

# NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

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## EXPLANATORY NOTES

### THE ACT

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

22. **Part 1** and Schedules 1 to 3 establish two new independent non-departmental public bodies (“NDPBs”), Natural England and the Commission for Rural Communities (“the Commission”). They also provide for the dissolution of two existing NDPBs, namely, English Nature and the Countryside Agency.
23. As mentioned in the summary, Natural England brings together the functions of the two existing NDPBs and the Rural Development Service (“RDS”). RDS’s mainly regional staff of about 1500 will become employees of Natural England (and so will be public sector employees instead of being civil servants). Most of the functions that RDS staff have performed on behalf of the Secretary of State will still be carried out by them, but as employees of Natural England. This is because the intention is that any RDS functions that derive from legislation will be the subject of long term service delivery agreements made between the Secretary of State and Natural England under Chapter 1 of Part 8 of this Act.
24. **Part 1** provides for the transfer of property, rights and liabilities in connection with the dissolution of English Nature and the Countryside Agency. This Part also confers power to make transfers in the future between Natural England, the Commission and a Minister of the Crown. This power is exercisable for the efficient management of property, rights and liabilities.

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

25. **Part 2** and Schedule 4 reconstitute the Joint Nature Conservation Committee as a UK-wide organisation, and make other changes to its remit.

#### **Part 3: Wildlife etc.**

26. **Part 3** makes provision in respect of biodiversity, pesticides harmful to wildlife, the protection of birds and invasive non-native species. It also introduces Schedules 5 and 6 which make provision in relation to enforcement powers in connection with wildlife and time limits for proceedings in respect of certain wildlife offences.

#### **Part 4: Sites of special scientific interest**

27. **Part 4** addresses a small number of gaps and uncertainties which have been identified for sites of special scientific interest (“SSSIs”). Specifically it creates a new offence for certain authorities (broadly speaking, public bodies and their employees) to permit the carrying out of an operation which damages an SSSI without reasonable excuse. It also creates a related offence of intentionally or recklessly destroying or damaging an SSSI’s flora, fauna, or geographical or physiographical features without reasonable excuse.

28. **Part 4** also contains provisions dealing with the effects of failure to serve notices on all the correct persons when notifying or denotifying an SSSI. It empowers Natural England and the Countryside Council for Wales to put up notices and signs relating to SSSIs, and makes it an offence to intentionally or recklessly, and without reasonable excuse, damage, destroy or obscure those notices or signs.

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

29. **Part 5** responds to the High Court judgment of 3 November 2005 in the case of *Meyrick Estate Management Ltd v Secretary of State for Environment, Food and Rural Affairs* [2005] EWHC 2618 (Admin), clarifying what factors may be taken into account when designating a National Park.
30. **Part 5** also amends the functions and the constitution of National Park authorities and the functions of the Broads Authority, and enables emergency funding to be given to National Park authorities and the Broads Authority if need be.

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

31. Under current law, evidence of use by non-mechanically propelled vehicles of a route for a 20 year period or a dedication for such use gives rise to a public right of way for all vehicles and this public right of way can be recorded on the definitive map and statement as a byway open to all traffic. (The “definitive map and statement” is a document kept by a local authority which shows footpaths, bridleways, restricted byways and byways open to all traffic.).
32. In *Bakewell Management Ltd v Brandwood* [2004] UKHL 14, [2004] 2 AC 519, the House of Lords decided that a right of way may arise where mechanically propelled vehicles have used a route for the 20-year period, even where that use was illegal. Use of footpaths or bridleways by mechanically propelled vehicles has been illegal since the 1930’s. Part 6 halts the implied creation of new public rights of way for mechanically propelled vehicles, preventing post-1930 use of a way by a mechanically propelled vehicle from giving rise to any future public right of way.
33. **Part 6** also extinguishes existing public rights of way for mechanically propelled vehicles, where those rights are not already recorded on the definitive map and statement, although this is subject to certain exceptions.
34. Property owners and others with an interest in land may have been relying on unrecorded public vehicular rights of way for access to that land. Part 6 ensures that, if the public right of way for mechanically propelled rights is extinguished, these people are provided with a private right of way to access the land by mechanically propelled vehicle.
35. All claims made under Part 3 of the Wildlife and Countryside Act 1981 to establish new rights for mechanically propelled vehicles which were lodged before 20 January 2005 (in England) or 19 May 2005 (in Wales) will be preserved and dealt with under the old law. So also will applications that were lodged after the relevant date but have reached the stage of being determined by the surveying authority. So too will applications lodged by landowners who want to maintain access to their property by mechanically propelled vehicle.
36. **Part 6** also amends provisions of the Highways Act 1980 that deal with the creation of public rights by a period of use. One purpose of the amendments is to make clear that use by non-mechanically propelled vehicles (such as pedal cycles) can still give rise to a new public right of way for non-mechanically propelled vehicles. Another is to clarify the date on which a public right to use a way is to be regarded as brought into question (for the purpose of calculating the length of the period of use, and thus whether or not a new public right of way has been created) in a case where the public right has been brought into question by an application to modify the definitive map and statement.

37. Finally, Part 6 includes provision to enable National Park authorities to make traffic regulation orders and other orders regulating traffic, in relation to recorded byways, footpaths and bridleways and unsealed carriageways in National Parks.

### **Part 7: Inland waterways**

38. **Part 7** re-constitutes the Inland Waterways Amenity Advisory Council by severing its administrative connections with British Waterways and setting it up as an independent body supported by Defra (or, in Scotland, by the Scottish Executive). Part 7 replaces the Council's existing statutory advisory functions with new, wider terms of reference enabling it to advise Government, navigation authorities and other interested persons about the inland waterways generally. The Council is renamed the Inland Waterways Advisory Council to reflect its new role. The Act does not change the Council's existing functions as a statutory consultee.

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

39. **Chapter 1** of Part 8 enables the Secretary of State to make agreements with bodies listed in Schedule 7 ("designated bodies") for certain types of function to be performed by those bodies. Designated bodies also have the power to authorise other designated bodies by agreement to perform their functions. In both situations the relevant function must be either a Defra or Defra-related one that is compatible with the purposes of the receiving body.
40. As mentioned above, this Chapter will enable Natural England to be authorised to carry out activities currently carried out by the Rural Development Service on behalf of the Secretary of State.
41. **Chapter 2** of Part, and Schedules 8, 9 and 10, confer power to establish boards for the purpose of helping to develop and promote agricultural and related industries. This Chapter also contains power to abolish certain existing agricultural levy bodies that are within Defra's remit (namely, the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council). These provisions are intended to enable action to be taken in the light of the Radcliffe Review of Agricultural and Horticultural Levy Bodies. This was published in October 2005, with document reference PB 11427, and is currently to be found at: [www.defra.gov.uk/corporate/consult/levy-bodies/index.htm](http://www.defra.gov.uk/corporate/consult/levy-bodies/index.htm).
42. **Chapter 3** confers a wide power to enable financial assistance to be given by the Secretary of State for any purposes connected with Defra activities.

### **Part 9: Miscellaneous**

43. Various Acts, apart from the Act dealing with the designation of National Parks, refer to areas of natural beauty. Section 99 clarifies what may be taken to contribute to natural beauty for the purposes of such references. This section was included in this Act as part of the response to the *Meyrick* case mentioned above.
44. **Section 100** amends byelaw-making powers relating to flood defence and the drainage system more generally, so that they can take environmental matters into account.
45. **Section 101** provides for the abolition of certain defunct statutory committees.

### **Part 10: Final provisions**

46. **Part 10**, as well as providing standard provisions in relation to transitional arrangements, commencement and extent, introduces two Schedules: Schedule 11 which contains minor and consequential amendments, and Schedule 12 which contains repeals.