

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

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Natural England and the Commission for Rural Communities

Chapter 1: Natural England

Constitution and general purpose

Section 1: Constitution

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

Section 2: General purpose

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

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

Advisory functions

Section 3: Review and research

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

Section 4: Advice

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

General implementation powers

Section 5: Carrying out proposals etc.

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

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

Section 7: Management agreements

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

Section 8: Experimental schemes

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

Other functions

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

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

Section 11: Power to charge for services and licences

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

Section 12: Power to bring criminal proceedings

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

Section 13: Incidental powers

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

Powers of Secretary of State

Section 15: Guidance

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

Section 16: Directions

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

Chapter 2: Commission for Rural Communities

The Commission and its general purpose

Section 17: Commission for Rural Communities

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

Section 18: Commission's general purpose

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

Functions

Section 19: Representation, advice and monitoring

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

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

Section 20: Research

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

Section 21: Information services etc.

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

Section 22: Power to charge for services

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

Section 23: Incidental powers

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

Powers of Secretary of State

Section 24: Grants

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

Section 25: Directions

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

Chapter 3: Supplementary

Transfer schemes etc.

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

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

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

Section 27: Continuing powers to make transfer schemes

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

Section 29: Interim arrangements

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