

*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 1: Natural England and the Commission for Rural Communities**

##### *Chapter 1: Natural England*

#### **Constitution and general purpose**

##### *Section 1: Constitution*

- 56. This section establishes Natural England, dissolves the Countryside Agency and English Nature and introduces Schedule 1.
- 57. *Schedule 1* sets out the constitution of Natural England, and includes provisions about its status, membership, chief executive and other employees, pay and pensions, procedure, accounts and annual reports.
- 58. The functions of English Nature and the Countryside Agency are transferred to Natural England, subject to the provisions of the Act. An example of a function that is not transferred is the function of the Countryside Agency under section 1 of the Miscellaneous Financial Provisions Act 1983, under which the Agency was under a duty to further social and economic development in rural areas.
- 59. Natural England may have functions which are not spelt out in Part 1. For example, it may have functions under legislation amended by Schedule 11, or under European Community schemes or EC Regulations.

##### *Section 2: General purpose*

- 60. *Subsection (1)* sets out that Natural England's general purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development. The terms "natural environment" and "benefit" are not defined but are meant to be broad and encompassing, going wider than the specific purposes listed in subsection (2), so that the natural environment could be found in towns in open spaces as well as in the countryside. The reference in subsection (1) to sustainable development indicates that Natural England is meant to seek solutions which, while achieving environmental benefits, also provide long-term economic and social benefits, and avoid untoward economic and social impacts.
- 61. *Subsection (2)* lists specific matters covered by the general purpose. Those matters include ones which have been purposes of the Countryside Agency and English Nature and aims of the Rural Development Service. Subsection (2) is not intended to be a comprehensive or hierarchical list. Natural England will also be able to pursue anything which falls within its general purpose as set out in subsection (1).

- 62. Subsection (2)(a) provides that the general purpose includes promoting nature conservation and protecting biodiversity. “Nature conservation” is defined in section 30 as the conservation of flora, fauna or geological or physiographical features.
- 63. Subsection (2)(b) sets out a purpose of conserving and enhancing the landscape. This includes, but goes wider than, conserving the natural beauty of the landscape. It could for example cover conserving field boundaries (such as hedgerows and dry stone walls), and monuments, buildings and sub-surface archaeological features which contribute to the landscape. Natural England will be able to conserve and enhance the English landscape for aesthetic, cultural and historic purposes as well as those carried out for habitat protection purposes.
- 64. Subsection (2)(c) and (d) provides that Natural England’s general purpose includes securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment, as well as encouraging open-air recreation and promoting access to the countryside and open spaces. These purposes are similar to the purposes of the Countryside Agency and English Nature under the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”), the Countryside Act 1968 (“the 1968 Act”) and the Wildlife and Countryside Act 1981 (“the 1981 Act”).
- 65. Subsection (2)(e) provides that Natural England’s general purpose includes contributing to social and economic well-being through management of the natural environment.
- 66. Subsection (3) makes clear that the purpose in subsection (2)(e) may be carried out by working with local communities.

### **Advisory functions**

#### **Section 3: Review and research**

- 67. Subsections (1) and (2) ensure that Natural England keeps under review matters relating to its general purpose, and that it consults bodies that it considers to have an interest when doing so.
- 68. Subsection (3) gives Natural England powers to undertake research which relates to its general purpose, and to commission or support others to undertake such research. The power to support research is not limited to financial support and so could include the provision of accommodation, equipment and expertise. “Research” is defined by section 30 to include inquiries and investigations, and so could include, for example, surveys and monitoring of the natural environment.
- 69. Subsection (4) ensures that when Natural England is carrying out functions to monitor nature conservation and related activities it should have regard to the common standards for monitoring of nature conservation, research into nature conservation and analysis of resulting information that have been established by the Joint Nature Conservation Committee.

#### **Section 4: Advice**

- 70. This section specifies Natural England’s duties and powers to provide advice to public authorities and others in relation to Natural England’s general purpose. “Public authority” is defined in section 30.

### **General implementation powers**

#### **Section 5: Carrying out proposals etc.**

- 71. As well as allowing Natural England to carry out proposals itself in pursuit of its general purpose, this section gives Natural England power to assist, coordinate and promote others’ carrying out of such proposals. This power will enable Natural England to enter

into a variety of working arrangements with persons or organisations in the public, private, voluntary and charity sectors.

### ***Section 7: Management agreements***

72. Management agreements are agreements that Natural England may enter into with people who have an interest in land. Their aim is to ensure that the land is managed or used in a way that helps to further Natural England's general purpose. This section replaces English Nature and the Countryside Agency's agreement-making powers in other legislation, but transitional provisions will ensure that any existing agreements made by English Nature and the Countryside Agency remain in force.
73. **Section 7** needs to be read in conjunction with the consequential amendments made to the 1949 Act, the 1968 Act and the 1981 Act by Schedule 11. Those Acts make further provision about the consequences of entering into or not entering into management agreements, and other related matters.

### ***Section 8: Experimental schemes***

74. The Countryside Agency currently has powers under section 4 of the 1968 Act to make and carry out experimental schemes designed to facilitate the enjoyment of the countryside, or to conserve or enhance its natural beauty or amenity. This section gives Natural England power to enter into experimental schemes over its whole remit.

### **Other functions**

### ***Sections 9 and 10: Information, consultancy and training services etc.***

75. These sections specify information, consultancy and training services that Natural England may provide. In relation to information services, section 9 provides that the power is not to be read as limited by any other enactment conferring more specific information powers. (An example of a more specific power is section 86 of the 1949 Act, which requires information to be provided about the location and means of access to National Parks, areas of outstanding natural beauty and long-distance routes.)

### ***Section 11: Power to charge for services and licences***

76. This section gives Natural England power, with the consent of the Secretary of State, to charge for its services. Charges are to be reasonable. The intention is to allow cost recovery.
77. The section also gives the Secretary of State a power, exercisable by negative-resolution statutory instrument, to require charges for licences where no charging provisions are set out elsewhere and to provide for exemptions or remissions from those charges.

### ***Section 12: Power to bring criminal proceedings***

78. This section provides that Natural England has the power to institute proceedings and the power to authorise persons other than barristers or solicitors to bring prosecutions on its behalf. This enables Natural England to have prosecutors on its staff in the same way as do organisations such as the Environment Agency and local authorities.

### ***Section 13: Incidental powers***

79. *Subsection (1)* gives Natural England power to do anything conducive or incidental to the discharge of its functions. This includes but is not limited to the powers listed in *subsection (2)*. The power to enter into agreements is not limited, and therefore can include working arrangements with persons in the private, public, voluntary and charity sectors.

## **Powers of Secretary of State**

### ***Section 15: Guidance***

80. This section gives the Secretary of State power, following consultation with Natural England and the Environment Agency, to give guidance to Natural England about how to carry out its functions. *Subsection (1)* requires the Secretary of State to give guidance to Natural England as to how it exercises its functions in relation to regional planning and associated functions.
81. Similarly, Schedule 11 contains an amendment to section 4(5) of the Environment Protection Act 1995 to require the Secretary of State to consult Natural England as well as the Environment Agency before giving guidance to the Environment Agency.
82. Natural England and the Environment Agency are required to have regard to guidance issued to them by the Secretary of State.

### ***Section 16: Directions***

83. This section gives the Secretary of State power to give general or specific directions to Natural England and requires that those directions be published. *Subsection (2)* provides that the direction-giving power does not apply to functions that Natural England exercises through the Joint Nature Conservation Committee. (The Secretary of State has a separate power to give directions to that committee under section 38. See further below.)
84. Natural England must comply with directions given under this section.

## ***Chapter 2: Commission for Rural Communities***

### **The Commission and its general purpose**

#### ***Section 17: Commission for Rural Communities***

85. This section establishes the Commission for Rural Communities.
86. It introduces Schedule 2, which sets out the constitution of the Commission, including provisions about its status, membership, chief executive and other employees, pay and pensions, procedure, accounts and annual reports.

#### ***Section 18: Commission's general purpose***

87. This section sets out the general purpose of the Commission. The purpose is focused upon the social and economic needs of persons in rural areas of England, especially people suffering from social disadvantage and areas suffering from economic under-performance. The general purpose of the Commission is to promote awareness among relevant persons of rural needs, and to promote the meeting of those needs in ways that contribute to sustainable development. "Relevant persons" is defined by section 18 as meaning public authorities and other bodies which appear to the Commission to be concerned with any aspect of rural needs.

## **Functions**

### ***Section 19: Representation, advice and monitoring***

88. The three main functions of the Commission are:
  - representation: i.e. to be an advocate to the Government and others for the social and economic needs of rural people, especially those suffering social disadvantage and those in areas suffering from economic under-performance;

- information and advice: i.e. to provide advice to the Government and others on issues affecting rural needs in England and ways of meeting them; and
- monitoring and reporting: i.e. to monitor and report on the way in which relevant persons' policies are developed, adopted and implemented report (by rural proofing or otherwise) and the extent to which those policies are meeting rural needs.

### ***Section 20: Research***

89. This section gives the Commission powers to undertake, commission and support research which relates to its general purpose. The power to support research is not limited to financial support and so could include the provision of accommodation, equipment, expertise and any supporting working arrangements. "Research" is defined by section 30 to include inquiries and investigations.

### ***Section 21: Information services etc.***

90. The Commission may publish documents or provide information about any matter relating to its general purpose. It may also assist others in such activities.
91. In broad terms it is intended that the Commission will be a body that gives advice based on its assessment of rural needs; it is not intended that it will provide services directly to the public.

### ***Section 22: Power to charge for services***

92. This section enables the Commission to charge what it considers a reasonable amount for services. This would, for example, enable the Commission to charge for its publications. The Commission must obtain the Secretary of State's consent before it charges for any services.

### ***Section 23: Incidental powers***

93. This section gives the Commission powers to take action which will help it to exercise its functions.

## **Powers of Secretary of State**

### ***Section 24: Grants***

94. This section enables the Secretary of State to fund the Commission. The Secretary of State may impose conditions when giving a grant (for example, a condition requiring the Commission to supply a financial memorandum or enter into a management agreement).

### ***Section 25: Directions***

95. This section enables the Secretary of State to give the Commission directions as to the exercise of its functions. The Commission must comply with directions made under this section.

## ***Chapter 3: Supplementary***

### **Transfer schemes etc.**

### ***Section 26: Transfers on dissolution of English Nature and Countryside Agency***

96. This section makes provision for the transfer of property, rights and liabilities in connection with the dissolution of English Nature and the Countryside Agency. This will be by way of transfer schemes made by the Secretary of State (see Schedule 3).

97. The transfers may be to Natural England, the Commission for Rural Communities, regional development agencies and Ministers of the Crown.
98. In relation to the transfer of employment rights and liabilities, Schedule 3 provides for an equivalent of regulation 5 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) (“TUPE”). Schedule 3 also provides for staff pensions. This is in the context of the Cabinet Office statement of practice of January 2000 “Staff Transfers in the Public Sector”, which states that public sector bodies should ensure that the principles of TUPE are followed and that transferring public sector staff are offered terms that are, overall, no less favourable those set out in TUPE.

### ***Section 27: Continuing powers to make transfer schemes***

99. This section enables further transfer schemes to be made in the future, in connection with the efficient management for public purposes of property, rights and liabilities.
100. The transfers allowed are set out in *subsections (2) and (3)* and are those from a Minister for the Crown to Natural England, the Commission or a person acting on their behalf, and those to a Minister for the Crown from Natural England or the Commission.

### ***Section 29: Interim arrangements***

101. This section gives the Secretary of State the power to require English Nature or the Countryside Agency to provide staff, premises or other facilities, on a temporary basis, to the Natural England or the Commission.
102. This power can be used during any period of transition between the establishment of the Natural England and the Commission for Rural Communities and the dissolution of English Nature and the Countryside Agency.

## **Part 2: Nature Conservation in the UK**

### **Joint Nature Conservation Committee etc.**

### ***Section 31: Joint Nature Conservation Committee***

103. The Joint Nature Conservation Committee, referred to as “the joint committee”, was established under Part 7 of the Environmental Protection Act 1990 (“the 1990 Act”). The Act re-enacts, with changes, the provisions of the 1990 Act that relate to the joint committee. The main change is that under the Act the joint committee has a UK-wide remit (covering England, Wales, Scotland and Northern Ireland), rather than merely a Great Britain remit (covering England, Wales and Scotland). This is reflected in Schedule 4, which reconstitutes the joint committee. The Schedule includes provision for Northern Ireland to have voting members.
104. [Schedule 4](#) also reproduces the effect of the changes made to the 1990 Act by the [Regulatory Reform \(Joint Nature Conservation Committee\) Order 2005 \(S.I. 2005/634\)](#). This will, amongst other things, provide the joint committee with the ability to employ its own staff and pay its chairman and independent members. It will also enable the Secretary of State to pay money directly to the joint committee.
105. Those powers are supplemented by provisions which provide that the conservation bodies for England, Wales and Scotland and the relevant Northern Ireland department must together contribute sufficient financial resources to the joint committee to enable it to discharge its functions. The level of contribution from each of the four bodies is decided by agreement by the relevant Ministers and Assembly members in Great Britain and the Northern Ireland department, following consultation with the bodies.



***Section 32: UK conservation bodies***

106. This section defines the terms “UK conservation bodies” and “GB conservation bodies”. Some of the joint functions to be discharged by the joint committee are UK-wide; others are GB-wide.

***Section 33: Purpose of functions under this Part***

107. The joint committee is given functions for the purpose of nature conservation and fostering the understanding of nature conservation. In discharging their functions under this Part, the UK conservation bodies and the joint committee are required to have regard to actual or possible ecological changes and the desirability of contributing to sustainable development.

**Coordinated functions**

***Section 34: Functions of national or international significance***

108. This section sets out functions of the UK conservation bodies that can be discharged only through the joint committee. These are functions of UK-wide or international significance. They include giving advice about nature conservation matters of UK-wide or international significance. Advice on the development and implementation of policies can be given to “the appropriate authorities”, i.e. the Ministers or governmental body in the relevant part of the UK. Advice can also be given, and knowledge disseminated, to any other person. The functions also include establishing common standards for nature conservation monitoring and for research and analysis, and commissioning or supporting research.

***Section 35: Advice from joint committee to UK conservation body***

109. This section gives the joint committee power to provide advice to UK conservation bodies, so long as that advice is connected with the functions of the body and is of UK-wide or international significance.

***Section 36: GB functions with respect to wildlife***

110. This section requires certain functions of the GB conservation bodies under the 1981 Act, to do with listing of protected animals and plants and related research, to be performed through the joint committee. The relevant provisions of the 1981 Act do not extend to Northern Ireland.

**Directions**

***Section 38: Directions***

111. This section enables the Secretary of State to give the joint committee directions about the exercise of certain functions. It is expected that, as the joint committee is a cross border body, any direction under this power would be made after consulting Scottish, Welsh and Northern Ireland Ministers. Directions made under this section must be complied with.

**Part 3: Wildlife etc.**

**Biodiversity**

***Section 40: Duty to conserve biodiversity***

112. This section and sections 41 and 42 replace section 74 of the Countryside and Rights of Way Act 2000 (conservation of biological diversity). In these notes, that Act is referred to as “CRoW”.

113. **Section 40** extends to all public authorities the existing section 74 duty to have regard to biodiversity as far as is consistent with the proper exercise of their functions. However, only Ministers, government departments and the National Assembly for Wales (that is, roughly, those bound by the original section 74 CRow duty) are obliged to have particular regard to the 1992 Convention; other public authorities are not. “Public authority” is defined in section 40. It includes, for example, local authorities, local planning authorities and statutory undertakers.

***Section 41: Biodiversity lists and action (England)***

114. This section replaces and reflects what is in existing subsections (2) to (5) of section 74 of CRow. It places a duty on the Secretary of State to publish, review and revise lists of living organisms and types of habitat in England that are of principal importance for the purpose of conserving English biodiversity, and to consult Natural England before doing so. It also requires the Secretary of State to take, and promote the taking of, steps to further the conservation of the listed organisms and habitats. A list was published in 2002 under the existing duty placed on the Secretary of State by section 74(5) of CRow.

***Section 42: Biodiversity lists and action (Wales)***

115. This section is equivalent to section 41, but relates to Wales rather than England. It requires the National Assembly for Wales to publish, review, revise and act on lists of organisms of principal importance in Wales. The Countryside Council for Wales is the body to be consulted.

**Pesticides harmful to wildlife**

***Section 43: Possession of pesticides harmful to wildlife***

116. The Secretary of State may, by negative resolution order, prescribe those ingredients of pesticides that she believes could cause harm to wild birds and/or animals. An order under section 43 could be made in relation to several pesticide ingredients that have been linked with poisoned bait and that are known to be very dangerous to animals, in particular to birds of prey. It will be an offence to possess a pesticide containing a prescribed ingredient unless it can be shown that possession was for lawful use in accordance with relevant pesticide, biocide or poisons legislation.
117. Existing legislation in Part 1 of the Wildlife and Countryside Act 1981 already provides for an offence where it can be shown that a person has set or used a poisoned bait (sections 5(1)(a) and (b) and 11(2)(a) and (b)). However, in practice, it has been difficult to prove that the person set or used the bait, and so under the new section 43 offence it will not be necessary to show this.
118. A similar offence to that set out in section 43 has been introduced in Scotland by the Nature Conservation (Scotland) Act 2004.
119. The offence in section 43 is not inserted in the 1981 Act partly for reasons connected with enforcement powers. Section 43 needs to be read with section 44, which confers enforcement powers in connection with the new offence, including certain powers contained in Schedule 2 to the Food and Environment Protection Act 1985 (FEPA) that are available in connection with other provisions regulating pesticides.

***Section 44: Enforcement powers in connection with pesticides***

120. The inspectors on whom the enforcement powers under this section are conferred will be authorised by the Secretary of State (in England) or the National Assembly for Wales (in Wales).
121. Under *subsection (1)* inspectors may enter premises to check if persons have a pesticide containing a prescribed ingredient in storage without any lawful use for it if they have



reasonable grounds to suspect that they may find evidence of an offence. This power could be used where there have been reports of poisoning wild birds or animals in a neighbourhood and an inspector wishes to check for possession of such pesticides in that neighbourhood. The inspector can require the disclosure of information under (1) (b) about any substance that he finds.

122. *Subsection (4)* applies most of the enforcement provisions of Schedule 2 to FEPA to the enforcement of the offence in section 43. This is particularly significant in connection with the power of entry conferred by subsection (1)(a) of section 44. Under paragraph 7 of Schedule 2 to FEPA, an inspector may enter a dwelling only if a justice of the peace has issued a warrant authorising him to do so. Such warrant will only be issued in certain prescribed circumstances as listed in that Schedule (for instance, where it is not possible to communicate with any person entitled to grant entry to the dwelling).
123. Authorised inspectors using enforcement powers under paragraph 2 of Schedule 2 to FEPA may bring with them other persons and any equipment or materials to assist them in performing their functions. They must only operate at reasonable hours. Additionally they will be able to use reasonable force to perform their functions (for example in opening containers). They can photograph evidence. Related offences are provided for under paragraph 10 of the FEPA Schedule. These include supplying false information to an inspector and obstructing an inspector who is performing his duties.
124. By virtue of *subsection (1)(c)* an inspector can seize any substance that he has reasonable grounds to believe to be a pesticide containing a prescribed ingredient. This power could be used to take a sample for analysis, or to take the whole of the substance away.
125. *Subsections (5) to (8)* provide safeguards in connection with seizure and a procedure for recovery of the seized substance if proceedings are not brought or after the completion of any criminal proceedings.

### ***Section 45 Codes of Practice***

126. The Secretary of State may issue a code that details how the authorised pesticide inspector will conduct himself before, during and after he has entered premises under the powers given by section 44. The inspector must have regard to such code and it will be admissible in evidence in any proceedings where it can be taken into account by a court.

### ***Section 46: Interpretation***

127. *Subsection (2)* defines “pesticide”. The term can include substances, preparations or organisms prepared or used for destroying any pests.
128. *Subsection (3)* defines “wild bird” and “wild animal”. Under the Wildlife and Countryside Act 1981 “wild bird” means any bird of a species that is ordinarily resident in or is a visitor to the European territory of any member state in a wild state, but does not include poultry, or game birds (other than in a few specified circumstances). “Wild animal” under the 1981 Act means any animal (other than a bird) which is or (before it was taken) was living wild.
129. It is necessary to be able to inspect not only land and buildings but also vehicles, vessels and so on, and therefore in *subsection (4)* “premises” is given an extended meaning. It is not uncommon in legislation for the meaning of “premises” to be extended in this way.

## **Protection of birds**

### ***Section 47: Protection of nests of certain birds which re-use their nests***

130. This section introduces a new paragraph into section 1(1) of the Wildlife and Countryside Act 1981. The new paragraph makes it an offence, at any time of the year,

to take, damage or destroy the nest of a wild bird species included in a new Schedule ZA1 to the 1981 Act. Schedule ZA1 contains three bird species which traditionally re-use their nests: the golden eagle (*Aquila chrysaetos*), the white-tailed eagle (*Haliaeetus albicilla*), and the osprey (*Pandion haliaetus*). Section 22 of the 1981 Act is also amended so that the list of species in Schedule ZA1 may be changed by the Secretary of State by order.

***Section 48: Birds released into the wild as part of a re-population programme***

131. This section substitutes a new section 1(6) in the 1981 Act and thus extends the protection afforded to wild birds under section 1 of that Act to birds which have been bred in captivity and lawfully released into the wild as part of a re-population or re-introduction programme. The section also substitutes a new subsection 6(5) in the 1981 Act which has the effect of making it an offence under section 6(1) to sell, offer or expose for sale, or have in possession or transport for the purpose of sale any live, captive-bred wild bird included in the relevant list (under Part 1 of Schedule 3 to the 1981 Act) which has been released into the wild as part of a re-population or re-introduction programme.

***Section 49: Registration etc. of certain captive birds***

132. This section amends section 7(3A) of the 1981 Act and makes it an offence to keep or have in one's possession any bird listed in Schedule 4 to the 1981 Act within 5 years of having been convicted of an offence under section 7(1) of the 1981 Act. Under section 7(1) it is an offence to keep or have in one's possession any bird included in Schedule 4 to the 1981 Act which has not been registered and ringed or marked in accordance with regulations made by the Secretary of State.

**Invasive non-native species**

***Section 50: Sale etc. of invasive non-native species***

133. This section introduces a new section 14ZA into the 1981 Act.
134. Under section 14ZA(1), it is an offence to sell, offer or expose for sale, or to have in one's possession or transport for the purpose of sale, any animal or plant to which the section applies or anything from which such an animal or plant can be propagated, such as an egg or a seed. Under section 14ZA(2) it is also an offence to publish or cause to be published any advertisement for the purchase or sale of these animals and plants.
135. Section 14ZA(3) sets out the animals and plants to which the offences in section 14ZA(1) and (2) apply. These are live animals and plants which are included in section 14(1) or (2) of the 1981 Act (animals and plants which must not be released etc. into the wild) **and** which have been prescribed by an order made by the Secretary of State.
136. Under section 14ZA(5) there is a defence available to these new offences where the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.

***Section 51: Codes of practice in connection with invasive non-native species***

137. This section introduces a new section 14ZB into the 1981 Act 1981 which gives the Secretary of State the power to issue codes of practice, or approve a code of practice issued by others, relating to non-native animal and plant species. It is intended that the codes will be used to provide recommendations, advice and information on how to stop the damage caused by non-native animals and plants.
138. Failure to comply with such a code is not in itself an offence; however it may be used as admissible evidence in any criminal or civil proceedings and a court must take account

of a failure to comply with the code where it considers this to be relevant. For example, in proceedings for the release of a non-native species prohibited under section 14(1) of the 1981 Act, compliance with the code could be used to decide whether the accused may rely on the due diligence defence contained in section 14(3).

## **Enforcement etc of provisions relating to wildlife**

### ***Section 52: Enforcement powers in connection with wildlife***

139. This section introduces Schedule 5, which inserts various new sections relating to enforcement into the 1981 Act, and applies enforcement provisions under the 1981 Act to the other four main Acts that deal with licensing for the protection of wildlife: the Destructive Imported Animals Act 1932, the Conservation of Seals Act 1970, the Deer Act 1991 and the Protection of Badgers Act 1992.

### **Part 1 of Schedule 5 - Amendments of the 1981 Act**

140. The Countryside and Rights of Way Act 2000 introduced for the first time the ability for wildlife inspectors to check for compliance with licences and enforce certain specified provisions of Part 1 of the 1981 Act alongside the police. Two new sections were introduced into the 1981 Act, sections 19ZA (enforcement: wildlife inspectors) and 19ZB (power to take samples).
141. [Part 1](#) of Schedule 5 inserts a number of new sections in the 1981 Act, which take the place of existing sections 19ZA and 19ZB (which are being repealed).

## **Police powers enhanced**

142. [Schedule 5](#) amends the existing enforcement powers of the police in section 19 of the 1981 Act and, in a new section 19XA inserted in the 1981 Act, gives the police revised powers in connection with taking samples in place of their powers in section 19ZB(1) and (2). (In addition, Part 4 of Schedule 5 extends the police power of entry under warrant currently contained in section 19(3) of the 1981 Act to offences under other Acts -. This is explained below.)

## **Wildlife inspector powers enhanced**

143. Wildlife inspectors are currently authorised under section 19ZA(1) of the 1981 Act. Under the Schedule 5 amendments, they will in future be authorised under a new section 18A. The powers of the inspectors currently found in sections 19ZA and 19ZB(3) and (4) are re-enacted and extended under new sections 18B and 18C for what are to be known as “Group 1 offences”, and under new sections 18D and 18E for what are to be known as “Group 2 offences”.
144. The “Group 2 offences” are those currently dealt with under sections 19ZA and 19ZB(3) and (4) of the 1981 Act. These offences mainly relate to licensing of captive, ringed and registered birds, and certain other licences for other animals and plants. Many captive birds are kept in dwellings, and therefore section 18D includes a power for inspectors to enter dwellings except in the case of enforcement of section 14 of the 1981 Act (introduction of new species etc.).
145. The “Group 1 offences” are offences not covered by the existing powers of enforcement of the wildlife inspectors under Part 1 of the 1981 Act. These offences mainly deal with animals, birds and plants that are found in the wild and of which it is rare for any person to have possession or control.
146. Offences in connection with all enforcement powers (whether in relation to the police or the wildlife inspectors) appear in new section 19XB; and these offences include obstructing a wildlife inspector acting in the exercise of his powers, not providing

reasonable assistance, failure to make specimens available for inspection and falsely pretending to be a wildlife inspector.

147. Finally, paragraph 5 of Schedule 5 amends section 21 of the 1981, which sets out the penalties for the offences in new section 19XB.

### **Part 2 of Schedule 5 – Enforcement of four other Acts**

148. The same officials authorised by the Secretary of State to act as wildlife inspectors under the 1981 Act will also monitor and enforce compliance with the four other main pieces of wildlife legislation in England and Wales mentioned above (the Destructive Imported Animals Act 1932, the Conservation of Seals Act 1970, the Deer Act 1991 and the Protection of Badgers Act 1992). This Part of Schedule 5 extends the enforcement powers available to the inspectors for “Group 1 offences” under the 1981 Act (as amended by this Act) to the others mentioned above, so that there is a common regime for enforcing these various pieces of wildlife legislation. This should make it simpler to train officials and issue appropriate authorisations for inspectors.

### **Part 3 of Schedule 5 – Codes of Practice**

149. The Secretary of State may issue a code that details how a wildlife inspector will conduct himself before, during and after he has entered premises under the powers under Part 1 of the 1981 Act or any of the four Acts mentioned above. The inspector must have regard to such code, and it will be admissible in evidence in any proceedings where it can be taken into account by a court.

### **Part 4 of Schedule 5 – Constable’s search warrant power extended to certain other Acts**

150. **Part 4** of Schedule 5 removes certain disparities between the four Acts’ enforcement powers. Currently, only police have powers of entry under the Deer Act 1991 and the Protection of Badgers Act 1992 (except where there is a licence agreement that specifies that authorised officials of English Nature or the Secretary of State may enter the premises to monitor the terms of the licence). Authorised inspectors have certain limited powers of entry in connection with the enforcement of the Destructive Imported Animals Act 1932 (namely, police can seize wild musk rats, coypu and mink). Under the Conservation of Seals Act 1970 police have powers to stop and search persons that are suspected of an offence of killing or injuring seals without a licence, and authorised persons representing Secretary of State may enter land for the purpose of obtaining information relating to seals. Part 4 of Schedule 5 therefore extends police powers of entry under warrant found in section 19(3) of the 1981 Act to the investigation of offences under these other wildlife licensing Acts.

### **Section 53: Wildlife offences: time limit for proceedings**

151. This section introduces Schedule 6. Schedule 6 alters the present requirement to bring summary proceedings for certain offences concerning wildlife and habitats within six months of the commission of the offence. In relation to the legislation detailed in the Schedule, summary proceedings must be brought within six months of the acquisition of evidence sufficient in the prosecutor’s opinion to warrant proceedings, and in any event within two years of the commission of the offence.

### **Section 54: Application of Part 1 of the 1981 Act to Crown**

152. This section introduces a new section 66A into the 1981 Act which, with specified exceptions, applies the provisions of Part 1 of the Act to the Crown. This is required by European law obligations under the Wild Birds Directive (79/409/EEC) and the Habitats Directive (92/42/EEC).

153. Where the Crown, for example a government department, contravenes any provision of Part 1, it will not be criminally liable for the action (or lack of action) in question; rather it will be open to anyone with an interest in the contravention to apply to the High Court for a declaration that the activity was unlawful. However, Part 1 will apply to people in the service of the Crown, such as civil servants, as it applies to any other person. Part 1 will not apply to the Queen in her personal capacity and this includes Her Majesty in right of the Duchy of Lancaster and the Duke of Cornwall.
154. Powers of entry for enforcement purposes granted to police constables and wildlife inspectors under sections 18A to 19XA of the 1981 Act will not apply to premises occupied by the Crown. For example, there will be no rights of entry for the purposes of enforcing the 1981 Act over land occupied by the Ministry of Defence.

#### **Part 4: Sites of special scientific interest (SSSIs)**

##### ***Section 55: Offences in connection with SSSIs***

155. This section introduces two new offences concerning SSSIs.
156. *Subsection (2)* provides that where a section 28G authority (as defined in section 28G of the 1981 Act – broadly speaking, any public body or its employees), fails to comply with its obligations under section 28I of the 1981 Act (notification to Natural England or, as the case may be, the Countryside Council for Wales, before permitting operations likely to damage an SSSI, etc.), it commits an offence unless it had a reasonable excuse. Emergency situations qualify as a reasonable excuse, provided notification is given as soon as practicable after the permission was given.
157. *Subsection (3)* provides a new offence of intentionally or recklessly destroying or damaging the listed features of a SSSI or disturbing its listed fauna, without reasonable excuse. This offence is in addition to that in section 28P(6) of the 1981 Act. The difference between them is that commission of this new offence does not require knowledge that what was destroyed, damaged or disturbed was within an SSSI. Accordingly, it carries a lesser penalty.
158. *Subsection (5)* provides that the court's powers to make a restoration order under section 31 of the 1981 Act also apply to convictions under the new offence created by subsection (3).

##### ***Section 56: Denotification***

159. This section amends section 28D of the 1981 Act to allow the relevant conservation body to denotify a site of special scientific interest, or part of a site, where it is “not” of special interest. Before this amendment, denotification could only take place if a site, or part of it, was “no longer” of special interest.

##### ***Section 57: Effect of failure to serve certain notices***

160. This adds a new section 70B to the 1981 Act.
161. Subsections (1) and (3) of section 70B provide that where, in relation to a piece of land, a relevant conservation body has taken all reasonable steps to serve on every owner and occupier one of the notices listed in subsection (2), but has failed to do so, the notice will remain valid. Section 70B applies to notices served both before and after the Act comes into force.
162. Subsection (4) of section 70B makes provision for calculating the time when a notice is deemed to have been served under section 28 to 28Q of the 1981 Act. A notice is deemed to have been served when the relevant conservation body has taken the last of the reasonable steps in subsection (1).



- 163. Subsection (5) requires a relevant conservation body to serve a notice on an owner or occupier of land when it becomes aware that it has failed to do so.
- 164. Subsection (6) provides that owners and occupiers are not liable for anything they have done or have omitted to do before section 70B comes into effect (paragraph (a)). Even once section 70B has come into effect, the fact that a notice is deemed to be valid under subsection (3) does not in itself render them liable for offences under subsections 28P(1) and 28Q(4) until they have been served with a copy of the notice (paragraph (b)).

### **Section 58: Notices and signs relating to SSSIs**

- 165. This section adds a new section 28S to the 1981 Act, conferring a general power on Natural England (or, in Wales, the Countryside Council for Wales) to erect, maintain and remove signs or notices about an SSSI, on land included in that SSSI. (The application of section 28S to Wales is achieved by section 27AA of the 1981 Act, inserted by paragraph 78 of Schedule 11.) Under section 28S, it will be an offence to, without reasonable excuse, intentionally or recklessly take down, damage, destroy or obscure such a sign or notice.
- 166. Subsection (2) ensures that the powers of entry to land provided by section 51 of the 1981 Act will be available for the purposes of putting up, etc. signs under section 28S.

## **Part 5: National Parks and the Broads**

### **Section 59: Criteria for designating National Parks**

- 167. This section clarifies the requirements that are contained in section 5 of the National Parks and Access to the Countryside Act 1949 for designating land in a Park by adding a new subsection (2A) which aligns the criteria with the purposes as set out in section 5(1) of that Act. When considering the natural beauty of land, Natural England may take into account its wildlife and cultural heritage. Additionally, when considering the opportunities that extensive tracts of land afford for open-air recreation, Natural England may take into account the extent to which it is possible to promote opportunities for the understanding and enjoyment of their special qualities by the public. This clarification seeks to reinstate the working assumptions that had been made by those involved in the designation process prior to the decision in *Meyrick Estate Management Ltd v Secretary of State for Environment, Food and Rural Affairs* [2005] EWHC 2618 (Admin).

### **Section 60: Procedure for orders designating National Parks**

- 168. This section makes various amendments to the 1949 Act.
- 169. Subsections (2) and (3) bring up to date the terminology describing the types of principal local authority that must be consulted on the designation or alteration of National Park boundaries. As well as updating old terminology, the subsections include a new requirement to consult parish councils in England and community councils in Wales.
- 170. Subsection (4) repeals section 9(2) of the 1949 Act. Section 9(2) enabled regulations to be made allowing proceedings preliminary to orders designating and varying National Parks to be taken concurrently with proceedings required in connection with development plans.
- 171. Subsection (5) amends Schedule 1 to the 1949 Act to make it clear that only objections by principal councils (and not parish or community councils) trigger an automatic public inquiry into National Park designation or boundary amendment. This will, for example, prevent an objection by a single parish council automatically triggering a public inquiry into the designation of a National Park or amendment to a National Park boundary.



***Section 61: Members of National Park authorities***

172. This section amends various provisions of Schedule 7 to the Environment Act 1995 relating to the membership of National Park authorities. The precise make-up of each National Park authority is set individually by secondary legislation. However, the general mix of members of each authority must be in keeping with a basic formula which is set out in Schedule 7 to the 1995 Act. *Subsections (1) and (2)* simplify the basic formula so that any composition in which (in Wales) local authority members outnumber “national” members or (in England) local authority members and parish members together outnumber “national” members will be possible. “National” members are the members who are not local authority or parish members. They are appointed by the Secretary of State.
173. *Subsections (3) to (5)* allow councillors (or chairs of parish meetings) who are waiting to be re-appointed or replaced on a National Park authority following an election, to nevertheless continue to act as National Park authority members, subject to an upper limit of three months. The subsections are intended to minimise interregnums between members.
174. *Subsection (6)* allows “national” members of National Park authorities to be appointed for up to four years at a time rather than the current three years. This brings them into line with local authority and parish members who normally serve four-year terms.

***Section 62: Expenditure by National Park authorities***

175. The Environment Act 1995 added a provision to the 1949 Act which stated that National Park authorities should not incur “significant” expenditure in support of their socio-economic duty. This has caused uncertainty and therefore section 62 removes this qualification.

***Section 63: Notification of agricultural operations on moor and heath in National Parks***

176. This section transfers the power from the Secretary of State to a National Park authority to make an order under section 42 of the Wildlife and Countryside Act 1981. An order so issued places a temporary prohibition on ploughing, and on other specified agricultural or forestry operations on moor or heath in National Parks, and may be issued if those operations are likely to affect the land’s character or appearance.

***Section 64: Functions of Broads Authority and others in relation to the Broads***

177. This section amends the Norfolk and Suffolk Broads Act 1988. It aligns the wording of the first two purposes of the Broads Authority and other relevant authorities with that of the first two purposes of the National Parks. The purposes of the different areas had previously shared common wording until the National Park purposes (in section 5(1) of the 1949 Act) were amended in 1995.

***Section 65: Emergency financial assistance***

178. This section adds any National Park authority and the Broads Authority to the list of bodies in section 155(4) of the Local Government and Housing Act 1989. This gives these authorities the ability to apply to a fund for emergency assistance following a natural disaster.

***Part 6: Rights of way***

***Section 66: Restriction on creation of new public rights of way***

179. This section limits the creation of new public rights of way for mechanically propelled vehicles. It will prevent use over a period of 20 years by any vehicle from giving rise

to a public right of way for mechanically propelled vehicles in the future. Instead, new public rights of way for mechanically propelled vehicular rights will be created only if they are expressly provided for or if they relate to a road intended to be used by mechanically propelled vehicles and constructed for that purpose under an enactment.

180. *Subsection (2)* is intended to ensure that where there is illegal use of a way by mechanically propelled vehicles, that use cannot give rise to “lower” public rights of way (such as footpath, bridleway or restricted byway rights).

***Section 67: Ending of certain existing unrecorded public rights of way***

181. This section extinguishes (subject to stated exceptions) unrecorded rights of way for mechanically propelled vehicles. This extinguishment prevents these rights being used to add new byways open to all traffic to the definitive map and statement for an area.
182. Some of the exceptions are set out in *subsection (2)*. Exception (a) ensures that existing rights of way for mechanically propelled vehicles are not extinguished if the main lawful use of the way for 5 years preceding commencement has been use for mechanically propelled vehicles. Exception (b) ensures that unclassified and other minor roads are not brought within the scope of the extinguishment. Exceptions (c) and (d) are identical to the exceptions in section 61. Exception (e) ensures that a where rights were created by a qualifying period of use by mechanically propelled vehicles during a period prior to 1 December 1930, those vehicular rights are not extinguished.
183. Some more exceptions are set out in *subsection (3)*. These exceptions relate to cases where an application to record a public right of way for mechanically propelled vehicles has already been lodged. Under paragraph (a), all applications made under Part 3 of the 1981 Act to record rights for mechanically propelled vehicles which were lodged before the relevant date will be preserved and dealt with under the old law. The relevant date is 20 January 2005 (in England) and 19 May 2005 (in Wales) (see *subsection (4)*). Where such applications have been lodged after the relevant date and have reached the stage of being determined by the surveying authority they will also be processed under the existing law (see paragraph (b)), as will applications in situations where landowners need the public right of way for mechanically propelled vehicles in order to access their property (see paragraph (c)).
184. In addition, *subsection (5)* ensures that where an unrecorded public right of way for mechanically propelled vehicles is relied upon at the time of commencement to enable access to land to be obtained by a person with an interest in the land or by a lawful visitor to that land, that public right becomes a private right of way for mechanically propelled vehicles for the benefit of that land. (This will only be relevant if subsection (3)(c) does not apply.)
185. This section does not apply to areas in London where there is no definitive map and statement.

***Section 66: Presumed dedication of restricted byways and use by pedal cycles etc.***

186. Section 31 of the Highways Act 1980 enables a public right of way to be treated as having been created as a result of a period of use for 20 years. This section amends section 31 of the 1980 Act so as to ensure that use of a way by a non-mechanically propelled vehicle (such as a pedal cycle) is capable in appropriate circumstances of giving rise to a public right of way for non-mechanically propelled vehicles (a restricted byway).

***Section 67: Presumed dedication and applications under section 53(5) of the 1981 Act***

187. This section also amends section 31 of the Highways Act 1980. This time, the purpose is to clarify the application of section 31 in cases where an application is brought to

modify the definitive map and statement so as to show a public right of way. Under section 31, the period of use is calculated by reference to the time when the right of the public to use the way is brought into question. Section 67 amends section 31 so as to make clear that, where the right of the public to use the way is brought into question by an application to modify the definitive map and statement, the date on which right of the public is brought into question is to be treated as being the date on which the application is made.

### ***Section 70: Supplementary***

188. *Subsection (1)* amends section 53(3) of the 1981 Act. The purpose of this amendment is to allow the recording on the definitive map and statement for the area of a newly discovered right of way which is a restricted byway.
189. *Subsections (2) to (7)* amend section 34 of the Road Traffic Act 1988. Section 34 makes it an offence to drive a mechanically propelled vehicle on a footpath, bridleway or restricted byway. The amendments create a limited exception for a person who has an interest in land or is a visitor to land and who drives on a restricted byway which came into being under the Countryside and Rights of Way Act 2000 and which before it became a restricted byway was in use for obtaining access to land. Subsection (7) clarifies that the phrase “visitor to the land” does not include those exercising their public rights in relation to access land under section 1 of the Countryside and Rights of Way Act 2000, or other public rights of access listed in section 15(1) of that Act.
190. *Subsection (8)* recognises that the new section 34A of the Road Traffic Act 1988, which was to be inserted by Schedule 7 to the Countryside and Rights of Way Act 2000 is not going to be brought into force, by repealing the relevant provision in Schedule 7. The Government announced in a written Parliamentary statement of 9 December 2003 (Hansard Vol. 415 Col. 80WS) that it would not be implementing section 34A. This is on the basis that the provision appears incompatible with Article 6(2) of the European Convention on Human Rights.

### ***Section 71: Interpretation***

191. This section provides various definitions for the purposes of Part 6. In particular, it is worth noting that the definition of a mechanically propelled vehicle excludes electrically assisted pedal cycles. In the absence of this definition, the fact a pedal cycle is mechanically assisted might be thought to mean that it is a mechanically propelled vehicle.

### ***Section 72: Traffic regulation on byways etc. in National Parks in England and Wales***

192. This section inserts two new sections in the Road Traffic Regulation Act 1984 (sections 22BB and 22BC) giving each National Park authority power to make traffic regulation orders and other traffic-related orders under that Act. The orders must be in relation to roads that are in the National Park that are either byways, footpaths or bridleways shown in a definitive map and statement or unsealed carriageways.

## **Part 7: Inland Waterways**

### ***Section 73: Inland Waterways Advisory Council***

193. This section changes the name of the Inland Waterways Amenity Advisory Council to the Inland Waterways Advisory Council.

### ***Section 74: Constitution of Council***

194. This section substitutes for section 110 of the Transport Act 1968 (which governs the existing Inland Waterways Amenity Advisory Council) a new section 110 setting out

the arrangements governing the composition of the Council and the procedures to be adopted for the appointment of the chairman and members. The section removes the requirement to consult the chairman of the British Waterways (referred to in the 1968 Act as the Waterways Board) before making appointments to the Council.

***Section 75: Term of office, procedure etc.***

195. This section adds a new section 110A to the 1968 Act setting out the terms under which the members of the new Council hold office, and the procedure for the appointment of regional and other committees. The new section also provides for the payment of members' expenses and allowances, and the remuneration of the chairman.
196. The Waterways Board is currently required to provide the Council with staff and accommodation. This requirement is dropped under the new section 110A. Under the new provision the Secretary of State and Scottish Ministers must provide the Council with staff and accommodation.

***Section 76: Functions of Council: England and Wales***

197. This section adds a new section 110B to the 1968 Act setting out the functions of the new Council in relation to England and Wales. New section 110B effectively replaces section 110(2) of the 1968 Act in relation to England and Wales. It gives the Council the role of providing advice to the Secretary of State and navigation authorities about matters relevant to inland waterways in England and Wales. It also allows the Council to provide any other interested person with such advice.

***Section 77: Functions of Council: Scotland***

198. This section changes the functions of the Council in relation to Scotland by adding a new section 110C to the 1968 Act. New section 110C effectively replaces section 110(2) of the 1968 Act in relation to Scotland. It gives the Council the function of providing advice to Scottish Ministers and the Waterways Board about matters relevant to inland waterways in Scotland which are either owned or managed by the Waterways Board or in respect of which the Board is providing advice or assistance. It also allows the Council to advise other interested persons about such matters.

**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.

**Part 9: Miscellaneous**

***Section 99: Natural beauty in the countryside***

230. This section makes clear that the mere fact that land is used for agriculture, woodlands, as a park or its flora, fauna or physiographical features have been derived, in part, from human intervention in the landscape, does not prevent it from being regarded as land within an area of "natural beauty". References to places of "natural beauty" are to be found in a range of enactments - (not just the core enactments dealing with the establishment and maintenance of National Parks and areas of outstanding natural beauty). This clarification allows a broader view to be taken of the meaning of "natural beauty" than was taken in the *Meyrick* case mentioned above.

***Section 100: Byelaws relating to land drainage***

231. The existing byelaw making powers in Schedule 25 to the Water Resources Act 1991 and section 66 of the Land Drainage Act 1991 do not integrate environmental issues into the byelaw decision-making process. This section amends the two enactments to do so.

***Section 101: Abolition of certain agricultural etc. committees***

232. Paragraphs (a) to (c) of this section abolish three redundant hill farming advisory committees that have operated under section 32 of the Hill Farming Act 1946 in the various parts of the United Kingdom. Paragraphs (d) and (e) abolish various consumer and investigation committees that were originally set up under section 19 of the Agricultural Marketing Act 1958 and a related Northern Ireland Order and have not been in operation for several years.

**Part 10: Final Provisions**

***Section 102: Crown land***

233. This section provides that “the appropriate authority” (as defined by *subsection (4)*) may enter into section 7 management agreements in relation to the Crown’s interests in Crown land. “Crown land” is defined widely to include land in which Her Majesty in right of the Crown, either of the Duchies of Lancaster and Cornwall, or a government department holds an interest. “The appropriate authorities” are variously (depending on the type of land involved) the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, the appointee of the Duke of Cornwall (or of any other possessor of the Duchy), or the government department that owns, manages or has the benefit of the land.

***Section 103: Wales***

234. This section ensures that the amendments made by the Act to the Wildlife and Countryside Act 1981 are governed by National Assembly for Wales (Transfer of Functions) Order 1999, thus ensuring that certain functions under the amendments are devolved to Wales.

***Section 104: Power to make further provision***

235. This section gives the Secretary of State power to give effect to the Act by making supplementary, incidental, consequential, transitory, transitional or saving provisions by order. Secondary legislation will need to be amended under this power to reflect the fact that Natural England is taking over the roles (for example as statutory consultee) of English Nature and the Countryside Agency. Orders under this section containing provisions that amend primary legislation require the approval of both Houses of Parliament. The negative procedure (annulment) applies to a statutory instrument containing any other order under this section.

***Section 105: Minor and consequential amendments etc.***

236. This introduces Schedules 11 (minor and consequential amendments) and 12 (repeals and revocations).
237. [Paragraph 97](#) of Schedule 11 introduces a new section 71(2) into the Wildlife and Countryside Act 1981 to clarify the meaning of “plants” in that Act. The drafting of the 1981 Act, which includes certain fungi species in Schedule 8 to that Act (which is about protected plants), assumes that fungi are plants. Similarly, the drafting of the 1981 Act, which includes algae in Part 2 of Schedule 9 to that Act (plants to which section 14 applies), also assumes that algae are plants. But from the standard scientific point of view fungi and algae are not regarded as plants. Paragraph 97 is intended to make clear that for the purposes of the 1981 Act fungi and algae species are regarded as “plants”.

***Section 108: Extent***

238. Most of the Act extends to England and Wales only. However, under Part 2 the Joint Nature Conservation Committee is a body that has a UK remit. The Inland Waterways Advisory Council’s functions extend to Scotland and therefore Part 7

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

extends to Scotland. Chapter 2 of Part 8, which deals with the agricultural levy boards, has UK-wide extent. Chapter 3 of that same Part (dealing with financial assistance) extends to Northern Ireland as well as England and Wales. Various sections in Parts 9 (miscellaneous) and 10 (final provisions) and Schedules 11 (minor and consequential amendments) and 12 (repeals and revocations) extend to Scotland and/or Northern Ireland.