



# Natural Environment and Rural Communities Act 2006

## 2006 CHAPTER 16

### PART 1

#### NATURAL ENGLAND AND THE COMMISSION FOR RURAL COMMUNITIES

### CHAPTER 1

#### NATURAL ENGLAND

#### *Constitution and general purpose*

#### **1 Constitution**

- (1) There is to be a body known as Natural England.
- (2) Natural England is to have the functions conferred on it by or under this Act or any other enactment.
- (3) Except where otherwise expressly provided, Natural England's functions are exercisable in relation to England only.
- (4) English Nature and the Countryside Agency are dissolved and their functions are (subject to the provisions of this Act) transferred to Natural England.
- (5) Schedule 1 contains provisions about the constitution of Natural England and related matters.

## **2 General purpose**

- (1) 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.
- (2) Natural England's general purpose includes—
  - (a) promoting nature conservation and protecting biodiversity,
  - (b) conserving and enhancing the landscape,
  - (c) securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment,
  - (d) promoting access to the countryside and open spaces and encouraging open-air recreation, and
  - (e) contributing in other ways to social and economic well-being through management of the natural environment.
- (3) The purpose in subsection (2)(e) may, in particular, be carried out by working with local communities.

### *Advisory functions*

## **3 Review and research**

- (1) Natural England must keep under review all matters relating to its general purpose.
- (2) When reviewing any matter, Natural England must consult such bodies as appear to it to have an interest in the matter.
- (3) Natural England may—
  - (a) undertake research into any matter relating to its general purpose, or
  - (b) commission or support (by financial means or otherwise) research into any such matter.
- (4) In discharging its functions in monitoring nature conservation, carrying out research or analysing the resultant information, Natural England must have regard to common standards established under section 34(2)(c).

## **4 Advice**

- (1) Natural England must, at the request of a public authority, give advice to that authority on any matter relating to Natural England's general purpose.
- (2) Subsection (3) applies if Natural England has reason to believe that advice given under subsection (1) has been rejected.
- (3) At the request of Natural England, the public authority must inform Natural England in writing whether the advice has been rejected and, if so, why.
- (4) Natural England may give advice to any person on any matter relating to its general purpose—
  - (a) at the request of that person, or
  - (b) if Natural England thinks it appropriate to do so, on its own initiative.

- (5) The advice that may be given under this section includes, in relation to any power to make byelaws, recommendations as to the matters in respect of which byelaws should be made.

### *General implementation powers*

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

Natural England may—

- (a) carry out proposals which appear to it to further its general purpose, or
- (b) assist in, coordinate or promote the carrying out of such proposals by others.

## **6 Financial and other assistance**

- (1) Natural England may give financial assistance to any person, if doing so appears to it to further its general purpose.
- (2) Financial assistance under this section may be given in any form, and may in particular be given by way of a grant, a loan or a guarantee.
- (3) Financial assistance under this section may be given subject to conditions, including (in the case of a grant) conditions for repayment in specified circumstances.
- (4) Natural England may, if doing so appears to it to further its general purpose, provide assistance to any person by making available goods or equipment free of charge or at a reduced cost.

## **7 Management agreements**

- (1) Natural England may make an agreement (a “management agreement”) with a person who has an interest in land about the management or use of the land, if doing so appears to it to further its general purpose.
- (2) A management agreement may, in particular—
  - (a) impose on the person who has an interest in the land obligations in respect of the use of the land;
  - (b) impose on the person who has an interest in the land restrictions on the exercise of rights over the land;
  - (c) provide for the carrying out of such work as may be expedient for the purposes of the agreement by any person or persons;
  - (d) provide for any matter for which a management scheme relating to a site of special scientific interest provides (or could provide);
  - (e) provide for the making of payments by either party to the other party or to any other person;
  - (f) contain incidental and consequential provision.
- (3) A management agreement is, unless the agreement otherwise provides—
  - (a) binding on persons deriving title under or from the person with whom Natural England makes the agreement, and
  - (b) enforceable by Natural England against those persons.

- (4) Schedule 2 to the Forestry Act 1967 (c. 10) (power for tenant for life and others to enter into forestry dedication covenants) applies to management agreements as it applies to forestry dedication covenants.
- (5) For the purposes of any enactment or rule of law as to the circumstances in which the dedication of a highway or the grant of an easement may be presumed, or may be established by prescription, the use by the public or by any person of a way across land at any time while it is the subject of a management agreement is to be disregarded.
- (6) “Interest in land” has the same meaning as in the National Parks and Access to the Countryside Act 1949 (c. 97).
- (7) “Management scheme” and “site of special scientific interest” have the same meaning as in Part 2 of the Wildlife and Countryside Act 1981 (c. 69).

## **8 Experimental schemes**

- (1) Natural England may—
  - (a) make and carry out experimental schemes designed to establish ways in which its general purpose might be furthered, or
  - (b) promote the making and carrying out of such schemes.
- (2) A scheme is experimental if it involves—
  - (a) the development or application of new methods, concepts or techniques, or
  - (b) the testing or further development of existing methods, concepts or techniques.
- (3) Before making an experimental scheme, Natural England must consult such persons as appear to it to have an interest in the subject matter of the scheme.

### *Other functions*

## **9 Information services etc.**

- (1) Natural England may—
  - (a) publish documents or provide information about any matter relating to its general purpose, or
  - (b) assist in the provision of such publications or information.
- (2) Nothing in any other enactment imposing a duty or conferring a power on Natural England—
  - (a) to publish or assist in the publication of documents of a particular kind, or
  - (b) to provide or assist in the provision of information of a particular kind,
 is to be read as limiting the power conferred by subsection (1).

## **10 Consultancy services and training**

- (1) Natural England may, if the conditions in subsection (2) are met, place the services of its officers or employees, or of any consultants it has engaged, at the disposal of any person.
- (2) The conditions are that—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the person has requested Natural England to act under subsection (1), and
  - (b) Natural England thinks that the request concerns a matter relating to its general purpose and presents special problems or requires special professional or technical skill.
- (3) Natural England may provide training in relation to any matters in respect of which it has functions.

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

- (1) Natural England may, with the consent of the Secretary of State, make such charges for its services as appear to it to be reasonable.
- (2) “Services” includes, in particular, anything done under—
- (a) section 4(1) or (4)(a) (advice);
  - (b) section 9 (information services etc.);
  - (c) section 10 (consultancy services).
- (3) The Secretary of State may by order make provision requiring charges to be paid in respect of, and for the purpose of meeting the cost of, issuing licences to which this subsection applies.
- (4) Subsection (3) applies to licences issued by Natural England under or by virtue of any enactment, other than licences for which charges are payable apart from this section.
- (5) An order under subsection (3) may make provision as to—
- (a) exemptions from or reductions in charges;
  - (b) remission of charges in whole or in part.
- (6) The power to make an order under subsection (3) is exercisable by statutory instrument.
- (7) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.

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

- (1) Natural England may institute criminal proceedings.
- (2) A person who is authorised by Natural England to prosecute on its behalf in proceedings before a magistrates' court is entitled to prosecute in such proceedings even though he is not a barrister or solicitor.

## **13 Incidental powers**

- (1) Natural England may do anything that appears to it to be conducive or incidental to the discharge of its functions.
- (2) In particular, Natural England may—
- (a) enter into agreements;
  - (b) acquire or dispose of property;
  - (c) borrow money;

- (d) subject to the approval of the Secretary of State, form bodies corporate or acquire or dispose of interests in bodies corporate;
- (e) accept gifts;
- (f) invest money.

### *Powers of Secretary of State*

## **14 Grants**

- (1) The Secretary of State may make grants to Natural England of such amounts as the Secretary of State thinks fit.
- (2) A grant under this section may be made subject to such conditions as the Secretary of State thinks fit.

## **15 Guidance**

- (1) The Secretary of State must give Natural England guidance as to the exercise of any functions of Natural England that relate to or affect regional planning and associated matters.
- (2) The Secretary of State may give Natural England guidance as to the exercise of its other functions.
- (3) Before giving guidance under this section the Secretary of State must consult—
  - (a) Natural England,
  - (b) the Environment Agency, and
  - (c) such other persons as the Secretary of State thinks appropriate.
- (4) The Secretary of State must publish any guidance given under this section as soon as is reasonably practicable after giving the guidance.
- (5) The power to give guidance under this section includes power to vary or revoke it.
- (6) In discharging its functions, Natural England must have regard to guidance given under this section.

## **16 Directions**

- (1) The Secretary of State may give Natural England general or specific directions as to the exercise of its functions.
- (2) Subsection (1) does not apply to functions of Natural England that are exercisable through the Joint Nature Conservation Committee.
- (3) The Secretary of State must publish any directions given under this section as soon as is reasonably practicable after giving the directions.
- (4) The power to give directions under this section includes power to vary or revoke the directions.
- (5) Natural England must comply with any directions given under this section.

## CHAPTER 2

### COMMISSION FOR RURAL COMMUNITIES

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

#### **17 Commission for Rural Communities**

- (1) There is to be a body known as the Commission for Rural Communities.
- (2) Schedule 2 contains provisions about the constitution of the Commission and related matters.

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

- (1) The Commission's general purpose is to promote—
  - (a) awareness among relevant persons and the public of rural needs, and
  - (b) meeting rural needs in ways that contribute to sustainable development.
- (2) For the purposes of this Chapter “relevant person” means—
  - (a) a public authority, or
  - (b) a body which appears to the Commission to be concerned with any aspect of rural needs.<sup>7</sup>
- (3) For the purposes of this Chapter “rural needs” means the social and economic needs of persons in rural areas in England.
- (4) In determining the social and economic needs of persons in those areas, particular regard is to be had to the needs of—
  - (a) persons suffering from social disadvantage, and
  - (b) areas suffering from economic under-performance.

#### *Functions*

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

The Commission must take such steps as appear to it to be appropriate for—

- (a) representing rural needs to relevant persons,
- (b) providing relevant persons with information and advice about issues connected with rural needs or ways of meeting them, and
- (c) monitoring, and making reports about, the way in which relevant persons' policies are developed, adopted and implemented (by rural proofing or otherwise) and the extent to which those policies are meeting rural needs.

#### **20 Research**

The Commission may—

- (a) undertake research into any matter relating to its general purpose, or
- (b) commission or support (by financial means or otherwise) research into any such matter.

---

*Status: This is the original version (as it was originally enacted).*

---

## **21 Information services etc.**

The Commission may—

- (a) publish documents or provide information about any matter relating to its general purpose, or
- (b) assist in the provision of such publications or information.

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

- (1) The Commission may, with the consent of the Secretary of State, make such charges for its services as appear to it to be reasonable.
- (2) “Services” includes, in particular, anything done under section 21.

## **23 Incidental powers**

- (1) The Commission may do anything that appears to it to be conducive or incidental to the discharge of its functions.
- (2) In particular, the Commission may—
  - (a) enter into agreements;
  - (b) acquire or dispose of property;
  - (c) borrow money;
  - (d) accept gifts;
  - (e) invest money.

### *Powers of Secretary of State*

## **24 Grants**

- (1) The Secretary of State may make grants to the Commission of such amounts as the Secretary of State thinks fit.
- (2) A grant under this section may be made subject to such conditions as the Secretary of State thinks fit.

## **25 Directions**

- (1) The Secretary of State may give the Commission general or specific directions as to the exercise of its functions.
- (2) The Secretary of State must publish any directions given under this section as soon as is reasonably practicable after giving the directions.
- (3) The power to give directions under this section includes power to vary or revoke the directions.
- (4) The Commission must comply with any directions given under this section.



## CHAPTER 3

### SUPPLEMENTARY

#### *Transfer schemes etc.*

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

- (1) The power conferred by subsection (2) is exercisable in connection with the dissolution of English Nature and the Countryside Agency.
- (2) The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities of English Nature or the Countryside Agency to—
  - (a) Natural England,
  - (b) the Commission,
  - (c) a regional development agency, or
  - (d) a Minister of the Crown.
- (3) On the transfer date, the designated property, rights or liabilities are transferred and vest in accordance with the scheme.
- (4) A regional development agency is an agency established under section 1 of the Regional Development Agencies Act 1998 (c. 45).

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

- (1) The powers conferred by this section are exercisable in connection with the efficient management for public purposes of any property, rights or liabilities.
- (2) The Secretary of State may at any time make one or more schemes for the transfer of designated property, rights or liabilities of a Minister of the Crown to—
  - (a) Natural England,
  - (b) the Commission, or
  - (c) a person acting on behalf of Natural England and the Commission.
- (3) The Secretary of State may at any time make one or more schemes for the transfer of designated property, rights or liabilities of—
  - (a) Natural England, or
  - (b) the Commission,to a Minister of the Crown.
- (4) On the transfer date, the designated property, rights or liabilities are transferred and vest in accordance with the scheme.

#### **28 Transfer schemes: supplementary**

- (1) Schedule 3 contains further provisions relating to the making of schemes under sections 26 and 27.
- (2) In sections 26 and 27 and Schedule 3—

“designated” in relation to a scheme, means specified in or determined in accordance with the scheme;

“the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect.

## 29 Interim arrangements

The Secretary of State may by written notice require English Nature or the Countryside Agency to provide staff, premises and other facilities on a temporary basis to—

- (a) Natural England, or
- (b) the Commission.

### *Interpretation*

## 30 Interpretation

(1) In this Part—

- “the Commission” means the Commission for Rural Communities;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
- “nature conservation” means the conservation of flora, fauna or geological or physiographical features;
- “research” includes inquiries and investigations.

(2) For the purposes of this Part, a public authority is any of the following—

- (a) a Minister of the Crown;
- (b) a public body (including a government department, a local authority and a local planning authority);
- (c) a person holding an office—
  - (i) under the Crown,
  - (ii) created or continued in existence by a public general Act, or
  - (iii) the remuneration in respect of which is paid out of money provided by Parliament;
- (d) a statutory undertaker.

(3) In subsection (2)—

“local authority” means a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

“local planning authority” has the same meaning as in the Town and Country Planning Act 1990 (c. 8);

“statutory undertaker” means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990.

## PART 2

### NATURE CONSERVATION IN THE UK

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

#### **31 Joint Nature Conservation Committee**

The Joint Nature Conservation Committee—

- (a) is to continue in existence, but
- (b) is to be re-constituted in accordance with Schedule 4.

#### **32 UK conservation bodies**

(1) In this Part “the UK conservation bodies” means—

- (a) for England, Natural England;
- (b) for Wales, the Countryside Council for Wales;
- (c) for Scotland, Scottish Natural Heritage;
- (d) for Northern Ireland, the Council for Nature Conservation and the Countryside.

(2) In this Part “the GB conservation bodies” means the bodies mentioned in subsection (1)(a) to (c).

#### **33 Purpose of functions under this Part**

(1) The UK conservation bodies and the joint committee have the functions conferred on them by this Part for the purposes of—

- (a) nature conservation, and
- (b) fostering the understanding of nature conservation.

(2) Each of them must, in discharging their functions under this Part, have regard to—

- (a) actual or possible ecological changes, and
- (b) the desirability of contributing to sustainable development.

#### *Coordinated functions*

#### **34 Functions of national or international significance**

(1) The UK conservation bodies have the functions described in subsection (2), but those functions may be discharged only through the joint committee.

(2) The functions are—

- (a) providing advice to the appropriate authorities on the development and implementation of policies for or affecting any nature conservation matter which—
  - (i) arises throughout the United Kingdom and raises issues common to England, Wales, Scotland and Northern Ireland,
  - (ii) arises in one or more (but not all) of those places and affects the interests of the United Kingdom as a whole, or

- (iii) arises outside the United Kingdom;
  - (b) providing advice to any persons and disseminating knowledge about any matter falling within paragraph (a)(i), (ii) or (iii);
  - (c) establishing common standards throughout the United Kingdom for the monitoring of nature conservation and for research into nature conservation and the analysis of the resulting information;
  - (d) commissioning or supporting (whether by financial means or otherwise) research which the joint committee thinks is relevant to any matter mentioned in paragraphs (a) to (c).
- (3) “The appropriate authorities” means—
- (a) the Secretary of State (or any other Minister of the Crown),
  - (b) the National Assembly for Wales,
  - (c) the Scottish Ministers, and
  - (d) the relevant Northern Ireland department.

### **35 Advice from joint committee to UK conservation body**

- (1) The joint committee may give advice or information to any of the UK conservation bodies on any matter which—
- (a) is connected with the functions of that UK conservation body, and
  - (b) in the opinion of the joint committee—
    - (i) arises throughout the United Kingdom and raises issues common to England, Wales, Scotland and Northern Ireland,
    - (ii) arises in one or more (but not all) of those places and affects the interests of the United Kingdom as a whole, or
    - (iii) arises outside the United Kingdom.
- (2) In discharging their functions relating to nature conservation, the UK conservation bodies must have regard to any advice given to them under subsection (1).

### **36 GB functions with respect to wildlife**

- (1) The GB conservation bodies have the functions described in subsection (2), but those functions may be discharged only through the joint committee.
- (2) The functions are—
- (a) those under sections 22(3) and 24(1) of the 1981 Act (listing of protected animals and plants);
  - (b) commissioning or supporting (whether by financial means or otherwise) research which the joint committee thinks is relevant to those functions.
- (3) “The 1981 Act” means the Wildlife and Countryside Act 1981 (c. 69).

### **37 UK conservation bodies: incidental powers for UK purposes, etc.**

- (1) Each of the UK conservation bodies may do anything that appears to it to be conducive or incidental to its functions under this Part.
- (2) In particular each of them may for the purposes of its functions under this Part—
- (a) acquire or dispose of property;

- (b) accept gifts;
  - (c) undertake research directly related to those functions if it appears appropriate to do so.
- (3) Nothing in any of the enactments concerning the functions of the UK conservation bodies prevents any of them—
- (a) if requested to do so by any of the others, from giving advice or information to the other, or
  - (b) from giving advice or information to the joint committee.
- (4) “Enactment” includes an Act of the Scottish Parliament and Northern Ireland legislation.

### *Directions*

## **38 Directions**

- (1) The Secretary of State may give the joint committee general or specific directions as to the discharge of any function under section 34 or 35 (but not as to the discharge of a function under section 36).
- (2) Before giving any directions under this section, the Secretary of State must consult the National Assembly for Wales, the Scottish Ministers and the relevant Northern Ireland department.
- (3) The Secretary of State must publish any directions given under this section as soon as is reasonably practicable after giving the directions.
- (4) The power to give directions under this section includes power to vary or revoke the directions.
- (5) The joint committee must comply with any directions given under this section.

### *Interpretation*

## **39 Interpretation**

In this Part—

- “the joint committee” means the Joint Nature Conservation Committee;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
- “nature conservation” means the conservation of flora, fauna or geological or physiographical features;
- “the relevant Northern Ireland department” means the Department of the Environment in Northern Ireland;
- “research” includes inquiries and investigations.

**PART 3**

## WILDLIFE ETC.

*Biodiversity***40 Duty to conserve biodiversity**

- (1) Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.
- (2) In complying with subsection (1), a Minister of the Crown, government department or the National Assembly for Wales must in particular have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- (3) Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.
- (4) “Public authority” means any of the following—
  - (a) a Minister of the Crown;
  - (b) the National Assembly for Wales;
  - (c) a public body (including a government department, a local authority and a local planning authority);
  - (d) a person holding an office—
    - (i) under the Crown,
    - (ii) created or continued in existence by a public general Act, or
    - (iii) the remuneration in respect of which is paid out of money provided by Parliament;
  - (e) a statutory undertaker.
- (5) In this section—
 

“local authority” means—

  - (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) in relation to Wales, a county council, a county borough council or a community council;

“local planning authority” has the same meaning as in the Town and Country Planning Act 1990 (c. 8);

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);

“statutory undertaker” means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990.

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

- (1) The Secretary of State must, as respects England, publish a list of the living organisms and types of habitat which in the Secretary of State’s opinion are of principal importance for the purpose of conserving biodiversity.

- (2) Before publishing any list the Secretary of State must consult Natural England as to the living organisms or types of habitat to be included in the list.
- (3) Without prejudice to section 40(1) and (2), the Secretary of State must—
  - (a) take such steps as appear to the Secretary of State to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published under this section, or
  - (b) promote the taking by others of such steps.
- (4) The Secretary of State must, in consultation with Natural England—
  - (a) keep under review any list published under this section,
  - (b) make such revisions of any such list as appear to the Secretary of State appropriate, and
  - (c) publish any list so revised as soon as is reasonably practicable after revising it.

#### **42 Biodiversity lists and action (Wales)**

- (1) The National Assembly for Wales must, as respects Wales, publish a list of the living organisms and types of habitat which in the Assembly's opinion are of principal importance for the purpose of conserving biodiversity.
- (2) Before publishing any list the Assembly must consult the Countryside Council for Wales as to the living organisms or types of habitat to be included in the list.
- (3) Without prejudice to section 40(1) and (2), the Assembly must—
  - (a) take such steps as appear to the Assembly to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published under this section, or
  - (b) promote the taking by others of such steps.
- (4) The Assembly must, in consultation with the Countryside Council for Wales—
  - (a) keep under review any list published under this section,
  - (b) make such revisions of any such list as appear to the Assembly appropriate, and
  - (c) publish any list so revised as soon as is reasonably practicable after revising it.

#### *Pesticides harmful to wildlife*

#### **43 Possession of pesticides harmful to wildlife**

- (1) A person is guilty of an offence if he has in his possession a pesticide containing an ingredient that is prescribed for the purposes of this section by an order made by the Secretary of State.
- (2) The Secretary of State may not make an order under subsection (1) unless he is satisfied that it is necessary or expedient to do so in the interests of protecting wild birds or wild animals from harm.
- (3) It is a defence for a person charged with an offence under this section to prove that his possession of the pesticide was for the purposes of doing anything in accordance with—
  - (a) provision made by or under the Poisons Act 1972 (c. 66);

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) regulations made under section 16(2) of the Food and Environment Protection Act 1985 (c. 48);
  - (c) the Biocidal Products Regulations 2001 (S.I. 2001/880) or any regulations replacing those regulations;
  - (d) the Plant Protection Products Regulations 2005 (S.I. 2005/1435) or any regulations replacing those regulations.
- (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or both).
- (5) The court by which a person is convicted of an offence under this section may order the forfeiture of the pesticide in respect of which the offence was committed.
- (6) The power to make an order under subsection (1) is exercisable by statutory instrument.
- (7) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) The Secretary of State must take such steps as are reasonably practicable to bring information about the effect of an order under subsection (1) to the attention of persons likely to be affected by the order.
- (9) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (4) to 51 weeks is to be read as a reference to 6 months.

#### **44 Enforcement powers in connection with pesticides**

- (1) An inspector may—
- (a) enter any premises if he has reasonable grounds to suspect that he may find there evidence that an offence is being committed under section 43,
  - (b) require any person whom he reasonably believes has information about the formulation, effects or use of any substance found on the premises to give him that information, and
  - (c) seize any substance found on the premises, if he has reasonable grounds for believing that it is evidence of an offence under section 43.
- (2) “Inspector” means—
- (a) a person authorised in writing by the Secretary of State to exercise the powers under this section in relation to England;
  - (b) a person authorised in writing by the National Assembly for Wales to exercise the powers under this section in relation to Wales.
- (3) An authorisation under subsection (2) is subject to any conditions or limitations specified in it.
- (4) Schedule 2 to the Food and Environment Protection Act 1985 (officers and their powers), other than paragraph 2A(1)(b) of that Schedule, has effect with respect to inspectors as it has effect with respect to persons authorised to enforce Part 3 of that Act.
- (5) Subsections (6) and (7) apply where an inspector seizes a substance under subsection (1)(c).



- (6) The inspector must give to a person on the premises, or affix conspicuously to some object on the premises, a notice stating—
- (a) what he has seized and the ground for seizing it, and
  - (b) the address for service for any claim for the return of the substance.
- (7) The inspector—
- (a) may retain the substance for so long as is reasonably necessary for the purposes of any investigation or proceedings in respect of an offence under section 43;
  - (b) subject to any order for forfeiture under section 43(5) or any claim made within the relevant period by a person entitled to the return of the substance, may retain the substance or, after the relevant period, destroy or otherwise dispose of it.
- (8) “The relevant period” means the period ending 28 days after—
- (a) any proceedings in respect of an offence under section 43 are finally determined, or
  - (b) if no such proceedings are brought, the time for bringing such proceedings expires.

#### **45 Codes of practice**

- (1) The Secretary of State may—
- (a) issue a code of practice in connection with any of the provisions of section 44 or Schedule 2 to the Food and Environment Protection Act 1985 (c. 48) as applied by section 44(4), and
  - (b) revise or replace such a code.
- (2) An inspector must have regard to any relevant provision of a code when discharging any function under any provision mentioned in subsection (1)(a).
- (3) But an inspector’s failure to have regard to any provision of a code does not make him liable to criminal or civil proceedings.
- (4) A code—
- (a) is admissible in evidence in any proceedings, and
  - (b) must be taken into account by a court in any case in which it appears to the court to be relevant.

#### **46 Interpretation**

- (1) This section has effect for the interpretation of sections 43 and 44.
- (2) “Pesticide” means—
- (a) a pesticide as defined by section 16(15) of the Food and Environment Protection Act 1985;
  - (b) anything to which Part 3 of the 1985 Act applies (by virtue of section 16(16) of the Act) as if it were a pesticide.
- (3) “Wild bird” and “wild animal” have the same meaning as in Part 1 of the Wildlife and Countryside Act 1981 (c. 69).

- (4) “Premises” includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport.

*Protection of birds*

**47 Protection for nests of certain birds which re-use their nests**

- (1) Amend the Wildlife and Countryside Act 1981 (c. 69) as follows.
- (2) In section 1 (protection of wild birds, their nests and eggs), in subsection (1), after paragraph (a) insert—
- “(aa) takes, damages or destroys the nest of a wild bird included in Schedule ZA1;”.
- (3) At the beginning of the Schedules insert—

“SCHEDULE  
ZA1

BIRDS WHICH RE-USE THEIR NESTS

<i>Common name</i>	<i>Scientific name</i>
Eagle, Golden	<i>Aquila chrysaetos</i>
Eagle, White-tailed	<i>Haliaeetus albicilla</i>
Osprey	<i>Pandion haliaetus</i> ”

NOTE: The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

- (4) In—
- (a) section 4 (exceptions to sections 1 and 3), in subsection (1)(c), and
- (b) section 7 (registration etc. of certain captive birds), in subsection (3A)(a)(i) and (c)(i),
- after “Schedule” insert “ZA1 or”.
- (5) In section 22 (power to vary Schedules), in subsection (1), for “Schedules 1 to 4” substitute “Schedules ZA1 to 4”.

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

- (1) In section 1 of the 1981 Act (protection of wild birds, their nests and eggs), for subsection (6) substitute—
- “(6) For the purposes of this section the definition of “wild bird” in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless it has been lawfully released into the wild as part of a re-population or re-introduction programme.

- (6A) “Re-population” and “re-introduction” have the same meaning as in the Directive of the Council of the European Communities dated 2nd April 1979 (No 1979/409/EEC) on the conservation of wild birds.”
- (2) In section 6 of the 1981 Act (sale etc. of live or dead wild birds, eggs etc.), for subsection (5) substitute—
- “(5) Any reference in this section to any bird included in Part 1 of Schedule 3 is a reference to any bird included in that Part which—
- (a) was bred in captivity,
  - (b) has been ringed or marked in accordance with regulations made by the Secretary of State, and
  - (c) has not been lawfully released into the wild as part of a re-population or re-introduction programme.
- (5A) “Re-population” and “re-introduction” have the same meaning as in the Directive of the Council of the European Communities dated 2nd April 1979 (No 1979/409/EEC) on the conservation of wild birds.
- (5B) Regulations made for the purposes of subsection (5)(b) may make different provision for different birds or different provisions of this section.”

#### **49 Registration etc. of certain captive birds**

In section 7 of the 1981 Act (registration etc. of certain captive birds), in subsection (3A), after paragraph (c) insert—

“(ca) any offence under subsection (1);”.

#### *Invasive non-native species*

#### **50 Sale etc. of invasive non-native species**

After section 14 of the 1981 Act insert—

##### **“14ZA Sale etc. of invasive non-native species**

- (1) Subject to the provisions of this Part, a person is guilty of an offence if he sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale—
- (a) an animal or plant to which this section applies, or
  - (b) anything from which such an animal or plant can be reproduced or propagated.
- (2) Subject to the provisions of this Part, a person is guilty of an offence if he publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell—
- (a) an animal or plant to which this section applies, or
  - (b) anything from which such an animal or plant can be reproduced or propagated.
- (3) This section applies to an animal or plant which—

- (a) is within section 14(1) or (2) (animals and plants which must not be released etc. into the wild),
  - (b) is of a description prescribed for the purposes of this section by an order made by the Secretary of State, and
  - (c) is a live animal or live plant.
- (4) An order under subsection (3) may be made in relation to a particular area or a particular time of the year.
- (5) Subsections (3) and (4) of section 14 (defence of due diligence etc.) apply to an offence under this section as they apply to an offence under that section.”

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

After section 14ZA of the 1981 Act insert—

### **“14ZB Codes of practice in connection with invasive non-native species**

- (1) The Secretary of State may issue or approve a code of practice relating to—
  - (a) animals which are not ordinarily resident in and are not regular visitors to Great Britain in a wild state,
  - (b) animals or plants included in Schedule 9, or
  - (c) any description of animals or plants mentioned in paragraph (a) or (b).
- (2) The Secretary of State may revise or replace a code or approve its revision or replacement.
- (3) The Secretary of State must ensure that a code is published in a way that is appropriate for bringing it to the attention of persons likely to be affected by it.
- (4) A person’s failure to comply with a provision of a code does not make him liable to criminal or civil proceedings.
- (5) A code—
  - (a) is admissible in evidence in any proceedings, and
  - (b) must be taken into account by a court in any case in which it appears to the court to be relevant.”

*Enforcement etc. of provisions relating to wildlife*

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

Schedule 5 contains amendments relating to enforcement powers in connection with wildlife.

## **53 Wildlife offences: time limits for proceedings**

Schedule 6 contains provisions extending the time limit for summary proceedings for certain offences relating to wildlife.

## 54 Application of Part 1 of 1981 Act to Crown

(1) In the 1981 Act, before section 67 insert—

### “66A Application of Part 1 to Crown

- (1) Subject to subsections (2) to (5), Part 1 and regulations and orders made under it bind the Crown.
  - (2) No contravention by the Crown of any provision of Part 1 makes the Crown criminally liable; but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.
  - (3) Despite subsection (2), Part 1 applies to persons in the public service of the Crown as it applies to other persons.
  - (4) But the powers conferred by sections 18A to 19XA are not exercisable in relation to premises occupied by the Crown.
  - (5) Nothing in this Part affects Her Majesty in her private capacity.
  - (6) Subsection (5) is to be read as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (meaning of Her Majesty in her private capacity) were contained in this Act.”
- (2) For the heading to section 67, substitute “Application of Parts 2 and 3 to Crown land”.

## PART 4

### SITES OF SPECIAL SCIENTIFIC INTEREST

## 55 Offences in connection with SSSIs

- (1) Amend section 28P of the Wildlife and Countryside Act 1981 (c. 69) (offences) as follows.
- (2) After subsection (5) insert—
  - “(5A) A section 28G authority which, in the exercise of its functions, permits the carrying out of an operation which damages any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest—
    - (a) without first complying with section 28I(2), or
    - (b) where relevant, without first complying with section 28I(4) or (6),is, unless there was a reasonable excuse for permitting the carrying out of the operation without complying, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
  - (5B) For the purposes of subsection (5A), it is a reasonable excuse in any event for a section 28G authority to permit the carrying out of an operation without first complying with section 28I(2), (4) or (6) if the operation in question was an emergency operation particulars of which (including details of the emergency)

were notified to Natural England as soon as practicable after the permission was given.”

(3) After subsection (6) insert—

“(6A) A person (other than a section 28G authority acting in the exercise of its functions) who without reasonable excuse—

(a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which a site of special scientific interest is of special interest, or

(b) intentionally or recklessly disturbs any of those fauna,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”

(4) In subsection (7), after “(6)” (in both places) insert “or (6A)”.

(5) In section 31 of the 1981 Act (restoration following offence under section 28P), in subsection (1)(b), after “28P(6)” insert “or (6A)”.

## 56 Denotification

In section 28D of the 1981 Act (denotification), in subsection (1), for “no longer” substitute “not”.

## 57 Effect of failure to serve certain notices in connection with SSSIs

After section 70A of the 1981 Act insert—

### “70B Effect of failure to serve certain notices

(1) This section applies where the relevant conservation body—

(a) has (whether before or after the commencement of this section) taken all reasonable steps to ensure that, under any provision listed in subsection (2), notice is served on every owner and occupier of any land to which the notice relates, but

(b) has failed to do so.

(2) The provisions are—

(a) section 28(1) (notification of SSSI);

(b) section 28(5) (confirmation or withdrawal of notification of SSSI);

(c) section 28A(3) (notice varying notification under section 28);

(d) section 28A(5) (notice confirming or withdrawing variation of notification);

(e) section 28B(2) (notification of additional land to be included in SSSI);

(f) section 28B(7) (confirmation or withdrawal of notification);

(g) section 28C(2) (notification of enlargement of SSSI);

(h) section 28C(3) (confirmation or withdrawal of notification of enlargement);

(i) section 28D(2) (denotification);

(j) section 28D(5) (withdrawal or confirmation of denotification);

(k) section 28J(3) (notice of proposed management scheme);

- (l) section 28J(8) (withdrawal or confirmation of management scheme).
- (3) The validity of the notice is not affected by the failure to serve it on every owner and occupier of the land.
- (4) For the purposes of sections 28 to 28Q, the time when the notice is to be treated as having been served is the time when the relevant conservation body took the last of the steps referred to in subsection (1)(a).
- (5) If the relevant conservation body becomes aware of its failure to serve a notice on an owner or occupier, it must serve a copy of the notice on that owner or occupier.
- (6) Nothing in subsection (3) or (4) renders the owner or occupier liable—
  - (a) in relation to anything done or omitted to be done before the commencement of this section, or
  - (b) under section 28P(1) or 28Q(4) in relation to anything done or omitted to be done before the copy of the notice is served under subsection (5).
- (7) “The relevant conservation body” means—
  - (a) in relation to land in an area in England—
    - (i) subject to sub-paragraph (ii), Natural England;
    - (ii) in relation to any time before the commencement of section 27AA, English Nature;
  - (b) in relation to land in an area in Wales, the Countryside Council for Wales.”

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

- (1) After section 28R of the 1981 Act insert—

### **“28S Notices and signs relating to SSSIs**

- (1) Natural England may, on any land included in a site of special scientific interest, put up and maintain notices or signs relating to the site.
  - (2) Natural England may remove any notice or sign put up under subsection (1).
  - (3) Any other person who intentionally or recklessly and without reasonable excuse takes down, damages, destroys or obscures a notice or sign put up under subsection (1) is guilty of an offence.
  - (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”
- (2) In section 51 of the 1981 Act (powers of entry), in subsection (1), after paragraph (k) insert—
- “(ka) for the purposes of putting up, maintaining or removing notices or signs under section 28S;”.
- (3) In subsection (2) of that section, for “paragraphs (a) to (k)” substitute “paragraphs (a) to (ka)”.

## PART 5

### NATIONAL PARKS AND THE BROADS

#### 59 Criteria for designating National Parks

- (1) In section 5 of the National Parks and Access to the Countryside Act 1949 (c. 97) (criteria for designating National Parks), after subsection (2) insert—

“(2A) Natural England may—

- (a) when applying subsection (2)(a) in relation to an area, take into account its wildlife and cultural heritage, and
  - (b) when applying subsection (2)(b) in relation to that area, take into account the extent to which it is possible to promote opportunities for the understanding and enjoyment of its special qualities by the public.”
- (2) The amendment made by subsection (1) applies for the purposes of the confirmation or variation on or after the day on which this section comes into force of orders made before that day as it applies for the purposes of the confirmation or variation of orders made on or after that day.

#### 60 Procedure for orders designating National Parks

- (1) Amend the 1949 Act as follows.
- (2) In section 7 (designation and variation of National Parks), in subsection (1), for “county council, county borough council and county district council” substitute “and local authority”.
- (3) After subsection (6) of that section insert—

“(7) In this section and Schedule 1 “local authority” means—

- (a) in relation to England, a county council, district council or parish council;
  - (b) in relation to Wales, a county council, county borough council or community council.”
- (4) In section 9 (development plans relating to National Parks), omit subsection (2).
- (5) In Schedule 1, in paragraph 2, after sub-paragraph (2) (local inquiries to be held where objection by local authority not withdrawn) insert—

“(2A) In sub-paragraph (2) “local authority” does not include—

- (a) in relation to an order designating a National Park in England, a parish council, or
- (b) in relation to an order designating a National Park in Wales, a community council.”

#### 61 Members of National Park authorities

- (1) Amend Schedule 7 to the Environment Act 1995 (c. 25) (National Park authorities) as follows.



---

*Status: This is the original version (as it was originally enacted).*

---

(2) In paragraph 1, for sub-paragraphs (2) to (6) (constitution of National Park authorities) substitute—

“(2) A National Park authority shall consist of—

- (a) a specified number of local authority members,
- (b) in the case of a National Park in England, a specified number of parish members to be appointed by the Secretary of State, and
- (c) a specified number of other members to be appointed by the Secretary of State;

and “specified” means specified in the relevant order.

(3) The total number of—

- (a) local authority members, and
- (b) parish members,

must exceed the number of other members.”

(3) In paragraph 2 (local authority members), for sub-paragraph (6) substitute—

“(5A) Sub-paragraph (5B) applies to a person who retires from being a member of a council by virtue of an election.

(5B) Sub-paragraph (5)(a) does not terminate his office as member of a National Park authority until—

- (a) three months after he retires from being a member of the council, or
- (b) if earlier, the day on which the National Park authority receives notice of a proposed replacement appointment;

but if he is re-elected he is eligible for re-appointment to the National Park authority.”

(4) In paragraph 3 (parish members of English National Park authorities), for sub-paragraph (4) substitute—

“(4A) Sub-paragraph (4B) applies to a person who retires from being a member of a parish council by virtue of an election.

(4B) Sub-paragraph (3) does not terminate his office as member of a National Park authority until—

- (a) three months after he ceases to be a member of the parish council, or
- (b) if earlier, the day on which the National Park authority receives notice of a proposed replacement appointment;

but if he is re-elected he is eligible for re-appointment to the National Park authority.”

(5) For sub-paragraph (6) of that paragraph substitute—

“(5A) Sub-paragraph (5B) applies to a person who retires from being chairman of a parish meeting by virtue of an election.

(5B) Sub-paragraph (5) does not terminate his office as member of a National Park authority until—

- (a) three months after he retires from being chairman, or

---

*Status: This is the original version (as it was originally enacted).*

---

(b) if earlier, the day on which the National Park authority receives notice of a proposed replacement appointment;  
but if he is re-elected as chairman he is eligible for re-appointment to the National Park authority.”

(6) In paragraph 4 (members, other than parish members, appointed by the Secretary of State), in sub-paragraph (2)(a) for “three years” substitute “four years”.

## **62 Expenditure by National Parks authorities**

In section 11A of the National Parks and Access to the Countryside Act 1949 (c. 97), in subsection (1) (duty of National Park authority to foster economic and social well-being of local communities in National Park), omit “, but without incurring significant expenditure in doing so,”.

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

(1) Amend section 42 of the Wildlife and Countryside Act 1981 (c. 69) (notification of agricultural operations on moor and heath in National Parks) as follows.

(2) In subsection (1)—

- (a) for “The Ministers” substitute “A National Park authority”, and
- (b) for “a National Park” substitute “the relevant Park”.

(3) In subsection (2)(b), for “the Ministers” substitute “the National Park authority”.

(4) In subsection (6), for “the Ministers, the Nature Conservancy Council and the Countryside Agency” substitute “Natural England”.

(5) For subsection (8) substitute—

“(8) An order under this section shall be made by statutory instrument and the Statutory Instruments Act 1946 shall apply to such an instrument as if the order had been made by a Minister of the Crown.”

(6) In section 51 (powers of entry), in subsection (2)(c), omit “the Ministers or”.

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

(1) Amend the Norfolk and Suffolk Broads Act 1988 (c. 4) as follows.

(2) In section 2 (functions of the Authority: general), in subsection (1), for paragraphs (a) and (b) substitute—

- “(a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the Broads;
- (b) promoting opportunities for the understanding and enjoyment of the special qualities of the Broads by the public; and”.

(3) In section 17A (general duty of public bodies etc.), in subsection (1), for paragraphs (a) and (b) substitute—

- “(a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the Broads;
- (b) promoting opportunities for the understanding and enjoyment of the special qualities of the Broads by the public; and”.

- (4) Any increase in the expenses of the Broads Authority attributable to subsection (2) and not related to protecting the interests of navigation is to be met otherwise than by means of—
- (a) charges of a kind mentioned in section 13(1) of the 1988 Act, or
  - (b) levies under section 14(1) of the 1988 Act.

## **65 Emergency financial assistance**

- (1) Amend section 155(4) of the Local Government and Housing Act 1989 (c. 42) (authorities eligible for emergency financial assistance) as follows.
- (2) After paragraph (h) insert—
- “(i) a National Park authority; or
  - (j) the Broads Authority.”
- (3) Omit “or” preceding paragraph (h).

## **PART 6**

### **RIGHTS OF WAY**

#### *Rights of way and mechanically propelled vehicles*

## **66 Restriction on creation of new public rights of way**

- (1) No public right of way for mechanically propelled vehicles is created after commencement unless it is—
- (a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or
  - (b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.
- (2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.

## **67 Ending of certain existing unrecorded public rights of way**

- (1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—
- (a) was not shown in a definitive map and statement, or
  - (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

But this is subject to subsections (2) to (8).

- (2) Subsection (1) does not apply to an existing public right of way if—
- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),
  - (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
  - (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
  - (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- (3) Subsection (1) does not apply to an existing public right of way over a way if—
- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
  - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
  - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—
    - (i) was reasonably necessary to enable that person to obtain access to the land, or
    - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.
- (4) “The relevant date” means—
- (a) in relation to England, 20th January 2005;
  - (b) in relation to Wales, 19th May 2005.
- (5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies—
- (a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or
  - (b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,
- the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.
- (6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.
- (7) For the purposes of subsections (3)(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact—
- (a) exercising the existing public right of way, or
  - (b) able to exercise it.
- (8) Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c. 69) does not apply.

- (9) Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c. 37) has effect subject to this section.

## **68 Presumed dedication of restricted byways and use by pedal cycles etc.**

- (1) Amend section 31 of the Highways Act 1980 (c. 66) (dedication of highway presumed after public use for 20 years) as follows.

- (2) After subsection (1) insert—

“(1A) Subsection (1)—

- (a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but
- (b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.”

- (3) After subsection (10) insert—

“(10A) Nothing in subsection (1A) affects the obligations of the highway authority, or of any other person, as respects the maintenance of a way.”

- (4) After subsection (11) insert—

“(12) For the purposes of subsection (1A) “mechanically propelled vehicle” does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (electrically assisted pedal cycle).”

## **69 Presumed dedication and applications under section 53(5) of the 1981 Act**

- (1) In section 31 of the 1980 Act, after subsection (7) insert—

“(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.”

- (2) The applications in relation to which the amendments made by subsection (1) apply include any application under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) which falls within section 67(3)(a), (b) or (c).

## **70 Supplementary**

- (1) In section 53(3) of the Wildlife and Countryside Act 1981 (modification of definitive map and statement in consequence of certain events)—

- (a) in paragraph (b) (expiration of period raising a presumption of dedication), after “public path” insert “or restricted byway”, and

- (b) in paragraph (c)(i) (discovery of evidence of right of way), after “public path” insert “, a restricted byway”.
- (2) Amend section 34 of the Road Traffic Act 1988 (c. 52) (prohibition of driving mechanically propelled vehicles elsewhere than on roads) as follows.
- (3) In subsection (2), omit “(subject to section 34A of this Act)”.
- (4) After subsection (2) insert—
  - “(2A) It is not an offence under this section for a person with an interest in land, or a visitor to any land, to drive a mechanically propelled vehicle on a road if, immediately before the commencement of section 47(2) of the Countryside and Rights of Way Act 2000, the road was—
    - (a) shown in a definitive map and statement as a road used as a public path, and
    - (b) in use for obtaining access to the land by the driving of mechanically propelled vehicles by a person with an interest in the land or by visitors to the land.”
- (5) In subsection (6), for “and section 34A of this Act do” substitute “does”.
- (6) In subsection (7), insert at the appropriate place in the alphabetical order—
  - ““interest”, in relation to land, includes any estate in land and any right over land (whether exercisable by virtue of the ownership of an estate or interest in the land or by virtue of a licence or agreement) and, in particular, includes rights of common and sporting rights;”.
- (7) After subsection (7) insert—
  - “(8) A person—
    - (a) entering any land in exercise of rights conferred by virtue of section 2(1) of the Countryside and Rights of Way Act 2000, or
    - (b) entering any land which is treated by section 15(1) of that Act as being accessible to the public apart from that Act,
 is not for the purposes of subsection (2A) a visitor to the land.”
- (8) In Schedule 7 to the Countryside and Rights of Way Act 2000 (c. 37), omit paragraphs 6 and 7.

## 71 Interpretation

- (1) In sections 66 and 67—
  - “interest”, in relation to land, includes any estate in land and any right over land (whether exercisable by virtue of the ownership of an estate or interest in the land or by virtue of a licence or agreement) and, in particular, includes rights of common and sporting rights,
  - “mechanically propelled vehicle” does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (c. 52) (electrically assisted pedal cycle), and
  - expressions defined for the purposes of Part 3 of the Wildlife and Countryside Act 1981 (c. 69) by section 66(1) of that Act have the same meaning as in that Part.

- (2) In each of sections 66 and 67 “commencement” means the commencement of that section; and in section 67 “existing” means in existence immediately before commencement.

*Traffic regulation in National Parks*

**72 Traffic regulation on byways etc. in National Parks**

After section 22B of the Road Traffic Regulation Act 1984 (c. 27) insert—

**“22BB Traffic regulation on byways etc. in National Parks in England and Wales**

- (1) This section applies to a road—
- (a) which is in a National Park in England or Wales,
  - (b) which is—
    - (i) shown in a definitive map and statement as a byway open to all traffic, a restricted byway, a bridleway or a footpath, or
    - (ii) a carriageway whose surface, or most of whose surface, does not consist of concrete, tarmacadam, coated roadstone or other prescribed material, and
  - (c) in respect of which no relevant order is in force.
- (2) The National Park authority may—
- (a) for a purpose mentioned in section 1(1)(a) to (g) or 22(2), by order make in respect of the road any such provision as is mentioned in section 2(1), (2) or (3) or 4(1);
  - (b) for the purpose of carrying out an experimental scheme of traffic control, by order make in respect of the road any such provision as is mentioned in section 2(1), (2) or (3) or 4(1);
  - (c) for a reason given in section 14(1)(a) or (b) or for a purpose mentioned in section 14(1)(c) or 22(2), by order make in respect of the road—
    - (i) any such provision as is mentioned in section 2(1), (2) or (3) or 4(1), or
    - (ii) any provision restricting the speed of vehicles.
- (3) This Act has effect, subject to subsection (4) and any prescribed modifications, in relation to an order by a National Park authority under subsection (2)(a), (b) or (c) as it has effect in relation to an order by a local traffic authority under section 1, 9 or 14(1).
- (4) Before making any order under subsection (2), the National Park authority must consult any authority which is a highway authority for the road.

**22BC Section 22BB: supplementary**

- (1) Expressions used in section 22BB(1)(b) that are defined for the purposes of Part 3 of the Wildlife and Countryside Act 1981 by section 66(1) of that Act have the same meaning as in that Part.
- (2) In section 22BB(1)(c) “relevant order” means—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) a traffic regulation order,
- (b) an experimental traffic order,
- (c) an order under section 14(1),
- (d) an order under section 22(4), or
- (e) an order under section 22B,

but does not include an order made under section 22BB(2).

- (3) In section 22BB “prescribed” means prescribed by regulations made—
  - (a) in relation to England, by the Secretary of State;
  - (b) in relation to Wales, by the National Assembly for Wales.
- (4) Any functions exercisable by the National Assembly for Wales by virtue of this section are to be treated for the purposes of section 44 of the Government of Wales Act 1998 (parliamentary procedures for subordinate legislation) as if made exercisable by the Assembly by an Order in Council under section 22 of that Act.”

## PART 7

### INLAND WATERWAYS

#### 73 **Inland Waterways Advisory Council**

The body established by section 110 of the Transport Act 1968 (c. 73) and known as the Inland Waterways Amenity Advisory Council is to be known instead as the Inland Waterways Advisory Council.

#### 74 **Constitution of Council**

For section 110 of the 1968 Act substitute—

##### **“110 The Inland Waterways Advisory Council**

- (1) There is to be a body known as the Inland Waterways Advisory Council (“the Council”).
- (2) The Council is to consist of a chairman and not less than 12 other members.
- (3) The chairman is to be appointed by the Secretary of State after consulting the Scottish Ministers.
- (4) Two of the members are to be appointed by the Scottish Ministers after consulting the Secretary of State.
- (5) In making those appointments, the Scottish Ministers must have regard to the desirability of appointing persons who appear to them to have specialist knowledge of Scotland.
- (6) The other members of the Council are to be appointed by the Secretary of State.
- (7) The members must include persons who appear to the person making the appointment to have wide knowledge of, and interest in, inland waterways.”



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

After section 110 of the 1968 Act insert—

**“110A Term of office, procedure etc.**

- (1) The members of the Council—
  - (a) hold and vacate office in accordance with their terms of appointment, and
  - (b) on ceasing to hold office, are eligible for reappointment;but a member may at any time resign his office by notice in writing to the Secretary of State or (as the case may be) the Scottish Ministers.
- (2) The Council—
  - (a) may, with the approval of the Secretary of State and after consulting the Scottish Ministers, appoint such regional committees as they think fit, and
  - (b) may appoint such other committees as they think fit.
- (3) The Council may determine the procedure (including quorum) of the Council or any committee.
- (4) The Secretary of State or the Scottish Ministers may pay the members of the Council—
  - (a) travelling and other expenses;
  - (b) allowances for loss of remunerative time.
- (5) The Secretary of State may pay the chairman such remuneration as the Secretary of State may determine.
- (6) If the chairman receives such remuneration he is not to be paid any allowance under subsection (4) for loss of remunerative time.
- (7) The Secretary of State and the Scottish Ministers must provide the Council with such staff, accommodation, services and other facilities as appear to the Secretary of State and the Scottish Ministers to be necessary or expedient for the proper performance of the Council’s functions.”

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

After section 110A of the 1968 Act insert—

**“110B Functions of Council: England and Wales**

- (1) The Council—
  - (a) shall provide the Secretary of State and navigation authorities with such advice as appears to the Council appropriate about matters relevant to inland waterways in England and Wales, and
  - (b) may provide any other interested person with such advice.
- (2) “Navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

---

*Status: This is the original version (as it was originally enacted).*

---

- (3) “Interested person”, in relation to any matter, means a person appearing to the Council to have a sufficient interest in the matter.”

## 77 Functions of Council: Scotland

After section 110B of the 1968 Act insert—

### “110C Functions of Council: Scotland

- (1) The Council—
- (a) shall provide the Scottish Ministers and the Waterways Board with such advice as appears to the Council appropriate about matters relevant to inland waterways in Scotland—
    - (i) which are owned or managed by the Waterways Board, or
    - (ii) in respect of which the Waterways Board is providing technical advice or assistance, and
  - (b) may provide any other interested person with such advice.
- (2) “Interested person”, in relation to any matter, means a person appearing to the Council to have a sufficient interest in the matter.”

## PART 8

### FLEXIBLE ADMINISTRATIVE ARRANGEMENTS

#### CHAPTER 1

##### AGREEMENTS WITH DESIGNATED BODIES

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

## 78 Agreement between Secretary of State and designated body

- (1) The Secretary of State may enter into an agreement with a designated body authorising that body to perform a DEFRA function—
- (a) either in relation to the whole of England or in relation to specified areas in England;
  - (b) subject to paragraph (a), either generally or in specified cases.  
“Specified” means specified in the agreement.
- (2) An agreement under this section—
- (a) may be cancelled by the Secretary of State at any time, and
  - (b) does not prevent the Secretary of State from performing a function to which the agreement relates.
- (3) This section is subject to sections 81 and 82 (reserved functions and maximum duration of agreement).

## **79 Agreement between designated bodies**

- (1) A designated body (“A”) may, with the approval of the Secretary of State, enter into an agreement with another designated body (“B”) authorising B to perform a function of A that is related to or connected with a DEFRA function—
  - (a) either in relation to the whole of England or in relation to specified areas in England;
  - (b) subject to paragraph (a), either generally or in specified cases.  
“Specified” means specified in the agreement.
- (2) The Secretary of State’s approval may be given—
  - (a) in relation to a particular agreement or in relation to a description of agreements;
  - (b) unconditionally or subject to conditions specified in the approval.
- (3) Subject to subsection (5), the Secretary of State—
  - (a) must review an agreement under this section no later than the end of the period of 5 years beginning with the date on which the agreement was entered into or was last reviewed by the Secretary of State, and
  - (b) if it appears appropriate to do so in the light of the review, may cancel the agreement.
- (4) Subject to subsection (5), an agreement under this section may not be varied except—
  - (a) by agreement between A and B, and
  - (b) with the approval of the Secretary of State.
- (5) An approval given under subsection (1) may provide that subsection (3) or (4) does not apply (or that both of them do not apply).
- (6) This section is subject to sections 81 and 82 (reserved functions and maximum duration of agreement).

## **80 Designated bodies**

- (1) In this Chapter “designated body” means a body listed in Schedule 7.
- (2) The Secretary of State may by order amend Schedule 7 so as to—
  - (a) add a body to the list, or
  - (b) remove a body from it.
- (3) But the Secretary of State may not exercise the power conferred by subsection (2)(a) unless satisfied that at least one of the purposes or functions of the body to be added to the list is related to or connected with a DEFRA function.
- (4) A body to be added to the list need not be a public body.
- (5) The power to make an order under subsection (2) is exercisable by statutory instrument.
- (6) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

**81 Reserved functions**

- (1) An agreement may not authorise a designated body to perform a reserved function.
- (2) The reserved functions are—
  - (a) any function whose performance by the designated body would be incompatible with the purposes for which the body was established;
  - (b) any power of a Minister of the Crown to make or terminate appointments or lay reports or accounts;
  - (c) any power to make subordinate legislation, give directions or guidance or issue codes of practice (or to vary or revoke any of those things);
  - (d) any power to fix fees or charges other than a power prescribed for the purposes of this section by an order made by the Secretary of State;
  - (e) any function of an accounting officer in his capacity as such;
  - (f) except in relation to an agreement authorising a public body to perform functions—
    - (i) any power to enter, inspect, take samples or seize anything, and
    - (ii) any other power exercisable in connection with suspected offences;
  - (g) any function of the Secretary of State under the Water Industry Act 1991 or under any subordinate legislation made under that Act.
- (3) The power to make an order under subsection (2)(d) is exercisable by statutory instrument.
- (4) A statutory instrument containing an order under subsection (2)(d) is subject to annulment in pursuance of a resolution of either House of Parliament.

**82 Maximum duration of agreement**

The maximum period for which an agreement may authorise a designated body to perform—

- (a) a DEFRA function, or
  - (b) a function that is related to or connected with a DEFRA function,
- is 20 years.

*Supplementary***83 Particular powers**

- (1) The fact that a function is conferred by or under this Act or an Act passed after the passing of this Act does not prevent it from being the subject of an agreement.
- (2) The Secretary of State or a designated body (“A”) may, under an agreement, authorise a designated body (“B”) to perform a function even though under the relevant enactments or subordinate legislation—
  - (a) the function is conferred on A by reference to specified circumstances or cases and the same type of function is conferred on B in different specified circumstances or cases,
  - (b) the function is exercisable by A and B jointly,
  - (c) B is required to be, or may be, consulted about the function (whether generally or in specified circumstances), or

---

*Status: This is the original version (as it was originally enacted).*

---

- (d) B is required to consent to the exercise of the function (whether generally or in specified circumstances).
- (3) An agreement may provide—
  - (a) for the performance of a function to be subject to the fulfilment of conditions;
  - (b) for payments to be made in respect of the performance of the function.
- (4) A designated body which is authorised under an agreement to perform a function—
  - (a) is to be treated as having power to do so;
  - (b) may, unless (or except to the extent that) the agreement provides for this paragraph not to apply—
    - (i) authorise a committee, sub-committee, member, officer or employee of the body to perform the function on its behalf;
    - (ii) form a body corporate and authorise that body to perform the function on its behalf.
- (5) However, where the designated body is a local authority—
  - (a) subsection (4)(a) is subject to section 84(5)(a), and
  - (b) section 84 applies in place of subsection (4)(b).
- (6) Subject to subsection (4)(b) and section 84, a designated body which is authorised under an agreement to perform a function may not authorise any other body or other person to perform that function.

## **84 Agreements with local authorities**

- (1) This section applies where a local authority is authorised under an agreement to perform a function.
- (2) Subject to subsection (5), the function that the local authority is authorised to perform is to be treated as a function of the local authority for the purposes of—
  - (a) any power of a local authority to arrange for the discharge of the function by any person mentioned in subsection (3), and
  - (b) any power of a person mentioned in subsection (3) to arrange for the discharge of a function by any other person mentioned there.
- (3) The persons are any committee, sub-committee, member, officer or employee of the local authority.
- (4) “Committee” does not include a joint committee of two or more local authorities.
- (5) If the local authority is operating executive arrangements—
  - (a) the function is to be treated as a function of the local authority for the purposes of section 13 of the Local Government Act 2000 (c. 22), and
  - (b) if (or to the extent that) the function is the responsibility of the executive of the local authority—
    - (i) subsection (2) does not apply, and
    - (ii) sections 14 to 16 of the 2000 Act, and any regulations made under sections 17 and 18 of the 2000 Act, apply.
- (6) “Executive arrangements” and “executive” have the same meaning as in Part 2 of the 2000 Act.

- (7) An agreement may provide that the provisions of subsection (2) or those mentioned in subsection (5)(b)(ii) do not apply (or do not apply to a specified extent).

## **85 Supplementary provisions with respect to agreements**

- (1) An agreement, and any approval given by the Secretary of State under section 79, must be in writing.
- (2) The Secretary of State must arrange for a copy of an agreement to be published in a way that the Secretary of State thinks is suitable for bringing it to the attention of persons likely to be affected by it.
- (3) No power of a Minister of the Crown under any enactment to give directions to a statutory body extends to giving a direction—
- (a) requiring it to enter into an agreement;
  - (b) prohibiting it from entering into an agreement;
  - (c) requiring it to include, or prohibiting it from including, particular terms;
  - (d) requiring it to negotiate, or prohibiting it from negotiating, a variation or termination of an agreement.
- (4) Schedule 15 to the Deregulation and Contracting Out Act 1994 (c. 40) (restrictions on disclosure of information) applies in relation to an authorisation by a designated body under this Chapter as it applies in relation to an authorisation under section 69 of that Act by an office-holder.

## **86 Interpretation**

- (1) In sections 81 to 85 “agreement” means an agreement under section 78 or 79.
- (2) In this Chapter “DEFRA function” means a function which at the material time falls to be performed by or through the Department for Environment, Food and Rural Affairs.
- (3) A certificate issued by the Secretary of State that a function falls to be performed as mentioned in subsection (2) is conclusive evidence of that fact.
- (4) In this Chapter—
- “designated body” has the meaning given by section 80;
  - “local authority” means—
    - (a) a local authority as defined in section 1(a) of the Local Government Act 2000 (c. 22), and
    - (b) the Greater London Authority;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

## CHAPTER 2

### POWERS TO REFORM AGRICULTURAL ETC. BODIES

#### *Power to create boards*

#### **87 Power to establish boards**

- (1) The appropriate authority may by order—
  - (a) establish a body for a purpose or purposes falling within section 88, and
  - (b) assign to it a function or functions falling within section 89.
- (2) The order must specify the area or areas in relation to which assigned functions are exercisable.
- (3) The areas which may be specified under subsection (2) are—
  - (a) England or an area in England;
  - (b) Wales or an area in Wales;
  - (c) Scotland or an area in Scotland;
  - (d) Northern Ireland or an area in Northern Ireland;
  - (e) any combination of any of the areas mentioned in paragraphs (a) to (d).
- (4) In this Chapter—
  - “the appropriate authority” has the meaning given by section 96;
  - “board” means a body established by an order under this section;
  - “section 87 order” means an order under this section.
- (5) A board is to be known by a name specified in the order.
- (6) Schedule 8 contains provisions about the constitution of boards and related matters.

#### **88 Permissible purposes of boards**

- (1) The purposes referred to in section 87(1)(a) are—
  - (a) increasing efficiency or productivity in an agricultural or related industry;
  - (b) improving marketing in an agricultural or related industry;
  - (c) improving or developing services that an agricultural or related industry provides or could provide to the community;
  - (d) improving the ways in which an agricultural or related industry contributes to sustainable development.
- (2) A section 87 order must specify—
  - (a) the purpose or purposes for which the board is established, and
  - (b) the industry to which the order relates.
- (3) For the purposes of subsection (2)(b), it does not matter whether the specified industry is regarded for any other purpose as—
  - (a) an industry,
  - (b) a group of industries, or
  - (c) a sector or sectors of an industry.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) “Agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, and the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds.
- (5) “Related industry” means an industry which is concerned with the production, processing, manufacture, marketing or distribution of—
- (a) anything (including any creature alive or dead) produced in the course of agriculture, and
  - (b) any product which is derived to any substantial extent from anything so produced.
- (6) “Services” includes environmental and educational services.

## **89 Permissible functions of boards**

- (1) The functions referred to in section 87(1)(b) are—
- (a) a function specified in Schedule 9 (a “Schedule 9 function”);
  - (b) a function which, immediately before the commencement of the section 87 order, is a function of an existing levy body (“an existing function”);
  - (c) a function which is a more limited version of a Schedule 9 function or an existing function;
  - (d) a function which is a combination of two or more Schedule 9 functions or existing functions;
  - (e) any additional function, if it appears to the appropriate authority—
    - (i) to be related or similar to, or connected with, any function being assigned by virtue of any of paragraphs (a) to (d), or
    - (ii) to be capable of being conveniently exercised in association with any function being so assigned.
- (2) In this Chapter “existing levy body” means—
- (a) the British Potato Council;
  - (b) the Home-Grown Cereals Authority;
  - (c) the Horticultural Development Council;
  - (d) the Meat and Livestock Commission;
  - (e) the Milk Development Council.

## **90 Ancillary provisions**

Schedule 10 makes further provision about the contents of a section 87 order.

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

## **91 Power to dissolve existing levy bodies**

- (1) The appropriate authority may by order provide for the dissolution of any or all of the existing levy bodies.
- (2) If an order is made providing for the dissolution of the Home-Grown Cereals Authority, the order must provide for the Cereals Marketing Act 1965 (c. 14) to cease to have effect.



- (3) If an order is made providing for the dissolution of the Meat and Livestock Commission, the order must provide for the relevant provisions of the Agriculture Act 1967 (c. 22) to cease to have effect.
- (4) The relevant provisions of the 1967 Act are—
  - Part 1 (livestock and meat marketing);
  - Schedule 1 (the Meat and Livestock Commission);
  - Schedule 2 (supplementary provisions with respect to development schemes).
- (5) If an order is made providing for the dissolution of—
  - (a) the British Potato Council,
  - (b) the Horticultural Development Council, or
  - (c) the Milk Development Council,the order must provide for the revocation of the development council order establishing the Council.
- (6) “Development council order” has the meaning given by section 1(2) of the Industrial Organisation and Development Act 1947 (c. 40) (power to establish development councils etc.).

## **92 Power to dissolve board**

- (1) The appropriate authority may by order provide for the dissolution of a board.
- (2) An order under this section must provide for the revocation of the section 87 order.

## **93 Dissolution: supplementary**

- (1) Subsection (2) applies if an order is made providing for—
  - (a) the dissolution of an existing levy body, or
  - (b) the dissolution of a board.
- (2) The order may provide for the transfer of any property, rights or liabilities of the existing levy body or board.
- (3) Subsection (4) applies if an order is made providing for—
  - (a) the dissolution of an existing levy body, or
  - (b) the dissolution of a board in relation to which provision has been made by virtue of paragraph 5 of Schedule 10 (levies).
- (4) The order must provide for the application of any surplus—
  - (a) for the purposes for which the existing levy body or board was established, or
  - (b) for connected purposes.
- (5) “Surplus” means an amount by which the assets of the existing levy body or board exceeds its liabilities and expenses.

*Powers of appropriate authority***94 Grants**

- (1) The appropriate authority may make grants to a board of such amounts as the appropriate authority thinks fit.
- (2) A grant under this section may be made subject to such conditions as the appropriate authority thinks fit.

**95 Directions**

- (1) The appropriate authority may give a board general or specific directions as to the exercise of its functions.
- (2) The appropriate authority must publish any directions given under this section as soon as is reasonably practicable after giving the directions.
- (3) The power to give directions under this section includes power to vary or revoke the directions.
- (4) A board must comply with any directions given under this section.

*Supplementary***96 “The appropriate authority”**

- (1) In this Chapter “the appropriate authority” means—
  - (a) in relation to matters concerning England only, the Secretary of State;
  - (b) in relation to matters concerning Wales only, the National Assembly for Wales;
  - (c) in relation to matters concerning Scotland only, the Scottish Ministers;
  - (d) in relation to matters concerning Northern Ireland only, the relevant Northern Ireland department;
  - (e) in relation to the matters mentioned in subsection (2), the Secretary of State acting with the approval of the National Assembly for Wales, the Scottish Ministers or (as the case may be) the relevant Northern Ireland department.
- (2) The matters referred to are—
  - (a) making a section 87 order establishing a board which has cross-border functions;
  - (b) making an order under section 91 or 92 dissolving an existing levy body or such a board;
  - (c) making appointments to such a board or exercising other powers in relation to a cross-border function of a board.
- (3) “Cross-border functions” means functions relating to—
  - (a) England, and
  - (b) Wales, Scotland or Northern Ireland.
- (4) The Scottish Ministers may not give their approval for the purposes of subsection (1)
  - (e) to the making of—

- (a) an order establishing a board whose cross-border functions include functions relating to Scotland, or
- (b) an order dissolving an existing levy body or a board whose cross-border functions include functions relating to Scotland,

unless a draft of the order has been laid before, and approved by a resolution of, the Scottish Parliament.

- (5) In this Chapter “the relevant Northern Ireland department” means the Department of Agriculture and Rural Development in Northern Ireland.

## **97 Orders: procedure etc.**

- (1) An order under this Chapter may include supplementary, incidental, consequential, transitory, transitional or saving provision.
- (2) An order under this Chapter making provision of a description referred to in subsection (1) may—
- (a) amend or repeal any enactment, or
  - (b) amend or revoke any subordinate legislation,
- whenever passed or made.
- (3) “Enactment” includes Acts of the Scottish Parliament and Northern Ireland legislation.
- (4) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30), except that it includes any instrument made under an Act of the Scottish Parliament and any instrument within the meaning of section 1(c) of the Interpretation Act (Northern Ireland) 1954 (c. 33 N.I.).
- (5) Before making any order under this Chapter the appropriate authority must consult such organisations as appear to it to be representative of interests substantially affected by the proposed order.
- (6) Subject to subsection (7), any power to make an order under this Chapter is exercisable by statutory instrument.
- (7) Any power of the relevant Northern Ireland department to make an order under this Chapter is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)).
- (8) An order under this Chapter may not be made—
- (a) by the Secretary of State, unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament;
  - (b) by the Scottish Ministers, unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Scottish Parliament;
  - (c) by the relevant Northern Ireland department, unless a draft of the statutory rule containing the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

### CHAPTER 3

#### FINANCIAL ASSISTANCE

#### 98 Financial assistance

- (1) The Secretary of State may give or arrange for the giving of financial assistance in respect of expenditure incurred or to be incurred in any matter related to or connected with a DEFRA function.
- (2) Financial assistance under this section may be given in any form, and may in particular be given by way of a grant, a loan or a guarantee.
- (3) Financial assistance under this section may be given subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State.
- (4) The conditions may, in particular, include (in the case of a grant) conditions for repayment in specified circumstances.
- (5) “DEFRA function” means a function which falls to be performed by or through the Department for Environment, Food and Rural Affairs.
- (6) A certificate issued by the Secretary of State that a function falls to be performed as mentioned in subsection (5) is conclusive evidence of that fact.
- (7) The power to give financial assistance under this section may be exercised even though a more specific power to give financial assistance exists.

### PART 9

#### MISCELLANEOUS

#### 99 Natural beauty in the countryside

The fact that an area in England or Wales consists of or includes—

- (a) land used for agriculture or woodlands,
- (b) land used as a park, or
- (c) any other area whose flora, fauna or physiographical features are partly the product of human intervention in the landscape,

does not prevent it from being treated, for the purposes of any enactment (whenever passed), as being an area of natural beauty (or of outstanding natural beauty).

#### 100 Byelaws relating to land drainage

- (1) In the Water Resources Act 1991 (c. 57), in Schedule 25, in paragraph 5(1) (power of Environment Agency to make byelaws for securing efficient working of drainage system), for the words from “necessary for securing” to the end of paragraph 5(1) substitute “necessary—
  - (a) for securing the efficient working of any drainage system, or
  - (b) for regulating the effects of any drainage system on the environment.”
- (2) In paragraph 5(5) of that Schedule, after “banks” insert “, drainage”.

- (3) In the Land Drainage Act 1991 (c. 59), in section 66(1) (power of land drainage authorities etc. to make byelaws for securing efficient working of drainage system), for the words from “necessary for securing” to the end of section 66(1) substitute “necessary—“
- (a) for securing the efficient working of any drainage system in their district or area, or
  - (b) for regulating the effects in their district or area of any drainage system on the environment.”

## **101 Abolition of certain agricultural etc. committees**

The following are abolished—

- (a) the advisory committee for England, Wales and Northern Ireland established under section 32 of the Hill Farming Act 1946 (c. 73),
- (b) the sub-committee for Wales and Monmouthshire established under that section,
- (c) the advisory committee for Scotland established under that section,
- (d) the consumers' committees and committees of investigation established under section 19 of the Agricultural Marketing Act 1958 (c. 47), and
- (e) the committee of investigation established under Article 21 of the Agricultural Marketing (Northern Ireland) Order 1982 (S.I. 1982/1080 (N.I. 12)).

## **PART 10**

### **FINAL PROVISIONS**

## **102 Crown land**

- (1) The appropriate authority may enter into an agreement under section 7 as respects an interest in Crown land held by or on behalf of the Crown.
- (2) An agreement under section 7 as respects any other interest in Crown land is of no effect unless approved by the appropriate authority.
- (3) “Crown land” means land an interest in which—
  - (a) belongs to Her Majesty in right of the Crown,
  - (b) belongs to Her Majesty in right of the Duchy of Lancaster,
  - (c) belongs to the Duchy of Cornwall, or
  - (d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.
- (4) “The appropriate authority”, in relation to any land, means—
  - (a) if the land belongs to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the land in question;
  - (b) if the lands belongs to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;

---

*Status: This is the original version (as it was originally enacted).*

---

- (c) if the land belongs to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
  - (d) if the land belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department.
- (5) If any question arises under this section as to what authority is the appropriate authority in relation to any land, that question is to be referred to the Treasury, whose decision is final.

### **103 Wales**

In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), the reference to the Wildlife and Countryside Act 1981 (c. 69) is to be read as a reference to the 1981 Act as amended by this Act.

### **104 Power to make further provision**

- (1) The Secretary of State may by order make such supplementary, incidental, consequential, transitory, transitional or saving provision as the Secretary of State considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.<sup>45</sup>
- (2) An order under subsection (1) may—
  - (a) amend or repeal any enactment contained in an Act passed on or before the last day of the Session in which this Act is passed;
  - (b) amend or revoke any subordinate legislation made before the passing of this Act.
- (3) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).
- (4) The power to make an order under subsection (1) is exercisable by statutory instrument.
- (5) An order under subsection (1) which contains any provision (whether alone or with other provisions) made by virtue of subsection (2)(a) may not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A statutory instrument containing any other order under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

### **105 Minor and consequential amendments etc.**

- (1) Schedule 11 contains minor and consequential amendments.
- (2) Schedule 12 contains repeals and revocations.

### **106 Financial provisions**

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown in consequence of this Act, and

- (b) any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided.

## 107 Commencement

- (1) Part 1 (Natural England and the Commission for Rural Communities) comes into force in accordance with provision made by order by the Secretary of State.
- (2) Part 2 (nature conservation in the UK) comes into force in accordance with provision made by order by the Secretary of State, after consulting the Scottish Ministers and the Department of Agriculture and Rural Development in Northern Ireland.
- (3) In Parts 3 to 5 (wildlife etc., SSSIs, National Parks and the Broads)—
  - (a) section 59 comes into force at the end of the period of two months beginning with the day on which this Act is passed, and
  - (b) the other provisions come into force in accordance with provision made by order by the Secretary of State.
- (4) Part 6 (rights of way) comes into force in accordance with provision made by order by—
  - (a) the Secretary of State (in relation to England), or
  - (b) the National Assembly for Wales (in relation to Wales).
- (5) Part 7 (inland waterways) comes into force in accordance with provision made by order by the Secretary of State, after consulting the Scottish Ministers.
- (6) In Part 8 (flexible administrative arrangements)—
  - (a) Chapter 1 comes into force in accordance with provision made by order by the Secretary of State,
  - (b) Chapter 2 comes into force in accordance with provision made by order by the Secretary of State, after consulting the Scottish Ministers and the Department of Agriculture and Rural Development in Northern Ireland, and
  - (c) Chapter 3 comes into force in accordance with provision made by order by the Secretary of State.
- (7) In Part 9 (miscellaneous)—
  - (a) section 99 (natural beauty in the countryside) comes into force at the end of the period of two months beginning with the day on which this Act is passed, and
  - (b) section 101 (abolition of certain agricultural etc. committees) comes into force in accordance with provision made by order by the Secretary of State, after consulting the Scottish Ministers and the Department of Agriculture and Rural Development in Northern Ireland.
- (8) In this Part—
  - (a) section 105 and Schedules 11 and 12, except so far as relating to an Act of the Scottish Parliament or a provision which extends to Northern Ireland only, comes into force in accordance with provision made by order by the Secretary of State,
  - (b) section 105 and Schedules 11 and 12, so far as relating to an Act of the Scottish Parliament, comes into force in accordance with provision made by order by the Secretary of State after consulting the Scottish Ministers, and
  - (c) section 105 and Schedules 11 and 12, so far as relating to a provision which extends to Northern Ireland only, comes into force in accordance

---

*Status: This is the original version (as it was originally enacted).*

---

with provision made by order by the Secretary of State, after consulting the Department of Agriculture and Rural Development and the Department of the Environment in Northern Ireland.

- (9) The power to make an order under this section is exercisable by statutory instrument.
- (10) An order under this section may make different provision for different purposes or different areas.
- (11) An order under this section may make such transitional, transitory or saving provision as the person making the order considers expedient.

## **108 Extent**

- (1) Except as provided by this section, this Act extends to England and Wales only.
- (2) Part 2 (nature conservation in the UK) extends also to Scotland and Northern Ireland.
- (3) In Part 3—
  - (a) amendments affecting any provisions of the Wildlife and Countryside Act 1981 (c. 69) that extend to the territorial waters adjacent to England and Wales extend also to those waters, and
  - (b) paragraphs 1, 2, 5 and 6 of Schedule 6 (wildlife offences: time limits for proceedings), and section 53 so far as necessary, extend to any place to which the enactments amended by Schedule 6 extend.
- (4) Part 7 (inland waterways) extends also to Scotland.
- (5) In Part 8 (flexible administrative arrangements)—
  - (a) Chapter 2 (powers to reform agricultural etc. bodies) extends also to Scotland and Northern Ireland, and
  - (b) Chapter 3 (financial assistance) extends also to Northern Ireland.
- (6) In Part 9 (miscellaneous), section 101 (abolition of certain agricultural etc. committees) extends also to Scotland and Northern Ireland.
- (7) In this Part—
  - (a) sections 105, 107 and 109 and this section extend also to Scotland and Northern Ireland so far as necessary, and
  - (b) the amendments, repeals and revocations in Schedules 11 and 12 have the same extent as the provisions to which they relate (except where otherwise provided).

## **109 Short title**

This Act may be cited as the Natural Environment and Rural Communities Act 2006.