

**House of Lords Select Committee on the Natural Environment  
and Rural Communities Act 2006  
Written evidence submitted by the Open Spaces Society,  
September 2017**

**Summary of Open Spaces Society's recommendations to the committee**

- 1 Government should give clearer and more transparent guidance as to how Natural England should allocate its resources to ensure that its general purposes, as defined in the NERC Act, are not squeezed and effectively extinguished.
- 2 There should be greater integration of access, wildlife and landscape conservation, throughout Natural England.
- 3 Natural England's independent voice should be reinstated.
- 4 The papers for Natural England's board meetings should resume being published on the website and in advance of the meetings, in accordance with government's promises of greater transparency and accountability.
- 5 Natural England needs more resources and more independence from government.
- 6 Natural England needs the staff and resources to enable it to secure public funding for public access post-Brexit.
- 7 Natural England's field staff should be trained in public access.
- 8 The committee should hold a separate inquiry into part 6 of the Natural Environment and Rural Communities Act.
- 9 The committee should call on the Secretary of State to publish and keep up to date a list of functions which have been the subject of 'flexible administrative arrangements' under chapter 1 of part 8 of the NERC Act.

**Introduction**

- 1 The Open Spaces Society is Britain's oldest national conservation body, founded in 1865. We campaign for the protection and management of common land, town and village greens, open spaces and public paths, in town and country, throughout England and Wales. Our members are individuals, organisations and local councils. We are a registered charity.
- 2 Questions 4-6, and question 11 are particularly relevant to our area of interest and knowledge.

## Natural England

4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?

- 3 Natural England is doing an excellent job in creating the coastal route and adjoining access land around England and has made great efforts to spend the money which government has provided for this project. It has scaled up its staff and put together an efficient and effective team to deliver this. This shows that, when Natural England is given a ring-fenced fund, it can use it to provide outstanding public benefit.
- 4 Natural England also demonstrates a clear commitment to common land, which it recognises provides a wide range of benefits to the public (including landscape, access, culture, history and wildlife habitats). It produces helpful responses to applications for works on common land, and we greatly appreciate the work of those staff who have a role on commons.
- 5 We are concerned that, as Natural England has increasingly been subsumed into Defra, there is a fundamental tension between undertaking its regulatory function and fulfilling its general purposes as laid down in the Natural Environment and Rural Communities Act 2006 (NERC Act). Limited resources are increasingly being re-directed to the former, leaving its wider functions wanting. Its general purposes of 'securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment, and promoting access to the countryside and open spaces and encouraging open-air recreation' have been sidelined so that resources can be focused on narrower regulatory obligations.

***Recommendation 1: Government should give clearer and more transparent guidance as to how Natural England should allocate its resources to ensure that its general purposes, as defined in the NERC Act, are not squeezed and effectively extinguished.***

- 6 We do not feel that, 11 years on, access and wildlife have been integrated throughout the organisation—instead, access appears to have been sidelined (apart from the work on coastal access, which is most welcome). Too often, we find that Natural England is actively supporting site-specific schemes to promote biodiversity (eg by promoting fencing of common land to facilitate conservation grazing) without any real consideration of its statutory general purposes (in s.2(2)(c) and (d)) to promote enjoyment of the natural environment and encourage open-air recreation.

***Recommendation 2: There should be greater integration of access, wildlife and landscape conservation, throughout Natural England.***

- 7 Natural England has regrettably been sucked into Defra. It no longer has its own website, nor does it issue its own press releases. It has no independent voice as the government's adviser and champion on wildlife, landscape and access. We no longer hear from it beyond the odd blog—for instance, partners such as the Open

Spaces Society were not informed that Defra was to celebrate the milestone on coastal access<sup>1</sup> on 1 September, so we could not help with publicity. This lack of independence causes us deep concern; government needs a critical friend.

***Recommendation 3: Natural England's independent voice should be reinstated.***

- 8 Natural England's board papers are not published, only the minutes, so the public is not encouraged to attend or take an interest in board meetings. Some board meetings are open to the public and one can register attendance, but if one does not know what is coming up, it is impossible to know whether one wishes to attend. The information, such as it is, appears [here](#). Consequently, while we are delighted that Natural England's conservation strategy for the 21<sup>st</sup> century, Conservation 21, has as one of its three guiding principles 'putting people at the heart of the environment', we have seen no evidence of how this is being achieved. This is just one example of the difficulty of knowing what is going on in Natural England at board level.
- 9 We suspect that the failure to publish board papers online is a symptom of its being absorbed into the Government machine (see paragraph 7 above): Natural England no longer has control of 'its' website, and therefore has no power to demand that board papers be published. We note and recall that, for example in 2012, Natural England published its board agenda and papers on its own website<sup>2</sup>.

***Recommendation 4: The papers for Natural England's board meetings should resume being published on the website and in advance of the meetings, in accordance with government's promises of greater transparency and accountability.***

**5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

- 10 Since Natural England was established, local authorities have made severe cuts in resources devoted to public rights of way and public access. Natural England needs to help find innovative ways to ensure that rights of way are maintained and access is increased. It does not need a change to its remit, but it does need more resources and more independence from government.

***Recommendation 5: Natural England needs more resources and more independence from government.***

- 11 Natural England has an important role in ensuring that public funding for agriculture, post-Brexit, is directed to securing public benefit, in particular through the provision of public access. Government must provide Natural England with the staff and

<sup>1</sup> Natural England now working on every stretch of the coast.

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[http://webarchive.nationalarchives.gov.uk/20120821114428/http://www.naturalengland.gov.uk/about\\_us/ourpeople/neboard/meetings/default.aspx](http://webarchive.nationalarchives.gov.uk/20120821114428/http://www.naturalengland.gov.uk/about_us/ourpeople/neboard/meetings/default.aspx)

resources to ensure that this happens. To achieve this, Natural England must actively engage with stakeholders in gathering ideas and good practice. This would be an excellent investment since it will secure long-term public benefit.

***Recommendation 6: Natural England needs the staff and resources to enable it to secure public funding for public access post-Brexit.***

**6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England—and other partners—been in promoting better access?**

- 12 Natural England needs a structure which enables it fully to integrate public access with wildlife and landscape protection and to employ staff who have the knowledge and expertise to advocate the importance of public access for health and well-being, to ensure that the law is followed, and to argue for public access to be at the heart of the organisation. All field staff should have training in public access, recreation and enjoyment of the countryside—and particularly those who have an English Nature background and may not be sufficiently aware of these aspects of Natural England’s general purposes and their importance to their day-to-day work.

***Recommendation 7: Natural England’s field staff should be trained in public access.***

The changing context since 2006

**11 Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

- 13 We are disappointed that the committee has not invited views on part 6 of the Natural Environment and Rural Communities Act 2006 (rights of way) and, in particular, the provision to extinguish the rights of mechanically-propelled vehicles on many routes (with retrospective effect). This was a draconian measure, and while there are strong feelings on the benefits and disadvantages of part 6, there has been no attempt by Government to review the legislation and its efficacy. There may be important lessons here for the implementation of the 2026 closure of the definitive map under Part II of the Countryside and Rights of Way Act 2000 and amending measures in the Deregulation Act 2015—but if there are, no steps are being taken to ensure that they are learned, and employed to improve outcomes under the 2000 Act.

***Recommendation 8: The committee should hold a separate inquiry into part 6 of the Natural Environment and Rural Communities Act.***

- 14 We also wish to draw to the committee’s attention the absence of any meaningful information in the public domain about the implementation of part 8, chapter 1, of the NERC Act, ‘agreements with designated bodies’. Chapter 1 enables agreements between the Secretary of State for Environment, Food and Rural

Affairs<sup>3</sup> and designated bodies (such as Natural England) to enable functions of the Secretary of State to be discharged instead by the designated body. It also enables agreements between designated bodies for similar purposes. Eligible designated bodies are listed in Schedule 7 to the NERC Act. Under section 85(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.’

- 15 We understand that a number of functions have been delegated from the Secretary of State to Natural England under chapter 1, including for example the enforcement power relating to abuse of agricultural common land under section 46 of the Commons Act 2006. But, so far as we can establish, Defra does not publish an up-to-date list of delegated functions on [www.gov.uk](http://www.gov.uk), so that it is impossible for the public to understand which statutory functions conferred on the Secretary of State have been legally assigned to another body (whether Natural England or another), notwithstanding that the Secretary of State is statutorily obliged to publish such agreements. This means that the public does not know whether representations, enquiries, complaints and legal action about the exercise of such powers should be addressed to Defra or to any of a number of designated bodies, unless any online guidance happens to address the point.
- 16 We note that historical snapshots of agreements with Natural England are available on internet archive sites. But these are unacceptable substitutes for a currently-maintained list of delegated functions, as such snapshots are generally not visible to search engines (and therefore invisible other than to the well-informed) and are not updated, and the reader has no way of knowing whether they remain in force or have been amended or supplemented.
- 17 We note with dismay that, in his report to Parliament dated July 2017 on Post-legislative Scrutiny of the Natural Environment and Rural Communities Act 2006, the Secretary of State observes (para 63) that ‘Owing to the wide-ranging number and function of designated bodies described in Chapter 1 and the lack of a central record of agreements made, it has not been possible to provide more information about how these provisions have been used by the department.’ If even Defra cannot explain what agreements have been made by its own department, how can the public and interested stakeholders be expected to know what arrangements have been made? It is unacceptable that Defra has failed to co-ordinate records of such agreements, and failed to discharge the Secretary of State’s duty to publish such agreements under section 85(2) of the NERC Act.

***Recommendation 9: The committee should call on the Secretary of State to publish and keep up to date a list of functions which have been the subject of ‘flexible administrative arrangements’ under chapter 1 of part 8 of the NERC Act.***

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<sup>3</sup> Amendments have been made to Chapter 1 to enable certain other functions to be assigned. However, these functions are merely the former functions of the Secretary of State for EFRA, which have moved to other parts of Government in consequence of machinery of government changes.

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