

*These notes refer to the Natural Environment and Rural Communities Act 2006 (c.16) which received Royal Assent on 30 March 2006*

# NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Flexible administrative arrangements**

##### *Chapter 1: Agreements with designated bodies*

#### **Powers to enter into agreements**

##### *Section 78: Agreement between Secretary of State and designated body*

199. This section gives the Secretary of State a power to enter into an agreement with a designated body authorising that body to carry out a Defra function on behalf of the Minister. A Defra function is one that the Secretary of State certifies as one that falls to be performed by or through the Department for Environment, Food and Rural Affairs.
200. “Designated body” is defined as a body listed in Schedule 7. The Secretary of State can amend the list in Schedule 7 by statutory instrument.
201. An agreement made under this section will, for example, enable activities that are currently carried out by Defra’s Rural Development Service to be carried out by Natural England.

##### *Section 79: Agreement between designated bodies*

202. This section allows one designated body (“A”) to enter into an agreement with another designated body (“B”) authorising “B” to carry out a function of “A” that is related to or connected with a Defra function. This would be by mutual agreement, and subject to the approval of the Secretary of State.
203. The section allows for the Secretary of State’s approval to be given either to a particular agreement or to a description of agreements. This will enable the Secretary of State to approve an agreement in respect of a single function or to give a generic approval (which may be time limited if desired) that covers a group of similar functions.

##### *Section 80: Designated bodies*

204. This section introduces Schedule 7, which lists designated bodies. It also sets out the circumstances in which the Secretary of State may add bodies to the list or remove them from it. Most of the bodies listed in Schedule 7 are bodies in the “Defra family” (i.e. bodies sponsored by Defra). Others carry out at least one function that is related to or connected with a function of Defra. For instance, the Forestry Commission (a non-ministerial department) and the Historic Buildings and Monuments Commission for England (a non departmental public body known as “English Heritage” and sponsored by the Department for Culture, Media and Sport) have been included in the list. Local

authorities have been included in the list because they already perform a number of Defra-related functions.

### ***Section 81: Reserved functions***

205. This section provides that a function cannot be subject to an agreement under section 78 or 79 (a “Chapter 1 agreement”) if it is a “reserved function”. Reserved functions are listed in *subsection (2)* and include, for example: functions whose performance by the designated body would be incompatible with that body’s purposes, powers of a Minister to make and terminate appointments; Ministerial powers to give directions, guidance issue codes of practice and make subordinate legislation; Ministerial powers to fix fees and charges (unless the Secretary of State has ordered otherwise); accounting officer functions; and functions under the Water Industry Act 1991 and any subordinate legislation made under that Act. Powers of entry, inspection, sampling and seizure and related powers are also reserved functions, except where the body being authorised is a public body.

### ***Section 82: Maximum duration of agreement***

206. This section imposes a 20-year limit on the duration of Chapter 1 agreements.

### ***Section 83: Particular powers***

207. *Subsection (2)* of this section provides for various cases where the body being authorised to carry out a function under a Chapter 1 agreement is already involved with the function in some way, for example as a consultee, as a body that must give its consent before Ministers or others can perform the function, or in the joint exercise of the function. The subsection clarifies that Chapter 1 agreements can still be made in such circumstances.
208. *Subsection (4)* provides that the lack of a specific power to carry out a function, will not prevent a body from performing it if the body has been authorised to so under a Chapter 1 agreement. It also provides that the body can delegate performance to a specially-formed body corporate or to a committee, sub-committee, member officer or employee of the body (except in certain local authority cases, or if the agreement prohibits this). However, *subsection (6)* provides that delegation of the performance of the function to anyone else is generally not permitted.

### ***Section 84: Agreements with local authorities***

209. This section makes particular provision for local authorities in relation to Chapter 1 agreements. Local authorities require this provision due to the legislative streamlining of local government decision-making under the Local Government Act 2000. Under that Act and subordinate legislation each function of a principal local authority is (depending on the function) administered either directly by the full council or through executive arrangements. Detailed arrangements for the performance of the functions are specified in regulations made under section 13 of the 2000 Act.
210. This section provides that where a function is to be discharged on behalf of the Secretary of State or another designated body by a local authority under a Chapter 1 agreement, the existing allocation of responsibility for the performance of that type of function under the 2000 Act and subordinate legislation (whether executive or full council) will apply.
211. The section also provides that the full council (or the executive, as applicable) may use various usual powers of delegation (for example, to committees and officers) to perform the function.

***Section 85: Supplementary provisions with respect to agreements***

212. *Subsection (1)* of this section provides that Chapter 1 agreements, and any approvals for them under section 72, must be in writing. Under *subsection (2)* the agreements are to be made public in such a way that, in the Secretary of State's opinion, bodies and people likely to be affected by an agreement have it brought to their attention.
213. *Subsection (3)* provides that no power of a Minister of the Crown to give directions to a statutory body can be used to require the body to enter into a Chapter 1 agreement, or to prohibit it from doing so.
214. *Subsection (4)* applies Schedule 15 to the Deregulation and Contracting Out Act 1994 to authorisations by a designated body under section 72. This is to make clear to each contracting body how to handle confidential information and the situations where sharing of information between the contracting bodies is permitted.

***Chapter 2: Powers to reform agricultural etc. bodies***

**Power to create boards**

215. This Chapter gives the Secretary of State the powers to establish new bodies for agricultural and related industries and to dissolve both existing levy bodies and any bodies created using the provisions in this Chapter. This Chapter also allows for property, rights, liabilities and any surplus to be transferred from the dissolved body or board.

***Section 87: Power to establish boards***

216. This section confers power on the appropriate authority to make an order establishing a board. The order will specify the purpose for which the board is established and assign certain functions to it. The permissible purposes are set out in section 88; the permissible functions are set out in section 89. An order under this section must specify the geographical area in relation to which assigned functions are to be exercised.
217. "The appropriate authority" is defined in section 96 #
- in relation to matters concerning England only, the appropriate authority is the Secretary of State;
  - in relation to matters concerning Wales only, the appropriate authority is the National Assembly for Wales;
  - in relation to matters concerning Scotland only, the appropriate authority is the Scottish Ministers;
  - in relation to matters concerning Northern Ireland only, the appropriate authority is the Department of Agriculture and Rural Development in Northern Ireland;
  - in relation to certain other specified matters (broadly speaking cross-border matters), the appropriate authority is the Secretary of State acting with the approval of the National Assembly for Wales, the Scottish Ministers (where a draft of the order has been approved by a resolution of the Scottish Parliament) or the Department of Agriculture and Rural Development in Northern Ireland.
218. An order under this section is referred to in the Act (and in these notes) as a "section 87 order".
219. The procedure for making a section 87 order is provided for in section 97.

***Section 88: Permissible purposes of boards***

220. *Subsection (1)* lists the purposes for which a board may be established. *Subsection (2)* requires a section 87 order to specify the purposes for which the board is established and to define the industry to which the order relates.

***Section 89: Permissible function of boards***

221. This section sets out the variety of functions which may be assigned to a board under a section 87 order. The section introduces Schedule 9, which contains a list of functions that is based on those available for development councils set up under the Industrial Organisation and Development Act 1947. The functions include promoting and undertaking scientific research, and promoting marketing, product certification, development of export trade, education and training. The other permissible functions that may be assigned to a board are functions of the five main existing levy bodies. Three of them, those dealing with horticulture, potatoes and milk, are set up as development councils under the 1947 Act. There is a separate Act, the Cereals Marketing Act 1965, that set up the levy board in the cereals sector (Home Grown Cereals Association), and Part 1 of the Agriculture Act 1967 that set up the Meat and Livestock Commission. These bodies will remain in place unless and until the appropriate authority decides to dissolve them (see section 91).

***Section 90: Ancillary provisions***

222. This section introduces Schedule 10, which contains further provisions about the contents of a section 87 order. These include provisions relating to acting through subsidiaries, registers, returns and other information, investigative powers, levies, reserve funds, power to charge for services, incidental powers, approval of appropriate authority, consultation and offences.
223. In particular the board of a new body will be able to demand sight of records and other documents so as to enable it to verify that the correct levy is raised from people. It will also take note of the views of the different sectors.

**Power to dissolve existing levy bodies and boards**

***Section 91: Power to dissolve existing levy bodies***

224. This section confers power on the appropriate authority to dissolve the existing levy bodies (as defined by section 89(2)). The section ensures that where an existing levy body is dissolved the primary or secondary legislation which established the body is repealed or revoked.

***Section 92: Power to dissolve board***

225. This section confers power on the appropriate authority to dissolve any board established under this Chapter.

***Section 93: Dissolution: supplementary***

226. This section provides that, in the event of an order for the dissolution of an existing levy body or a board created under this Chapter, the order may deal with the transfer of any property, rights or liabilities of the existing body or board. Also, where an existing levy body or a board has collected levies, any surplus assets can be applied elsewhere by the order (for example, for the benefit of the industry that has paid the levies in past years).

## **Powers of appropriate authority**

### ***Section 94: Grants***

227. Under this section the appropriate authority may make grants to a board under such conditions as the authority sees fit.

### ***Section 95: Directions***

228. Under this section the appropriate authority may give a board directions as to the exercise of its functions, and revoke or amend such directions (which have to be in published).

## ***Chapter 3 Financial assistance***

### ***Section 98: Financial assistance***

229. This section enables the Secretary of State to provide financial assistance in respect of expenditure incurred or to be incurred in any matter related to or connected with a Defra function, subject to any conditions (for example terms governing reimbursement on breach) specified. These grant-giving powers are couched broadly and flexibly in order to enable the Secretary of State to fund any function within Defra's remit, even where a more specific power to give financial assistance exists. This will, for example, enable the Secretary of State to fund directly matters such as social and economic regeneration of deprived rural areas. At present she can do this only through the Countryside Agency or some other delivery agency. The new power can be exercised in relation to Wales and Northern Ireland.