

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

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.