteers from important local industries alongside local authority representatives.<sup>285</sup>
254. The loss of the RDAs (and the CRC) is compounded still further by the abolition, in April 2015, of the Defra Rural Communities Policy Unit. This team of staff was intended to support Ministers in leading rural policy from within the department. The overall picture is one of an ever-decreasing focus upon, and capacity to support, the needs of rural communities. Staff and resources were initially lost in the transition from the Countryside Agency to the CRC; this resource was diminished still further when the CRC was abolished and the RCPU took on some of its mantle. At the same time, the economic development and regeneration capacity of the RDAs was lost, and the RCPU has subsequently been abolished too. Rural communities have not been well served by these changes.
255. **While the name of the Act is the Natural Environment and Rural Communities Act 2006, most of the Act's provisions pertaining to rural communities have been annulled with the dissolution of the Commission for Rural Communities, and the abolition of the Regional Development Agencies. This has had a profound negative impact upon the way in which the Government handles rural needs but, equally importantly, has diminished the focus on the economic potential of rural areas and the level of support available to deliver that potential. The closure of the Rural Communities Policy Unit compounds the situation. Our remaining recommendations on these matters will, we believe, help to address this unfortunate situation.**

### Rural policy making today

#### *The work of Defra*

256. As mentioned above, the demise of the CRC, RDAs, RCPU and various predecessor bodies has led to rural policy today being almost exclusively handled within Government by Defra. The four priorities set out in the Defra Strategy for the period to 2020 include: "A rural economy that works for everyone contributing to national productivity, prosperity and wellbeing".<sup>286</sup>
257. In seeking to deliver against this priority Defra acts as the key representative for rural interests across Government. Much of this work is channelled through the Minister for Rural Affairs, who also holds the title of Rural Ambassador. Additionally, Defra provides funding to support Action for Communities in Rural England (ACRE), and its network of 38 Rural Community Councils. Defra also funds rural development through the Rural Development Programme for England (part of the Common Agricultural Policy), which provides financial support for farming and forestry, environmental improvements and economic development. £3.5 billion has been allocated to the Programme for the period from 2014–2020,<sup>287</sup> the vast majority of which

283 [Q 51](#) (Christopher Price), [Q 166](#) (Merrick Denton-Thompson OBE)

284 [Q 120](#) (Jeremy Leggett)

285 [Q 51](#) (Christopher Price)

286 Supplementary written evidence from Defra ([NER0079](#))

287 *Ibid.*

is directed towards farming and the environment, rather than to broader rural economies and communities.

258. The Secretary of State told us that the department had a total of 64 staff in rural teams, with 25 of those in the Defra rural policy team, five in planning and housing and 34 working on the Rural Development Programme for England.<sup>288</sup>

### *Limitations and problems*

259. We were told that the resources of Defra were consumed with agriculture and environmental policy, and that the department had never really taken to the rural affairs element of its remit.<sup>289</sup> This echoed a view consistently put to us, which was that rural affairs was often taken to mean “farming and land management”, both within and beyond Government.<sup>290</sup> This interpretation of rural affairs is unfortunately mistaken, given the relatively limited role now played by agriculture within the wider rural economy. The agriculture, forestry and fishing sectors accounted for just 7.5% of rural employment in 2016/17; the same sectors also represent only 2% of GVA<sup>291</sup> in predominantly rural parts of England.<sup>292</sup>
260. Jeremy Leggett, a Trustee of ACRE, suggested that successive Secretaries of State for Environment, Food and Rural Affairs had not made rural affairs a priority over many years.<sup>293</sup> This is not a new concern; a 2007 article in *Sustainable Development* noted that the establishment of Defra was intended to be a “new departure in the Government’s treatment of rural policy”, with rural affairs as a central pillar among the priorities of the new department.<sup>294</sup> In reality, however, Defra’s policy agenda had become increasingly centred on environmental sustainability and “where rural affairs and rural development were once envisaged in a central and integrating role within the new department, they have effectively been marginalized by stronger policy agendas around climate change and sustainable development”.<sup>295</sup>
261. Lord Haskins expanded upon this history of organisational tension, telling us that “Defra as an organisation was put together in the middle of the night after a general election without any thought at all to its strategic purpose”.<sup>296</sup> He went on to suggest that the department was a “hybrid”, and that this caused significant difficulties:

“Defra’s problem is that it has to try to reconcile what are essentially tense relationships. Elsewhere in Whitehall you separate them, and they fight. MAFF was the farmers’ body. I am not saying that we should go back to MAFF at all, but the Defra agenda is too complicated”.<sup>297</sup>

---

288 [Q 197](#) (Michael Gove MP)

289 [Q 105](#) (Trevor Cherrett)

290 Written evidence from the Historic Houses Association ([NER0057](#))

291 Gross Value Added.

292 Defra, *Statistical Digest for Rural England* (February 2018) pp 52–67: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/682889/02\\_Statistical\\_Digest\\_of\\_Rural\\_England\\_2018\\_February\\_edition.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/682889/02_Statistical_Digest_of_Rural_England_2018_February_edition.pdf) [accessed 13 March 2018]

293 [Q 124](#) (Jeremy Leggett)

294 Philip Lowe and Neil Ward, ‘Sustainable Rural Economies: Some lessons from the English experience’, *Sustainable Development*, Volume 15 (2007), p 310.

295 *Ibid.*

296 [Q 16](#) (Lord Haskins)

297 *Ibid.*

262. ACRE explained that the changes brought about by the creation of Defra had actually broken the links between rural communities and central Government oversight of the local authorities tasked with delivering many key services to those communities:

“The government created the Department of Environment, Food and Rural Affairs and moved some of the old Department of the Environment’s sections into it, also placing the new Countryside Agency under its wing. The break between Government’s oversight of local government and its policy towards rural communities was made at this point. This limited the inter-relationships over rural policy and government’s mainstream tasking of local government ... All of government’s policy towards rural areas—the natural environment, farming, plant and animal health, water, marine issues and flooding—now came either directly or indirectly under DEFRA. The remaining rural remit of the RDC, that which had been moved into the Countryside Agency, was probably better resourced than ever before, but with limited policy influence alongside the land-based priorities of DEFRA”.<sup>298</sup>

263. A number of witnesses told us that Defra currently had insufficient resources available to take the lead on rural policy, and that staffing numbers had diminished over time.<sup>299</sup> Hastoe Housing Association told us:

“The closure of the Commission for Rural Communities and the introduction of a greatly reduced successor, the Rural Communities Policy Unit and its successor (Defra’s Rural Policy team), and the large cuts to Defra’s overall budget (30% from 2010 to 2015 with another 30% cut from 2015 to 2020), have all combined to leave rural businesses, organisations and communities without both a strong government department to advocate for them, and the vital independent policy and research underpinning that is necessary to inform decision-making and achieve real policy change”.<sup>300</sup>

In a similar vein, Lincolnshire Wildlife Trust suggested that the limited resources available to the rural policy team meant that any focus on rural policy issues within Government was lost within a wider emphasis on the urban growth agenda.<sup>301</sup>

264. This loss of resources and diminution of focus comes at a time when rural communities are facing real social and economic challenges. These challenges were borne out by the report of the Social Mobility Commission, published in November 2017, which found that social and economic opportunities were limited in a large number of rural areas: “Some of the worst-performing areas, such as Weymouth and Portland, and Allerdale, are rural, not urban; while some are also in relatively affluent parts of England—places like West Berkshire, Cotswold and Crawley”.<sup>302</sup>

---

298 Written evidence from ACRE ([NER0022](#))

299 [Q 74](#) (George Dunn)

300 Written evidence from Hastoe Housing Association ([NER0067](#))

301 Written evidence from Lincolnshire Wildlife Trust ([NER0064](#))

302 Social Mobility Commission, *State of the Nation 2017: Social Mobility in Great Britain* (November 2017): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/662744/State\\_of\\_the\\_Nation\\_2017\\_-\\_Social\\_Mobility\\_in\\_Great\\_Britain.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/662744/State_of_the_Nation_2017_-_Social_Mobility_in_Great_Britain.pdf) [accessed 13 March 2018]

The Commission went on to conclude:

“... the new social mobility coldspots in our country are concentrated in remote rural or coastal areas and in former industrial areas ... Perhaps unsurprisingly only 13 per cent of disadvantaged young people in former industrial areas and 14 per cent in remote rural coldspots progress to university compared with 27 per cent in hotspots. Many of these places combine poor educational outcomes for young people from disadvantaged backgrounds with weak labour markets that have a greater share of low-skilled, low-paid employment than elsewhere in England ... Remote rural and coastal areas also suffer from poor connectivity by transport, restricting opportunities still further”.<sup>303</sup>

265. It is clear, overall, that rural affairs has not been a central pillar among the priorities of Defra thus far and that, since the creation of the department, focus has intensified still further on the agriculture and environmental aspects of its remit, at the expense of the rural economy and rural communities. We considered how the machinery of Government might be adjusted in order to address this situation, but first considered the potential for Defra itself to give greater attention to the wider needs of rural communities.

*The case for retaining rural policy within Defra*

266. The creation of Defra, with “rural affairs” specified within the name of a key central Government department, should have given added weight to rural policy and delivered greater alignment between policies towards agriculture, the environment and the wider rural economy. In 2002 the then Government explained how this structural change was intended to “elevate” rural policy:

“A fundamental difference in the way the Government approached the delivery of rural economic and social policy was signalled by the creation of Defra, one of whose central pillars is the whole rural affairs agenda. This elevation of rural policy, with the first Government Minister for Rural Affairs, reflects the fact—confirmed by the FMD experience—that the rural economy is not a synonym for agriculture, but is now a complex mixed economy in which food production, tourism and recreation, and public and private services are all important strands”.<sup>304</sup>

267. The current Secretary of State told us why Defra was presently well suited to take the lead on rural policy within Government:

“First, every organisation that has a care for what happens in rural areas is an organisation we are more likely to talk to than other government departments at any given point. If it is the NFU, the CLA, the RSPB, those responsible for our national parks or those responsible for ensuring that in rural areas there is appropriate employment in a variety of sectors, they are likely to be people we are talking to”.<sup>305</sup>

The Rural Ambassador expanded upon this point:

---

303 *Ibid.*

304 HM Government, *Response to the Reports of the Foot and Mouth Inquiries*, Cm 5367 (2002), para 1.19, cited in Environment, Food and Rural Affairs Committee, *The potential of England's rural economy* (Eleventh Report, Session 2007–08, HC 544–II)

305 [Q 199](#) (Michael Gove MP)

“I am having meetings on well-being and vulnerability with the Rural Coalition, the Rural Services Network, the Association of Convenience Stores and the chief executive of the Post Office. In my view, that is where you get the infrastructure of rural life ... there is an interconnection between food, farming and agriculture, as a backbone, and rural communities and the social services, such as health and education, with good, improving schools, that they require to have a good and prosperous life. I believe that Defra has a locus in all those things, because they need to be mainstreamed”.<sup>306</sup>

268. The work of the Rural Ambassador and the extensive engagement that he has undertaken with stakeholder groups was reflected in some of our evidence. The CLA told us that they were supportive of the current arrangements, with the Rural Ambassador being supported by a “reasonably well structured and funded team”.<sup>307</sup> They also suggested that Defra was now engaging in a much more co-ordinated and effective manner than was the case previously.<sup>308</sup>
269. We agree that the current Rural Ambassador, alongside the Secretary of State, has shown an encouraging new focus on rural policy and a willingness to engage with stakeholders on those matters affecting rural society and the rural economy. Experience since the creation of Defra, however, has demonstrated that over time the department collectively has lacked the ability to confront the issues facing rural communities.
270. This ability will be constrained still further by the changes brought about by the departure of the UK from the EU. Agriculture, farming and the environment are all policy areas that will be affected significantly by Brexit, and we were told that this presented the risk of a further reduction in resources for wider rural policy within Defra.<sup>309</sup> Community First Yorkshire expressed concern that the Referendum result would unduly distract Defra from other ongoing priorities for rural communities.<sup>310</sup> A report published by the National Audit Office in December 2017 went some way towards confirming this, stating that: “Defra has de-prioritised work in some areas to accommodate EU exit activity” and confirming that “Defra is under significant strain”.<sup>311</sup>
271. Since our evidence taking concluded Defra has published a new consultation paper entitled *Health and Harmony: The future for food, farming and the environment in a Green Brexit*.<sup>312</sup> The document sets out the Government’s vision for the future of farming after the UK leaves the EU but, apart from some concern for rural resilience in the uplands, there is little mention of rural communities and certainly no future vision akin to those now provided for farming and environment.

---

306 Q 199 (Lord Gardiner of Kimble)

307 Q 49 (Christopher Price)

308 Written evidence from the CLA ([NER0026](#))

309 Q 105 (Trevor Cherrett)

310 Written evidence from Community First Yorkshire ([NER0017](#))

311 National Audit Office, *Implementing the UK’s exit from the European Union: The Department for Environment, Food and Rural Affairs* (18 December 2017), pp 18–20: <https://www.nao.org.uk/wp-content/uploads/2017/12/Implementing-the-UKs-exit-from-the-European-Union-the-Department-for-Environment-Food-Rural-Affairs.pdf> [accessed 13 March 2018]

312 Defra, *Health and Harmony: The future for food, farming and the environment in a Green Brexit*, (February 2018): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684003/future-farming-environment-consult-document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684003/future-farming-environment-consult-document.pdf) [accessed 13 March 2018]



272. Taken together, these issues suggest that responsibility for rural policy would best be handled elsewhere within Government. Action with Communities in Rural England summarised the situation effectively:

“Despite the best efforts of a number of Ministers and senior officials since DEFRA’s creation, it is hard to avoid the conclusion that the responsibility for a broadly based policy towards rural areas, rural people, communities and businesses needs to lie elsewhere in government. It needs to be located somewhere where its real, cross-cutting, nature can be better and more powerfully exercised”.<sup>313</sup>

273. The clear majority of our evidence supported this view. While we believe that the current Secretary of State and Rural Ambassador have been proactive in improving engagement with stakeholders in rural communities it is evident that, on balance, the rural affairs element of the departmental remit has been neglected over time. In conclusion, we believe that rural affairs has been ‘lost’ within the wider departmental focus upon agriculture, the environment, food and farming. We therefore gave careful consideration to how the rural affairs brief might best be handled within Government.

*Where should rural policy sit within government?*

274. A number of witnesses suggested that the Ministry of Housing, Communities and Local Government (MHCLG) should take on greater responsibility for rural policy.<sup>314</sup> We note, in this context, that predecessor departments to MHCLG used to have this responsibility and that, when in existence, the Countryside Agency reported to the Department for Environment, Transport and the Regions.<sup>315</sup> Additionally, local authorities are responsible for delivery of many of the essential public services that support rural vitality and the rural economy. This suggests that the Government department responsible for providing oversight to local government should have a key role to play.
275. The Landscape Institute argued that giving MHCLG responsibility for rural affairs would allow Defra to focus on the environment and sustainable food production; they went on to note that MHCLG was the lead body for sustainable development and, as such, would be well placed to deliver for rural communities.<sup>316</sup> The potential for local authorities to take on and deliver a greater role in rural development was also highlighted, and it was suggested that moving the brief to MHCLG would be a good idea in this context.<sup>317</sup>
276. The Town and Country Planning Association noted that wider rural policy matters related more closely to the responsibilities of this department, particularly when issues such as housing, planning and service delivery were under consideration. They proposed the creation of a new Rural Policy Unit, to be placed either within the Cabinet Office or MHCLG, whose responsibilities would include developing national rural policy in the context

---

313 Written evidence from ACRE ([NER0022](#))

314 Note that much of this evidence was taken before the Department was renamed in January 2018; as such, the evidence usually cited the Department for Communities and Local Government (DCLG) rather than MHCLG.

315 Subsequently, the Countryside Agency reported to the Office of the Deputy Prime Minister (ODPM).

316 Written evidence from Landscape Institute ([NER0070](#))

317 [Q 16](#) (Lord Haskins)



of wider strategic policies.<sup>318</sup> The rural economy, rural communities, rural development planning and social deprivation could, in our view, all feature within such a unit.

277. Some argued that MHCLG was the best home since communities and local development form core parts of the MHCLG remit. President of the Landscape Institute, Merrick Denton-Thompson OBE, questioned the logic of treating rural communities as fundamentally different to others:

“Why would you treat one part of society differently from another, and are you not missing a trick if you do not see the whole of society as one target audience? It is the responsible public-sector approach to ensure that the opportunities are there for everybody ... It therefore seemed right and proper to us that [MHCLG] have the responsibility for rural affairs and that Defra should concentrate very much on the priorities of sustainable food production and the environment, because we think that is a challenge enough”.<sup>319</sup>

278. Although arguments were made to leave the responsibility for rural policy with Defra we support the view that it should be transferred from Defra to the Ministry for Housing, Communities and Local Government, leaving Defra free to concentrate upon its extensive farming, food and environmental remit in the face of the Brexit challenge. Rural communities should be treated in a manner consistent with the approach taken towards urban communities; the challenges facing rural housing delivery, for example, are equal to those being experienced in urban areas, and MHCLG should be giving consistent attention to these matters.
279. **Responsibility for rural policy and rural communities does not sit well within Defra, with the department being predominantly focused upon the important environment, agriculture and food elements of its remit. This focus will intensify as a result of Brexit. We therefore recommend that responsibility for rural affairs should be transferred from the Department for Environment, Food and Rural Affairs to the Ministry of Housing, Communities and Local Government. This change would ensure that responsibility for rural communities sits within the central Government department that is responsible for communities as a whole as, indeed, it did prior to the creation of Defra. It would also ensure that the responsibility rested in the department which oversees local authorities, who are the key delivery agents for most services to rural communities.**

### Rural proofing

#### *The challenge of delivering services for rural communities*

280. A number of witnesses drew attention to specific challenges in the rural context, including significant infrastructure and spatial differences between urban and rural areas. These included “dispersed housing settlements, ageing or overloaded infrastructure networks and the need to maintain close links with urban neighbours and global trade routes”.<sup>320</sup> These challenges can have an impact upon the quality of life of rural residents but, additionally, can limit the potential for growth and development in the rural economy.

318 Written evidence from TCPA ([NER0085](#))

319 [Q 162](#) (Merrick Denton-Thompson OBE)

320 Written evidence from LGA ([NER0014](#))

281. Sparsity can be an important factor to consider when assessing the impacts of policy upon rural communities and businesses. The CLA highlighted the increased costs that can result from delivering services to more sparsely populated areas, and suggested that departments outside Defra were unwilling to incur the cost of providing equivalent levels of services to those provided in urban areas.<sup>321</sup> They suggested that part of the challenge of rural proofing was the need to persuade Government departments that extra expenditure was required to secure universal services in rural areas.<sup>322</sup>

*Defra and rural proofing*

282. As mentioned at the outset of this chapter, the Government has offered the following definition of rural proofing: “Rural proofing aims to understand the impacts of government policy intervention and to ensure fair and equitable policy outcomes for rural areas. Rural proofing is about finding the best ways to deliver policies in rural areas”.<sup>323</sup>

283. Defra told us that their role was to champion rural proofing and support departments across government, in order that policies can take account of specific challenges and opportunities for rural business and communities, and that those who live, work and travel in rural areas are not disadvantaged.<sup>324</sup> They went on to set out a range of actions that they had taken in recent years to embed rural proofing across Government. These included:

- The publication of new guidance in March 2017, and co-hosting, with the Cabinet Office, a workshop for policymakers;
- The development and dissemination of a step-by-step guide to “applying the rural-urban classification”.
- A requirement within the Treasury Green Book for policymakers to assess whether proposals are likely to have a different impact in rural areas than elsewhere.<sup>325</sup>

The Rural Ambassador told us that there was a “strong drive” to ensure that rural proofing occurred at the beginning of policy processes, and that Defra worked collaboratively with other departments to seek to ensure that specific aspects of rural life and communities, such as sparsity, were accounted for properly.<sup>326</sup>

284. While many acknowledged Defra’s work in the area, and in particular the work of the Rural Ambassador,<sup>327</sup> we were told that the various attempts to address the demand for rural proofing had been unfocused and unsuccessful. Trevor Cherrett, TCPA Policy Council Member, argued that stakeholders were “forever trying to persuade Government to take rural into account”, going on to state:

---

321 Written evidence from CLA ([NER0026](#))

322 [Q 50](#) (Christopher Price)

323 Defra, *Practical guidance to assess impacts of policies on rural areas* (March 2017), p 2: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/600450/rural-proofing-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600450/rural-proofing-guidance.pdf) [accessed 13 March 2018]

324 Supplementary written evidence from Defra ([NER0079](#))

325 Supplementary written evidence from Defra ([NER0079](#))

326 [Q 198](#) (Lord Gardiner of Kimble)

327 [Q 49](#) (Christopher Price and Guy Smith)

“Why would rural not be taken into account if it is 20% to 25% of the population and 80% of the land? Why do organs of government, departments and so on, not take it fully into account? We have seen a period of trying to make them take it into account through rural proofing and setting up commissions and bodies and so on. It has worked very patchily. Breaking that down into why is another big matter. It has been a real struggle, and I think it has got worse”.<sup>328</sup>

285. This view was representative of our wider evidence on rural proofing. A key issue was that rural proofing, where it happened at all, was taking place too late in the policy-making process.<sup>329</sup> The Government’s rural proofing guidance, for example, sets out a four-stage process with no requirement to consult rural stakeholders until stage four,<sup>330</sup> by which time urban based policymakers may already have built in features that had negative effects for rural areas. Box 2 sets out a brief case study on housing policy, highlighting two policy changes that have had particularly negative impacts for rural communities.

### **Box 2: Rural housing and the failure of rural proofing**

#### **Rural Exception Sites**

Rural exception sites are small rural sites which would not otherwise be used for housing, sold by landowners at low cost to enable the construction of affordable housing in perpetuity for the local community.

We heard that the delivery of housing on such sites has been jeopardised by the introduction of a “right to buy” for housing association tenants. Although currently voluntary, this policy overrides the exception site requirement that housing should be affordable in perpetuity. CPRE told us that evidence suggested that the extension of the voluntary right to buy to housing association tenants was causing landowners to hold back land that they otherwise might provide for rural affordable housing, on the basis that housing brought forward may not remain affordable for the longer term.

Hastoe Housing Association informed us that: “Landowners who had made land available at below market value were angry that others might benefit financially from their generosity and many were withdrawing from new affordable schemes”. They argued that a proper, independent rural proofing process would have identified this unintended effect on rural communities “and could have challenged the Government to require changes to the voluntary agreement—for example, by recommending a clear exemption for rural communities.”

#### **Affordable housing thresholds**

Most housing developments are subject to local authority planning policies requiring direct provision of, or contributions towards, new affordable housing as a condition of planning permission. In 2016, the Government amended national planning guidance to prohibit affordable housing requirements for new developments of 10 units or fewer.

328 [Q 102](#) (Trevor Cherrett)

329 Written evidence from Rural England CIC ([NER0006](#)), [Q 119](#) (Jeremy Leggett)

330 Written evidence from NFU ([NER0076](#))

This has had a particular impact in rural areas where new housing is dominated by smaller sites, which have typically provided over 60% of new affordable housing. The policy change has contributed to a situation where, according to CPRE, 16.8% of new rural homes are classified as affordable—less than half the figure in 2012. The threshold policy was described to us by Graham Biggs as “devastating to rural areas” and “a prime example of rural interests not being consulted early enough”. Trevor Cherrett argued that the change in policy was “a disaster for rural areas”, going on to suggest that “either somebody somewhere decided that supporting developers was so important that they overrode it, or they misplaced it—they did not think of the rural implications”.

Sources: *Written evidence from Hastoe Housing Association* ([NER0067](#)), *CPRE* ([NER0083](#)), [Q 132](#) (Graham Biggs MBE), [Q 103](#) (Trevor Cherrett)

286. The urban background of policymakers, and a lack of understanding of rural communities in Whitehall, was highlighted as a consistent issue. We were told that “policymakers tend to think that rural communities are like urban communities but a bit smaller”,<sup>331</sup> while the Chair of the Rural Coalition suggested that “policymakers were, on the whole, embedded in London and are very urban-centric”.<sup>332</sup> She went on to state:

“Quite a lot of the people who are developing these policies—with the best will in the world—think of rural as farming, horticulture and environment. That is what they see. And they see the drivers of the economy as large businesses, whereas that is not always the case”.<sup>333</sup>

287. The lack of monitoring or follow-up is another reason for the failure of rural proofing. Rural proofing would work best in a context where its implementation is monitored and reported upon; we were told that “when it is known that rural proofing is an expectation, it is likely to happen”.<sup>334</sup> However, there is currently no regular, external monitoring of rural proofing by Whitehall,<sup>335</sup> and no enforcement measures or sanctions are applied should rural proofing fail to take place.

288. In addition, we heard that there was a view within Government that Defra dealt with “rural” matters, limiting the engagement required of other departments.<sup>336</sup> Notwithstanding this, it was also noted that Defra had themselves been guilty of a failure to rural proof. Dr Nigel Stone told us:

“As for rural proofing, I am going to be a bit unkind to Defra here, but they did not even do it themselves. They went to ‘digital by default’ in terms of service delivery before most other departments, when most of their customers do not have broadband, a mobile signal or even much prospect of getting it”.<sup>337</sup>

### *A role for the Cabinet Office?*

289. The current structures of policy making are not, therefore, well suited to rural proofing. Rural proofing does not happen often enough; when it does, it is often too late in the policy process. There is limited monitoring or follow-

331 [Q 129](#) (Sue Chalkley OBE)

332 [Q 121](#) (Margaret Clark CBE)

333 *Ibid.*

334 *Written evidence from Rural England CIC* ([NER0006](#))

335 *Ibid.*

336 [Q 124](#) (Margaret Clark CBE) and [Q 49](#) (Christopher Price)

337 [Q 29](#) (Dr Nigel Stone)

up, which diminishes the emphasis placed on rural proofing. There are also examples—not limited to those presented above—of major policy changes that have had significant negative implications for rural communities. These represent a failure of rural proofing.

290. We considered possible solutions to this issue. ACRE and the TCPA both argued for the creation of a rural policy unit within the Cabinet Office which would take on responsibility for rural policy generally, and which would become the lead department for rural proofing across Government.<sup>338</sup>
291. We have already set out, earlier in this chapter, our belief that responsibility for specific rural policy should rest with MHCLG. Rural proofing, however, is not the same as rural policy, and needs to have wider application across Government. We see no reason why each and every Government department should not be required to think about the ways in which their policies affect rural people. For this reason, we believe that the Cabinet Office, sitting at the centre of Government, should take on greater responsibility for rural proofing.
292. This view was favoured by a majority—but not all—of our witnesses. The Countryside Alliance told us that embedding rural proofing within the Cabinet Office would give rural needs a greater prominence within Government than they enjoyed in the days of the CRC:

“It seems to us that the only place you can have a proper view of policy development across all departments is in the Cabinet Office ... This role could sit in the Cabinet Office with a full view of policy development across the range of government and with the ability to influence that and point out to all departments that are developing policies ... that may have a differential impact of rural communities. It should also head off any necessity for Secretaries of State to intervene very late in the policy process. We would like to give rural communities that independent champion, sitting within the department and the place where policy is being developed, so they can have an impact. Whatever we say about the CRC, it was not in that place, and it could not have that view”.<sup>339</sup>

293. The NFU told us that they supported this view.<sup>340</sup> Wider support came from the District Councils Network and the County Councils Network (CCN), who suggested that the Cabinet Office has the required ability to influence at the centre of Government.<sup>341</sup> The CCN went on to state:

“What we are trying to say is that rural England, rural communities and the people who live there, deserve to have their voice heard at the centre of government. If you are looking for the centre of government, the eye will often land on the Cabinet Office”.<sup>342</sup>

294. In a similar vein, the Rural Services Network argued that the Cabinet Office would be well placed to take on rural proofing, given its presence at the heart of Government and its ability to influence other departments and shape their output.<sup>343</sup>

---

338 Written evidence from ACRE ([NER0022](#)) and TCPA ([NER0085](#))

339 [QQ 39–41](#) (Tim Bonner)

340 [Q 49](#) (Guy Smith)

341 [Q 109](#) (Cllr Ian Stewart and Daryl Phillips)

342 [Q 109](#) (Cllr Ian Stewart)

343 [Q 131](#) (Graham Biggs MBE)

295. **The delivery of services can be challenging—and sometimes more expensive—in rural areas as a result of population sparsity and more limited infrastructure. Policy changes by Government departments that fail to account for these challenges can have negative impacts for rural people.**
296. **Each and every Government department should be seeking to take account of the circumstances facing rural communities when developing policy. At present, the responsibility for promoting rural proofing across Government rests with Defra, but Defra does not have the cross-Government influence or capacity required to embed rural proofing more widely.**
297. **Rural proofing should be driven and promoted from the centre of Government and, as such, it is vital that the Cabinet Office takes the lead. We therefore recommend that responsibility for promoting and embedding rural proofing across all Government departments should be clearly assigned to the Cabinet Office, within a single purpose unit with the necessary resources and breadth of experience required to exert influence on all departments.**
298. **Additionally, we recommend that the Government should establish a mechanism by which departments report, to the Cabinet Office, on the actions that they have taken to ensure that rural proofing takes place. The Government should revise and strengthen its rural proofing guidance, in order to facilitate much earlier engagement with rural communities and their representatives. The revised guidance should then be promoted properly, with workshops used to raise awareness across and beyond Whitehall.**



## CHAPTER 6: GREEN LANES AND RIGHTS OF WAY

---

### The effect of the NERC Act 2006

299. Part Six of the NERC Act 2006 extinguished a large number of existing, unrecorded, public rights of way for motor vehicles. Section 67(2) provided a number of exceptions to this change, which have subsequently been the source of some controversy. Section 72 extended the power to make Traffic Regulation Orders, which limit the use of specified routes by motor vehicles, to National Park Authorities.
300. In their post-legislative assessment of the NERC Act Defra stated that “Part Six 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”.<sup>344</sup>
301. A number of submissions to our inquiry identified problems with Section 67(2)(b) of the NERC Act, which ensured that rights for motor vehicles were not extinguished on routes identified on local authorities ‘List of Streets’.<sup>345</sup> The routes affected by this exemption include roads sometimes known as ‘Green Lanes’, or as unsealed, unclassified roads (UURs).
302. We heard evidence suggesting that it was inappropriate for these roads to retain rights for motor vehicle use as they were easily susceptible to damage, and were often not maintained by local authorities owing to resource constraints.<sup>346</sup> Kent County Council also noted that the list of streets was originally intended to be a record of maintainable highways, rather than a record of highway rights.<sup>347</sup> The polarised views highlighted by Defra were evident in some of the material that we considered.

### Current issues

303. The North York Moors Green Lanes Alliance observed that “in recent years there has been a large increase in recreational use by off-roading motor vehicles, motor bikes and quads, and the disproportionate amount of damage done on UURs by them [means] many have become unusable for horse-drawn vehicles and at best difficult for horse riders”.<sup>348</sup>
304. The Alliance went on to argue that the NERC Act 2006 should be amended to enable UURs to be listed as restricted byways—effectively bridleways—meaning that horse drawn vehicles could use them, while other motorised vehicles would be prohibited.<sup>349</sup> This point was supported by the Yorkshire Dales Green Lanes Alliance which stated that “the Act needs amending, so as to remove motor-vehicular rights from unsealed unclassified county roads

---

344 Defra, *Post-legislative Scrutiny of the Natural Environment and Rural Communities Act 2006*, Cm 9473, July 2017, p 23: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/632026/nerc-act-2006-post-legislative-scrutiny-9473-print.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/632026/nerc-act-2006-post-legislative-scrutiny-9473-print.pdf) [accessed 13 March 2018]

345 A list of highways which are maintainable at public expense.

346 Written evidence from the North York Moors Green Lanes Alliance (NER0007), Yorkshire Dales Green Lanes Alliance (NER0002), Peak and Northern Footpaths Society (NER0005), Green Lanes Protection Group (NER0015), Peak Horsepower (NER0016), Fritz Groothues (NER0020), Peak District Green Lanes Alliance (NER0036), Green Lanes Environmental Action Movement (NER0038), Kent County Council Public Rights of Way and Access Service (NER0040)

347 Written evidence from Kent County Council Public Rights of Way and Access Service (NER0040)

348 Written evidence from the North York Moors Green Lanes Alliance (NER0007)

349 *Ibid.*

on the List of Streets that are not part of what Defra calls the ‘ordinary road network’”.<sup>350</sup>

305. Dr Michael Bartholomew of the Green Lanes Protection Group told us that “before NERC, there was a very low threshold for vehicle users to claim a route and turn it into a vehicular route, and the number of routes that would become vehicular was virtually unstoppable. The NERC Act put a stop to that and stopped the expansion, but now it needs to start to reduce those that are there”.<sup>351</sup> He added that “a small piece of legislation that extinguishes vehicular rights on those 3,000 miles on the lists of streets would be simple and very effective”.<sup>352</sup>
306. A critical perspective on this and similar proposals was provided by the Trail Riders Fellowship (TRF), which stated that its experience was that “responsible trailriding will, generally, have no greater impact on the road surface than that of a horse”. They also criticised the provisions in the NERC Act 2006 for which, it stated, “the practical effect ... has been to extinguish motorcycle access on roads that were established carriageways”.<sup>353</sup> The Fellowship added that “the objective evidence supports the TRF’s view that there was relatively little motorcycle traffic prior to NERC and that this remains the case post NERC”.<sup>354</sup>
307. The Motoring Organisations’ Land Access and Recreation Association (LARA) described the Act’s extinguishing of unrecorded rights of way as “a blunt instrument”. They noted in particular the removal of rights on public roads with vehicular rights of way which are also listed as footpaths, bridleways or restricted byways, meaning that “the public right of way for mechanically propelled vehicles is broken and rendered useless as a through-route”.<sup>355</sup>

### The use of Traffic Regulation Orders

308. We were told that problems with vehicular use could be addressed through the more widespread application of Traffic Regulation Orders (TROs), which enable Highways Authorities to restrict motor vehicles from using green lanes or other highways. Section 72 of the NERC Act extended these powers to National Parks. This approach was supported by the TRF, which stated that it “actively lobbies for and supports TROs which provide effective regulatory solutions to irresponsible behaviour”.<sup>356</sup>
309. The Country Land & Business Association told us that authorities were sometimes reluctant to use TROs because of the threat of costly litigation.<sup>357</sup> The Yorkshire Dales Green Lanes Alliance stated that Natural England “could be more energetic” in advising authorities to use TROs, and that “Natural England should also help authorities to frame their traffic regulation orders in ways that can withstand the legal challenges that vehicle users commonly present”.<sup>358</sup>

---

350 Written evidence from Yorkshire Dales Green Lanes Alliance ([NER0002](#))

351 [Q 138](#) (Dr Michael Bartholomew)

352 *Ibid.*

353 Written evidence from Trail Riders Fellowship ([NER0089](#))

354 *Ibid.*

355 Written evidence from LARA ([NER0024](#))

356 Written evidence from Trail Riders Fellowship ([NER0089](#))

357 Written evidence from CLA ([NER0026](#))

358 Written evidence from Yorkshire Dales Green Lanes Alliance ([NER0002](#))

310. The Peak District Green Lanes Alliance suggested that introducing TROs was a “cumbersome, resource intensive process” and that “there is a strong case for new legislation extending the grounds for a TRO”, which might include sustainability, threats to ancient monuments or SSSIs, and the protection of other routes. It added that “most importantly the TRO process needs streamlining”.<sup>359</sup>
311. We were told that only two National Park authorities have so far used the powers granted to them through the Act to make TROs. The Green Lanes Environmental Action movement stated that this may be due to some green lanes in some national parks being protected by legislation, as well as insufficient resources for the TRO process and the above mentioned risk of legal challenge.<sup>360</sup>
312. Kent County Council noted that the NERC Act 2006 failed to extend to National Parks the powers in Section 92 of the Traffic Regulation Act 1984 (to allow the placement of bollards in locations where traffic has been prohibited), “and as a result limited the ability of National Parks Authorities to effectively enforce Traffic Regulation Orders should they be made”.<sup>361</sup> The Council added that “the law of unintended consequences” may apply to the extinguishing of rights of way under the Act, as it “concentrated the recreational motor vehicle use of unsealed routes on a considerably shorter network”.<sup>362</sup>
313. Dr Michael Bartholomew stated that advice on the making of TROs was “overlapping, out of date, contradictory and ... in some cases wrong”. He noted that the handbook supplied to highways officers for the management of green lanes was “published in 2005, is completely out of date, and the examples are obsolete”.<sup>363</sup>
314. Alan Kind, of LARA, suggested that the TRO process could be helpful, but that “the big problem with the TRO system is that it is not very flexible; it is a bit all or nothing” and that a new scheme could be introduced allowing for more selective closures where conditions made it unusual or damaging for motorised vehicles to use the routes.<sup>364</sup>
315. We believe that TROs need to be used more widely and more flexibly to address some of the evident ongoing problems on green lanes. It is clear that some of the requirements associated with making a TRO are onerous, unnecessary and, in some cases, outdated.<sup>365</sup> The case for reform is clear.
316. **We accept the evidence that the exemptions contained in the NERC Act 2006 may result in damage from motorised vehicles if green lanes are not sensitively managed. Unfortunately, local authority resource constraints mean that these routes are not always properly maintained, and the process of drawing up Traffic Regulation Orders can be slow and resource-consuming, and also creates the risk of legal action. Given that trail riders’ groups and protection groups alike**

---

359 Written evidence from Peak District Green Lanes Alliance ([NER0036](#))

360 Written evidence from Green Lanes Environmental Action Movement ([NER0038](#))

361 Written evidence from Kent County Council Public Rights of Way and Access Service ([NER0040](#))

362 *Ibid.*

363 [Q 141](#) (Dr Michael Bartholomew)

364 [Q 146](#) (Alan Kind)

365 We were told, for example, that the requirement to advertise in a newspaper is a significant element of the estimated overall cost of around £2,000 [Q 115](#) (Cllr Ian Stewart).

welcomed the use of TROs in particular circumstances, we believe that improving these should be the first step in any new approach.

317. **The Government should take steps to simplify the process for—and thus reduce the costs of—establishing Traffic Regulation Orders, with the aim of securing better value, greater flexibility and applicability in the use of TROs to manage problems resulting from ‘green-laning’. This might include provision for more selective closures, reduction in bureaucracy in the application process and reduced, updated, advertising requirements.**

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

---

### Members

The Earl of Arran  
 Baroness Byford  
 The Earl of Caithness  
 Lord Cameron of Dillington (Chairman)  
 Lord Cavendish of Furness (from 23 October 2017)  
 Viscount Chandos (from 18 October 2017)  
 Lord Faulkner of Worcester  
 Lord Foster of Bishop Auckland  
 Lord Harrison (until 18 October 2017)  
 The Countess of Mar  
 Baroness Parminter  
 Baroness Scott of Bybrook (until 23 October 2017)  
 Baroness Scott of Needham Market  
 Baroness Whitaker

### Declarations of interest

Earl of Arran

*Member, Countryside Alliance, Country Land and Business Association and National Trust*

*Family farming interests in Devon. Land includes rights of way.*

Baroness Byford

*Family farming interests in Suffolk. Land includes rights of way.*

*President, Royal Agricultural Societies of England*

*Member, Country Land and Business Association, Countryside Alliance, National Farmers Union, National Trust*

*Secretary, All-Party Parliamentary Group on Rural Services*

*Vice President, Leicestershire and Rutland Rural Community Council*

*President, Suffolk Agricultural Association*

Earl of Caithness

*Vice Patron of a charitable trust, in Scotland, which owns land and benefits from EU grants. Land includes rights of way.*

*Member, Countryside Alliance.*

Lord Cameron of Dillington

*Former Chair of the Countryside Agency and an Ex-Rural Advocate.*

*Landowning and farming interests in receipt of environmental payments. Land includes rights of way.*

*Chair, Strategic Advisory Board, Government Global Food Security Programme*

*Chair, The Advisory Board of the Centre for Ecology and Hydrology*

*Member, Campaign to Protect Rural England, Countryside Alliance, Country Land and Business Association, National Farmers Union, National Trust and the Royal Society for the Protection of Birds.*

*Lawes Trustee, Rothamsted Research.*

**Lord Cavendish of Furness**

*Beneficiary of family trusts and companies concerned with landowning and farming interests in receipt of environmental payments; landlord / tenant relationships (including lease(s) to Natural England and Cumbria Wildlife Trust; mineral extraction; tourism and leisure; horseracing; shooting and fishing and forestry. Land includes rights of way.*

*Member, Angling Trust, British Association for Shooting and Conservation, Country Land and Business Association, Countryside Alliance, Cumbria Wildlife Trust, Cumbria Woodlands, Game and Wildlife Conservation Trust, Green Lanes Environmental Action Movement, Moorland Association, National Trust, North Lonsdale Agricultural Society and Salmon and Trout Association*

*President, Cark and District Angling Association, Dry Stone Walling Association and Grange and Wildfowlers Association*

*Former President and Patron, Cartmel Agricultural Society*

*Chairman, Leven Angling Association*

*Closely involved in negotiations with Natural England on coastal access in Cumbria.*

**Viscount Chandos**

*Trustee, Esmée Fairbairn Foundation and Ernest Kleinwort Charitable Trust. Both fund a wide range of environmental charities in the UK.*

**Lord Faulkner of Worcester**

*President, Heritage Railway Association*

*Chairman, Great Western Railway Advisory Board*

*President, Cotswold Line Promotion Group*

*Member, National Trust and English Heritage*

*Vice President, Campaign for Better Transport.*

**Lord Foster of Bishop Auckland**

*No relevant interests declared.*

**Lord Harrison**

*No relevant interests declared.*

**Countess of Mar**

*Husband owns 110 acres of land, 10 of which are woodland managed for wildlife, 20 for grass, currently let, which receive EU subsidy and 80 of which are arable land, let to a long-term tenant. Land includes rights of way. Husband is also the owner of buildings let to a farm and countryside store. The Countess of Mar benefits indirectly from these incomes.*

**Baroness Parminter**

*Liberal Democrat Spokesperson for Defra in the House of Lords (Interest ceased October 2017).*

*Member, National Trust and Surrey Wildlife Trust.*

**Baroness Scott of Bybrook**

*Leader, Wiltshire Council*

*Vice President, Local Government Association*

*Member of Executive, County Councils Network*

*Spokesperson, County Councils Network.*

**Baroness Scott of Needham Market**

*Deputy Chair, Harwich Haven Authority*

*Member, Suffolk Wildlife Trust and Royal Society for the Protection of Birds Trustee, Community Action Suffolk, which receives a grant from Defra under the funding stream for ACRE.*



**Baroness Whitaker**

*Vice President and former President of the South Downs Society  
Resident of a village in the South Downs National Park  
Member, Ouse and Adur Rivers Trust  
Chair, Newhaven Coastal Communities Team*

A full list of Members' interests can be found in the Register of Lords Interests:  
<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

**Professor Maria Lee (Specialist Adviser)**

*Professor of Law, Vice-Dean, Co-director of the Centre for Law and the Environment, Faculty of Laws, University College London  
Occasional work with the Brexit Scenarios Group of Greener UK (unpaid)  
Member, Academic Panel of Francis Taylor Building, Barristers Chamber  
Editorial Committee and Director, Modern Law Review  
Editorial Committee, Journal of Environmental Law  
Executive Committee, Society of Legal Scholars  
Member, UK Environmental Law Association, Herts and Middlesex Wildlife Trust, National Trust, Ramblers Association and Amnesty International.*

**Professor Mark Shucksmith OBE (Specialist Adviser)**

*Professor of Planning and Director of Newcastle University Institute for Social Renewal, Newcastle University.  
Newcastle University receives funding from the European Commission and ESRC for research into rural policy, with which Professor Shucksmith is involved.  
Trustee, Action with Communities in Rural England (ACRE)  
Trustee, Carnegie UK Trust  
Member of Stakeholder Group, Rural England  
Formerly Board member of Countryside Agency (2005–06) and Commission for Rural Communities (2006–13).*

## APPENDIX 2: LIST OF WITNESSES

---

Evidence is published online at [www.parliament.uk/nerc-act-committee](http://www.parliament.uk/nerc-act-committee) and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \*\* gave both oral evidence and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

**	Alan Law, Chief Officer for Strategy and Reform, Natural England	<a href="#">QQ 1–11</a>
**	Shirley Trundle CBE, Director, Natural Environment Policy, Department for Environment, Food and Rural Affairs	
*	Lord Haskins	<a href="#">QQ 12–17</a>
*	Dr Stuart Burgess CBE, Former Chairman, Commission for Rural Communities	<a href="#">QQ 18–24</a>
*	Nick Johannsen, Director, Kent Downs AONB Unit, appearing on behalf of the National Association of Areas of Outstanding Natural Beauty	<a href="#">QQ 25–30</a>
*	Dr Nigel Stone, Former Chief Executive, Exmoor National Park Authority	
*	Harry Bowell, Director, North, National Trust	<a href="#">QQ 31–36</a>
*	Dr David Bullock, Head of Species and Habitat Conservation, National Trust	
*	Tim Bonner, Chief Executive, Countryside Alliance	<a href="#">QQ 37–47</a>
**	Christopher Price, Director of Policy and Advice, Country Land and Business Association (CLA)	<a href="#">QQ 48–58</a>
**	Guy Smith, Vice-President, National Farmers' Union (NFU)	
*	Dieter Helm CBE, Professor of Economic Policy, University of Oxford and Chairman of the Natural Capital Committee	<a href="#">QQ 59–66</a>
*	George Dunn, Chief Executive, Tenant Farmers Association	<a href="#">QQ 67–77</a>
*	David Trigger MBE, Chairman, Small Farms Association	
**	Chris Corrigan, Director, RSPB England	<a href="#">QQ 78–88</a>
**	Stephen Trotter, Director, England, The Wildlife Trusts	
*	Dr Jo Judge, Chief Executive, National Biodiversity Network	<a href="#">QQ 89–94</a>

- \*\* Dr Stephanie Wray, President, Chartered Institute of Ecology and Environmental Management (CIEEM)
- \*\* Dr Hugh Ellis, Head of Policy, Town and Country Planning Association [QQ 95–106](#)
- \*\* Trevor Cherrett, TCPA Policy Council Member, Town and Country Planning Association
- \* Daryl Phillips, Joint Chief Executive of Hart District Council and the District Councils' Network Chief Executive Planning Lead [QQ 107–116](#)
- \*\* Cllr Ian Stewart, Spokesman for Environment and Communities, County Councils Network and Deputy Leader, Cumbria County Council
- \*\* Margaret Clark CBE, Chair, Rural Coalition [QQ 117–126](#)
- \*\* Jeremy Leggett, Trustee, Action with Communities in Rural England (ACRE)
- \* Graham Biggs MBE, Chief Executive, Rural Services Network [QQ 127–136](#)
- \*\* Sue Chalkley OBE, Chief Executive, Hastoe Housing Association
- \*\* Dr Michael Bartholomew, Chairman, Green Lanes Protection Group [QQ 137–142](#)
- \*\* Dr Diana Mallinson, Honorary Secretary, Green Lanes Environmental Action Movement
- \*\* Mario Costa-Sa, Chair, Trail Riders Fellowship [QQ 143–148](#)
- \*\* Alan Kind, Principal Officer, Motoring Organisations' Land Access and Recreation Association (LARA)
- \* Alison Hallas, Policy and Advocacy Officer, Ramblers [QQ 149–157](#)
- \* Stephen Russell, Policy and Advocacy Officer, Ramblers
- \*\* Merrick Denton-Thompson OBE, President, Landscape Institute [QQ 158–167](#)
- \*\* Rebecca Hughes, Policy & Influencing Officer, Landscape Institute
- \* David Baldock, Senior Fellow, Institute for European Environmental Policy (IEEP) [QQ 168–176](#)
- \* Martin Nesbit, Head, Climate and Governance Programme, Institute for European Environmental Policy
- \* Dr Tony Grayling, Director of Sustainable Business and Development, Environment Agency [QQ 177–184](#)
- \*\* Dr Andy Clements, Board Member, Natural England [QQ 185–196](#)
- \*\* Alan Law, Chief Officer for Strategy and Reform, Natural England

- \*\* Andrew Sells, Chairman, Natural England
- \*\* Rt Hon. Michael Gove MP, Secretary of State for Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs [QQ 197–208](#)
- \*\* Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Department for Environment, Food and Rural Affairs

### Alphabetical list of all witnesses

- \*\* Action with Communities in Rural England (ACRE) [NER0022](#)
- Association of Local Environmental Record Centres (ALERC) [NER0066](#)
- Association of Local Government Ecologists (ALGE) [NER0048](#)
- Bat Conservation Trust [NER0061](#)
- British Caving Association [NER0033](#)
- British Ecological Society [NER0068](#)
- Broads Local Access Forum [NER0047](#)
- \*\* Chartered Institute of Ecology and Environmental Management (CIEEM) [NER0030](#)
- \*\* Country Land and Business Association (CLA) [NER0026](#)
- Community First Yorkshire [NER0017](#)
- Condover Parish Council [NER0008](#)
- Cotswold District Council [NER0056](#)
- \*\* County Councils Network (CCN) [NER0086](#)
- CPRE [NER0083](#)
- Cranborne Chase AONB [NER0071](#)
- Cycling UK [NER0060](#)
- [NER0090](#)
- \*\* Department for Environment, Food and Rural Affairs [NER0025](#)  
[NER0079](#)  
[NER0084](#)  
[NER0094](#)
- Doncaster Metropolitan Borough Council [NER0046](#)
- Dorset Local Nature Partnership [NER0059](#)
- East Riding of Yorkshire & Kingston Upon Hull Joint Local Access Forum [NER0031](#)
- Field Studies Council [NER0003](#)
- Forestry Commission, England [NER0049](#)
- The Geological Society [NER0075](#)
- Jackie German [NER0062](#)

	Mr Peter Giles	<a href="#"><u>NER0019</u></a>
	Gloucestershire Local Access Forum	<a href="#"><u>NER0021</u></a>
	Greater Lincolnshire Nature Partnership	<a href="#"><u>NER0044</u></a>
**	Green Lanes Environmental Action Movement (GLEAM)	<a href="#"><u>NER0038</u></a>
**	Green Lanes Environmental Action Movement and Green Lanes Protection Group	<a href="#"><u>NER0088</u></a>
**	Green Lanes Protection Group	<a href="#"><u>NER0015</u></a>
	Fritz Groothues	<a href="#"><u>NER0020</u></a>
**	Hastoe	<a href="#"><u>NER0067</u></a>
	Historic England	<a href="#"><u>NER0073</u></a>
	Historic House Association	<a href="#"><u>NER0057</u></a>
	Joint Nature Conservation Committee (JNCC)	<a href="#"><u>NER0039</u></a>
	Peter Karner	<a href="#"><u>NER0028</u></a>
	Kent County Council Public Rights of Way and Access Service	<a href="#"><u>NER0040</u></a>
	Mr Roger John Kirkham	<a href="#"><u>NER0063</u></a>
**	Landscape Institute	<a href="#"><u>NER0070</u></a>
	Lincolnshire Wildlife Trust	<a href="#"><u>NER0064</u></a>
	Local Government Association (LGA)	<a href="#"><u>NER0014</u></a>
	Mid & West Berks Local Access Forum	<a href="#"><u>NER0027</u></a>
	Dr Gordon Morris	<a href="#"><u>NER0018</u></a>
**	Motoring Organisations' Land Access and Recreation Association (LARA)	<a href="#"><u>NER0024</u></a> <a href="#"><u>NER0087</u></a>
**	National Farmers' Union (NFU)	<a href="#"><u>NER0076</u></a>
**	Natural England	<a href="#"><u>NER0082</u></a> <a href="#"><u>NER0092</u></a> <a href="#"><u>NER0095</u></a>
	Natural Environment Research Council (NERC)	<a href="#"><u>NER0029</u></a>
	New Forest Access Forum	<a href="#"><u>NER0011</u></a>
	Norfolk County Council	<a href="#"><u>NER0042</u></a>
	Norfolk Local Access Forum	<a href="#"><u>NER0041</u></a>
	Norfolk Rural Strategy Steering Group	<a href="#"><u>NER0065</u></a>
	North Somerset Local Access Forum	<a href="#"><u>NER0012</u></a>
	North York Moors Green Lanes Alliance	<a href="#"><u>NER0007</u></a>
	North Yorkshire County Council	<a href="#"><u>NER0081</u></a>
	Open Spaces Society	<a href="#"><u>NER0074</u></a>
	Ove Arup and Partners Ltd	<a href="#"><u>NER0069</u></a>

	Peak and Northern Footpaths Society	<a href="#"><u>NER0005</u></a>
	Peak District Green Lanes Alliance	<a href="#"><u>NER0036</u></a>
	Peak Horsepower	<a href="#"><u>NER0016</u></a>
	Pennine National Trails Partnership	<a href="#"><u>NER0013</u></a>
	Rotherham Metropolitan Borough Council	<a href="#"><u>NER0072</u></a>
	Royal Botanic Gardens, Kew	<a href="#"><u>NER0052</u></a>
**	RSPB	<a href="#"><u>NER0051</u></a>
		<a href="#"><u>NER0091</u></a>
**	Rural Coalition	<a href="#"><u>NER0037</u></a>
	Rural England CIC	<a href="#"><u>NER0006</u></a>
	Lord Bishop of St Albans and Bishop of Hereford	<a href="#"><u>NER0043</u></a>
	Mr Peter Schofield	<a href="#"><u>NER0009</u></a>
	Sheffield City Council	<a href="#"><u>NER0054</u></a>
	Shropshire Council	<a href="#"><u>NER0055</u></a>
	South West Coast Path Association	<a href="#"><u>NER0045</u></a>
	Staffordshire County Council	<a href="#"><u>NER0077</u></a>
**	Town and Country Planning Association (TCPA)	<a href="#"><u>NER0085</u></a>
**	Trail Riders Fellowship	<a href="#"><u>NER0089</u></a>
	UK Environmental Law Association	<a href="#"><u>NER0053</u></a>
	Welsh Government	<a href="#"><u>NER0093</u></a>
	Mr David White	<a href="#"><u>NER0034</u></a>
	Wildlife and Countryside Link	<a href="#"><u>NER0078</u></a>
**	The Wildlife Trusts	<a href="#"><u>NER0080</u></a>
	Mr John Wilson	<a href="#"><u>NER0032</u></a>
	Yorkshire Dales Green Lanes Alliance	<a href="#"><u>NER0002</u></a>



## APPENDIX 3: CALL FOR EVIDENCE

---

The House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006 was appointed by the House on 29 June 2017. The remit of the Committee is “to consider and report on the Natural Environment and Rural Communities Act 2006”.

The Committee will explore the following key issues in detail and would welcome your views on any or all of the following questions. Please note that questions are not listed here in any particular order of importance.

### Questions

This is a public call for written evidence to be submitted to the Committee. The deadline is 4pm on Monday 11 September 2017.

#### *Rural advocacy and the Commission for Rural Communities*

1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how—if at all—are the CRC’s original functions of advocate, adviser and watchdog being fulfilled?
2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas—and who should be taking the lead on such matters?
3. What role should Defra—or other Government departments—play in co-ordinating policy for rural areas? How effectively are the interests—including social and economic interests—of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?

#### *Natural England*

4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?
5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?
6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England—and other partners—been in promoting better access?

#### *Sustainability and biodiversity*

7. Is the duty to ‘have regard’ to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?
8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?

9. How does the English duty to ‘have regard’ to biodiversity compare to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?

*The changing context since 2006*

10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?
11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?

**APPENDIX 4: ACRONYMS AND GLOSSARY**

---

ACRE	Action with Communities in Rural England
ALGE	Association of Local Government Ecologists
AONB	Area of Outstanding Natural Beauty
CAP	Common Agricultural Policy
CCC	Committee on Climate Change
CCN	County Councils Network
CJEU	Court of Justice of the European Union
CIEEM	Chartered Institute of Ecology and Environmental Management
CLA	Country Land & Business Association
CRC	Commission for Rural Communities
CRoW Act	Countryside and Rights of Way Act 2000
Defra	Department for Environment, Food and Rural Affairs
GLNP	Greater Lincolnshire Nature Partnership
GVA	Gross Value Added
HMRC	Her Majesty's Revenue & Customs
IEEP	Institute for European Environmental Policy
JNCC	Joint Nature Conservation Committee
LARA	Motoring Organisations' Land Access and Recreation Association
LEPs	Local Enterprise Partnerships
LGA	Local Government Association
LI	Landscape Institute
MAFF	Ministry of Agriculture, Fisheries and Food
MHCLG	Ministry for Housing, Communities and Local Government
NDPB	Non-Departmental Public Body
NE	Natural England
NERC Act	Natural Environment and Rural Communities Act 2006
NEWP	Natural Environment White Paper (2011)
NFU	National Farmers' Union
NGO	Non-Governmental Organisation
NIAAs	Nature Improvement Areas
NPPF	National Planning Policy Framework
OECD	Organisation for Economic Co-operation and Development

RCPU	Rural Communities Policy Unit
RDA	Regional Development Agency
RSPB	Royal Society for the Protection of Birds
SSSI	Site of Special Scientific Interest
TCPA	Town and Country Planning Association
TRF	Trail Riders Fellowship
TROs	Traffic Regulation Orders
UURs	Unsealed, Unclassified Roads

**APPENDIX 5: FLOWCHART OF PREVIOUS ORGANISATIONS**

