

Government response

The government thanks the House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006 (NERC Act) for its report - 'The countryside at a crossroads: Is the Natural Environment and Rural Communities Act 2006 still fit for purpose?'

It is the government's ambition to leave our environment in a better state than we found it. The 25 Year Environment Plan published in January 2018, outlines the steps we propose to take to achieve our ambition and we recognise that a care for the land is crucial for the future of rural prosperity.

The government's response to the Committee's report sets out plans to address accountability for the environment once we have left the European Union, including the creation of a new environmental body.

The government has addressed the issues raised by the Committee on the role of Natural England, clarifying how it has transformed its approach to deploy resources strategically for the greatest positive impact, including delivering with and through others and where it leads, advises and guides. In particular, Natural England has adapted its approach to planning advice to maintain a high response rate and the quality of advice it provides. The government is committed to finding a long-term and secure future for our National Trails.

The government agrees that further action can be taken to make sure that public bodies take steps to integrate biodiversity and wider natural capital considerations into their decision-making. It should however be noted that the NERC Act biodiversity duty is not the only means for delivering our ambition for biodiversity.

The government wants thriving rural areas – with a strong and sustainable economy building on its diversity and with vibrant communities, so that people at whatever stage in their lives have the same opportunities as those who live in towns and cities.

Government has a clear approach to rural proofing - it is best mainstreamed into all policymaking across government as well as delivery at the local level. The government remains committed to rural proofing all policies from the earliest stages.

The Committee made a range of recommendations that the government has addressed below.

Chapter Two: Brexit and the natural environment

Recommendations 1, 2 and 3

The departure of the United Kingdom from the European Union will result in a governance gap for environmental protection in the UK. Potentially, this could diminish the extent to which the Government can be held accountable for its environmental promises and commitments. (Paragraph 67)

We welcome, therefore, the Government's decision to create a new environmental body to hold both it and other public bodies to account, and the anticipated consultation on filling the 'governance gap'. We recommend that the new body should be independent, accountable to Parliament, financed by more than one Government department and tasked with providing environmental oversight and scrutiny. (Paragraph 68)

The new body must be able to deal with issues raised by individuals in complaints, and should have the power and capacity to take the Government and other public bodies to court when appropriate to do so. Where as a result of such actions, the courts determine faults or breaches to have occurred, appropriate sanctions—including but not limited to fines—should be available. (Paragraph 69)

Defra launched a consultation about the shape and remit of the new environmental governance body on 10 May 2018.

The government has heard strong and persuasive arguments that the absence of a body to fulfil the scrutiny and enforcement functions which the European Commission currently performs for environmental legislation is an important issue that needs to be addressed in maintaining or indeed enhancing the current level of environmental protection.

This is why, on 12 November 2017, the Secretary of State for the Environment, Food and Rural Affairs set out plans to consult on a new, independent and statutory body to hold government and potentially public authorities, to account on environmental issues once we have left the European Union. We are also consulting on our intention to create a new, comprehensive policy statement setting out the environmental principles that will guide our environmental policy-making and legislation post exit. This is something the Committee welcomed in the recommendations.

The government agrees that the new body will need to be independent of but funded by government. Setting on a particular classification or model for the new body now would pre-empt the consultation and the consideration of all responses.

Our starting point is that the statutory statement of environmental principles and the environmental body should cover England and environmental matters that are not devolved. We would welcome the opportunity to co-design the proposals for the new environmental body and principles with the devolved administrations, to jointly address these issues and ensure they work more widely across the UK, taking account of the different government and legal systems in the home nations.

Recommendations 4 and 5

The Habitats Directive and the Birds Directive require EU member states to report on the measures they have taken to implement the provisions of the Directive, including on the conservation status of habitats and species. Although the fine detail of policies may be subject to future change it will be important, following Brexit, to retain similar reporting requirements on the conservation status of protected species and habitats. (Paragraph 77)

We therefore recommend that Defra and its agencies be required to report on the implementation of their legal obligations in respect of nature conservation, including specific requirements with respect to the conservation status of protected species and habitats. These reports must be made to the new environmental body proposed by the Government, which should then scrutinise the reports and publish informed commentary, analysis, and recommendations for action by the Government. (Paragraph 78)

The government notes the Committee's recommendation. The EU (Withdrawal) Bill will make sure that existing EU environmental law continues to have effect in UK law. It will preserve EU law where it stands at the moment before we leave the EU. This will include the Habitats and Birds Directives as transposed through domestic legislation. As part of that the government will be transposing the existing reporting requirements contained in those directives and will require reports to be made publicly available. This will make sure the current levels of information and scrutiny remain in place after the UK exits the EU.

Defra launched a consultation about the shape and remit of the new environmental governance body on 10 May. Specifying responsibilities for the new body now would pre-empt the consultation and the consideration of all responses.

Chapter Three: The role of Natural England

Recommendation 6

Non-departmental public bodies, while playing a part in the processes of national government, should operate at arm's length from Ministers and departments. We share the concerns of witnesses who have told us that Natural England no longer has a distinctive voice. We urge the Government to

recognise these concerns, and to take steps to enable Natural England to operate with the appropriate degree of independence. (Paragraph 94)

Natural England is an executive non departmental public body that advises government on the natural environment in England. Natural England was established by the Natural Environment and Rural Communities Act 2006 (NERC Act).

Section 2 of the NERC Act states 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". It is the government's adviser for the natural environment in England. Natural England is a separate legal identity and may exercise its legal powers in pursuit of anything that falls within its general purpose. Natural England has also been given advisory, regulatory and delivery functions and over 500 duties and powers through other legislation and mechanisms.

The Chief Executive has delegated responsibility as Accounting Officer for Natural England which is accountable for the management of its own budget and publishes its own annual report and accounts. Natural England has a board of distinguished expert members chaired by Andrew Sells who maintain independence as required.

Defra plays no part in Natural England's advice as a statutory consultee on planning issues, individual licensing decisions or decisions on enforcement action. The relationship between Defra and Natural England is clearly set out in Natural England's Framework Document¹, so that there is no misunderstanding about the areas where it can and should act independently. The Framework document helps make sure the relationship between Defra and Natural England is conducted in accordance with the principles of the Partnerships between Departments and Arm's Length Bodies (ALBs): Code of Good Practice², including the principle that departments must give arm's-length bodies the autonomy they need to deliver effectively.

Defra will continue to make sure it gives Natural England licence to operate independently and to have a distinct voice for the natural environment, in line with its statutory remit and in accordance with the published principles in the Code of Good Practice.

¹ Natural England Framework Document - <https://www.gov.uk/government/publications/natural-england-framework-document>

² Partnerships between Departments and Arm's-length bodies - Code of Good Practice (Cabinet Office, 2017) - <https://www.gov.uk/government/publications/partnerships-with-arms-length-bodies-code-of-good-practice>

Recommendation 7

As a minimum requirement, we recommend that the Government should allow Natural England to re-establish its own, independent, press and communications function. (Paragraph 95)

The decision to bring together Corporate Services functions (including press and communications functions) into a Defra group model was taken in May 2016. This change formed part of a wider Corporate Services Transformation programme underpinned by a business case. The business case focused on removing duplication across the Defra group to deliver efficiency whilst driving up service performance through improved capability.

Natural England along with the Animal and Plant Health Agency, Forestry Commission, Rural Payments Agency and the Environment Agency all receive a bespoke service as part of this integrated service model. The new model is focused on working in partnership to make sure that services meet customer needs and are fully aligned with organisational aims and objectives, where appropriate.

Defra group's integrated communications team will provide Natural England with access to a significantly larger group-wide communications resource than was previously the case, providing greater connection and synergy with other parts of Defra group and its stakeholders and greater impact across a wider range of communications channels.

We will continue to make sure Natural England provides a distinct independent voice for the natural environment, grounded in science, evidence and experience of delivery at a local level.

Recommendations 8 and 9

Natural England should champion England's natural environment, and must have the authority, resources and capacity to deliver its general purpose, while working alongside farmers, landowners and NGOs. Successive reductions to its budget, however, have limited its ability to perform key functions, and reduced its wider influence. (Paragraph 104)

All of the objectives contained within the general purpose of Natural England are important; these functions were also important elements of the work of predecessor bodies to Natural England. Funding limitations have led to an increased focus on core regulatory functions and will, ultimately, lead to Natural England becoming unable to fulfil its general purpose. The Government must take steps to resolve this situation, particularly in light of the changes to environmental protection and management that will be brought about as a result of our departure from the European Union. We recommend that Natural England should be funded to a level commensurate with the

delivery of its full range of statutory duties and responsibilities. This situation should be addressed as a matter of urgency. (Paragraph 105)

Defra and Natural England have responded to the need to balance public spending and the consequent need to manage and prioritise resource tightly and to best effect.

Natural England has a significantly lower budget now than in 2010. To manage this the organisation has transformed the way it does business, deploying its resources strategically to where they will have the greatest impact to deliver its statutory remit as fully as possible within the financial constraints.

This approach is at the heart of Natural England's strategy 'Conservation 21' (published 2016). This strategy sets out how Natural England will work with partners to deliver resilient landscape and seas and put people at the heart of nature, embracing the concept of natural capital, to make sure of delivery of its core purpose. Examples include re-focusing delivery on shared outcomes through an 'area of focus' approach, agreeing 14 aligned Environment Agency and Forestry Commission boundaries alongside action plans; an example is the Wyre Forest public estate, where a Memorandum of Understanding between Natural England and the Forestry Commission provides a single strategic management plan.

This approach has allowed Natural England to maximise the benefits of local partnership working and strengthen the area based model for delivery to ensure the natural environment is conserved, enhanced and managed for current and future generations. Despite a challenging fiscal landscape and a broadening of its role, Natural England has made significant contributions across its remit since 2006 which have tangibly improved the natural environment in England. Examples include:

- Terrestrial biodiversity protection: delivering a net increase of over 14,000 ha in the Sites of Special Scientific Interest (SSSI) series; in the last year, 8,195 ha of SSSI have been newly notified, the highest total since Natural England was established. The species recovery programme has led to notable success stories for species like Bitterns, Large Blue Butterflies, and Cirl Buntings.
- Stewardship: delivering advice to 2,000 land managers including 85 events and 1,200 personal advice clinics.
- Managing National Nature Reserves: working with local partners to deliver its strategy for England's 224 National Nature Reserves (covering 94,000 ha). These are the jewels in the crown for Natural England.

- Protecting marine wildlife: supporting development of the Marine and Coastal Access Act in 2009 and designation of 38 Marine Conservation Zones to date, covering about 330,000 ha of our marine waters.

Recommendation 10

We note that the recently published 25-year environment plan promises the development of a Nature Recovery Network to deliver on recommendations from the Lawton Review. The Government must ensure that appropriate resources are devoted to this work. (Paragraph 106)

The government notes the Committee's recommendation to make sure appropriate resources are devoted to the development of a Nature Recovery Network. The government is currently developing a range of funding and delivery options for the Nature Recovery Network, including agri-environment schemes, woodland expansion and catalysing private sector investment. The government is also looking at how embedding a net gain principle in planning could contribute to nature recovery alongside facilitating housing development and how the future land management incentive system can support the establishment of the Network.

Recommendation 11

The development of partnerships and new, collaborative ways of working will be essential to delivering the strategy set out in Conservation 21. Natural England should continue to work effectively with stakeholders, incentivising and inspiring them towards positive action that will enhance our natural environment. This should complement, rather than diminish, the important regulatory backdrop that underpins the work of Natural England. (Paragraph 117)

The government supports this conclusion. To concentrate work with stakeholders to greater effect, Natural England has identified local Focus Areas to make a real difference in priority locations. Examples of valuable partnership work include:

- Back from the Brink: Natural England is leading the ambitious 'Back from the Brink' partnership, working with Amphibian and Reptile Trust, Bat Conservation Trust, Buglife, Bumblebee Conservation Trust, Butterfly Conservation, Plantlife and RSPB and has secured £4.6 million to save 20 species on the brink of extinction and benefit a further 200 additional species.
- Landscape scale enhancement contributing to the 25 Year Environment Plan: Through Farm Clusters, a new collaborative approach, Natural England has supported groups of farmers by providing trusted advice and where available support through the Countryside Stewardship Facilitation Fund.

- Greater Manchester Urban Pioneer: Natural England is working with the Mayoral combined authority to embed a natural capital investment plan within their strategic planning framework. Natural England is contributing to local partnerships to agree how we will apply 'net gain' principles through the planning system to direct funding from development towards these natural investments. This is part of Defra's 25 Year Environment Plan ambition.

Recommendation 12

We recommend that in reviewing its strategy and operations, Natural England should consider how to maintain an effective balance between its core functions of regulation and collaboration, and that the latter continues to be effectively backed up by the former when necessary. (Paragraph 118)

A fundamental aspect of the Conservation 21 Strategy is the emphasis placed on working collaboratively with partners and land managers in developing a joint vision and mutually beneficial outcomes at a landscape scale. Where regulation is required Natural England seeks to help partners understand and manage their responsibilities. Natural England has a very keen focus on the balance between its core functions of regulation and collaboration and continues to evaluate this balance, for example:

- **Long Term Plans in the Uplands:** Natural England and landowners are working together to create a shared vision for the land and develop a suite of outcomes they would like to achieve on their land. This allows positive management and restoration of key priority habitats, alongside sustainable approaches to business management, and includes voluntarily changing their burning consents on blanket bog to address an EU infraction. Once signed up to, these plans act as a regulatory consent for activities on the protected sites, this provides reassurance to the landowner, but also means that Natural England can still perform its regulatory function, if necessary, should the plan not be adhered to;
- **Teesside Special Protection Area (SPA) designation:** The Tees Valley Combined Authority, local authorities, agencies and NGOs established the Tees Estuary Partnership. The partnership has developed a long term vision for the estuary, currently delivered through a Memorandum of Understanding that has facilitated all parties to understand the real impact of the designation and a Habitat Banking scheme that enables and incentivises landowners to 'develop' land for conservation outcomes, which can be traded to offset future development impacts, using the principle of net gain. This approach will unlock the environmental potential of the estuary and streamline future development, offering more certainty to business and investors and boost inward investment in the area.

Recommendations 13, 14 and 15

We are persuaded by the evidence that the quality of planning advice issued by Natural England has declined, largely as a result of resource constraints. While application response rates continue to be impressive, there appears to be an increasing reliance on standard advice which in some cases may in itself not be up to date. (Paragraph 135)

The reduction of Natural England's role has left a vacuum which in many cases local authorities have been required to fill, without the adequate resources or expertise to do so. As Natural England has withdrawn, there has been little clarity as to the changing scope of its role or the expectations on local authorities. In the light of mutual resource pressures, Natural England should be clearer as to when it will play an active part in planning policy and decision-making, and when it will refer to other bodies. There should also be a renewed dialogue between Natural England, the Local Government Association and local authorities more generally as to the most effective role that NE can play in the planning process. (Paragraph 136)

We recommend that Natural England reviews its standard advice to planning authorities to ensure that it is up to date, and reviews it more regularly in future. We also recommend that Natural England reviews the extent of its reference to standard advice when considering planning applications. (Paragraph 137)

The government welcomes the recognition that Natural England's response rate is and continues to be impressive. Natural England responded to 12,852 planning application consultations from Local Planning Authorities in 2016/17, with 97% of these responded to within the agreed timeframe.

The government does not believe that the quality of planning advice has declined overall, but does acknowledge that the focus has changed and therefore some stakeholders may feel that the breadth of advice has reduced.

The government has recently consulted on changes to the National Planning Policy Framework (NPPF). This includes an additional reference to non-statutory and statutory consultees in the NPPF to highlight their role and encourage local planning authorities to refer applicants to them for pre-application advice where appropriate.

Natural England prioritises planning work to focus on engagement with planning authorities and developers at strategic plan and project stage and to provide advice to developers at the pre-application stage. This reduces the need for detailed interventions at the statutory planning application stage. Natural England's standing advice is used to respond to those consultations which pose a lower risk to the natural environment. It is used to ensure consistency, to address key non-locally

specific issues and allow them to better understand and fulfil their duties in relation to biodiversity and protected species. Bespoke advice is provided for those consultations which pose significant environmental risks or may present opportunities for the natural environment.

Natural England issued standard advice on protected species in October 2014 and on ancient woodland in March 2015. Standard advice is a 'material' planning consideration and it replaces the need for an individual response to planning consultations but has the same authority as an individual response. Ancient woodland and protected species are both issues that are of interest to Natural England, but for which they are not a specific statutory consultee, outside of designated sites (European sites and SSSIs).

The government supports the Committee's recommendation that standard advice should be up to date. Natural England is currently updating its ancient woodland advice and is currently reviewing its protected species advice and will commit to an analysis and review over the next 6 months on its use of standard advice.

Recommendations 16 and 17

We also noted the evidence that Natural England has insufficient regard for landscapes when offering planning advice, though we accept its evidence that the issue may be one of resource constraints rather than of losing a focus on landscape specifically. Nevertheless, with local government facing similar constraints, there is clearly a need for a body such as Natural England to retain and review its focus. (Paragraph 138)

Natural England should review its approach to considering landscapes when offering planning advice and considering planning applications, and consider if there is more it can do in this respect, particularly in light of the wider loss of expertise in landscape matters across the public sector. (Paragraph 139)

The government does not accept that Natural England has insufficient regard for landscapes when offering planning advice. Natural England will, however, review the consistency of its protected landscapes planning advice to test the balance of its advice within the available resources. Given the often large geographical scale of protected landscape impacts, Natural England generally focuses advice on protected landscapes at a strategic level by engaging in local plans rather than in individual planning applications.

There is no statutory requirement to consult Natural England on planning applications for protected landscapes (unless an environmental impact assessment is required). Planning authorities can however choose to consult Natural England and where they do, Natural England has a duty to provide advice. In recent years, Natural England's advice has been influential on significant landscape issues such

as the accommodation of major developments in the settings of Areas of Outstanding Natural Beauty. Natural England has also provided significant training to local authorities on landscape impact assessment.

Recommendation 18

Additionally, the Government's review of National Parks and Areas of Outstanding Natural Beauty, anticipated in the 25-year environment plan, should give due emphasis to the importance of the planning system in protecting landscapes. (Paragraph 140)

The government has committed in its 25 Year Environment Plan to commission a review of designated landscapes for the 21st Century. This will consider coverage of designations, how designated areas deliver their responsibilities, are financed and whether there is scope for expansion. It will also consider opportunities to enhance the environment in existing designations and expand on the existing eight-point plan for National Parks to connect more people with the natural environment. Whilst it is not envisaged as a review of the planning system, we anticipate that the review will recognise the importance of the planning system in protecting landscapes.

The government agrees that National Parks and AONBs should be protected. The National Planning Policy Framework (NPPF) affords these areas the highest status of protection. The government has recently consulted on amendments to the NPPF, which clarify that development within National Parks and AONBs should be limited. The government's response to that consultation will be published later in the summer.

Recommendation 19

We welcome the forthcoming consultation on strengthening requirements for biodiversity net gain in the planning system, as well as the forthcoming industry guidance. We would encourage the Government and Natural England to consider other measures in policy and guidance which would support net gain and associated environmental protection measures, taking into account the need for such measures to be practically deliverable and the fact that some environmental goods are not substitutable. (Paragraph 149)

The government agrees with the recommendation and appreciates the efforts of those involved in the development of industry principles and guidance and those of industry leaders in the implementation of biodiversity net gain.

The government has recently consulted on stronger wording on net gain in the draft revised text of the NPPF. Defra is working to develop proposals set out in the 25 Year Environment Plan and help set a clear direction of travel for industry and local government. Natural England is working to update the Defra metric used for biodiversity net gain, develop industry standards for biodiversity net gain and explore

how new metrics can support the delivery of natural capital benefits alongside biodiversity net gain. The consultation on mandatory net gain implementation, as referred to in the 25 Year Environment Plan, will also be crucial in the identification of opportunities and risks that might arise through future implementation of net gain policy.

Recommendation 20

We welcome the fact that Natural England has found means to generate income by the provision of planning advice, though its focus must continue to be on improving the process rather than generating revenue as a first priority. While Natural England discloses its income from discretionary advice in its national accounts, we believe further transparency would be welcome with regard to the uses it makes of its commercial income, perhaps through a separate declaration. (Paragraph 155)

Natural England will consider how best to provide this level of information. The nature of Annual Report reporting structure does not currently accommodate such detail. Charges are set in line with HM Treasury's policy to achieve full cost recovery for the service that is provided. This helps release Grant-In-Aid funding that can then be reinvested in other areas of work. The growth of chargeable discretionary work has helped to reduce the pressure on Grant-In-Aid funded statutory work.

Income from discretionary charging services has been invested in increased front-line delivery capacity. Natural England has estimated that Discretionary Advice Service income in 2017/18 has enabled it to fund approximately 60 front-line delivery staff that would otherwise not be possible from Grant-In-Aid alone.

Recommendation 21

Additionally, the NERC Act itself appears to limit the scope of Natural England's discretionary charging services. The Government should consider how these rules are applied to Natural England and whether they may unnecessarily limit the scope and potential of its discretionary activities. (Paragraph 156)

The Government will consider, as part of its planning for the 2019 Spending Review, what changes could assist Natural England's charging strategy, for example, we will consider whether the definition of services (which Natural England can charge for) in section 11 of the NERC Act, is potentially limiting to Natural England activities, consistent with its general purpose.

Recommendation 22

Natural England should consider carefully how it balances its resources between statutory, advisory and chargeable activities, and how it ensures

avoidance of conflict of interest between its roles as paid advisor and statutory consultee. (Paragraph 157)

Natural England has protocols to avoid any 'conflict of interest' that could arise from its statutory chargeable adviser roles. Pre-application advice is generally recognised as a useful process in the overall planning decision. Charging for this advice has enabled Natural England to invest in the staff capacity needed to meet the demand from prospective planning applicants for such advice.

Any advice given by Natural England officers pursuant to the agreement does not constitute or bind Natural England in respect of any future representations it may make as Statutory Consultee.

Natural England now has the experience of having provided charged advice on well over 1,000 cases over a 5 year period. This includes situations where Natural England has objected as a statutory consultee to cases on which chargeable advice has been provided, (for example, if advice has not been followed or new information has come forward).

Recommendation 23

We note the concerns that have been expressed regarding the long-term funding and sustainability of the National Trails network. We recommend that Natural England and Defra work with the Ramblers, representatives of the tourism industry, and other appropriate interest groups, to develop proposals for long-term management and maintenance funding. This work should give due consideration to the potential for sponsorship of the Trails and, more widely, should consider the role that active partnerships of different interests could play in maintaining national and local routes. (Paragraph 163)

The 13 National Trails in England were designated under the 1949 National Parks and Access to the Countryside Act. They are long-distance routes maintained to a higher standard than other public rights of way and cover over 2,000 miles in England. All National Trails have rights for walkers and some are also open to horse-riders and cyclists.

The government recognises that the 13 existing National Trails are valued by many people and provide public enjoyment for walkers from this country and abroad. The National Trails bring local economic benefit through tourism and also provide opportunities for improving the environment and for getting local communities involved in caring for them.

National Trails are now managed locally by National Trail Partnerships within a national framework of guidance and support provided through Natural England. Under the National Trails 'New Deal' funding formula Natural England provides funds

for the maintenance of National Trails, including for the new England Coast path stretches as they commence. Local highway authorities also contribute to maintenance on a 1:3 basis (i.e. government provides 75% of funding and authorities 25%).

Natural England's funding is provided specifically to make sure that maintenance of national trails meets the Quality Standards for National Trails. The Quality Standards mean that they deliver a higher quality experience (and benefits) than other public rights of way.

On 13 March 2018 Natural England confirmed to the National Trail Partnerships that it would be funding National Trails in 2018/19 at the same level of funding as had been provided in each of the previous 5 years according to the New Deal funding formula.

The government and Natural England are committed to finding a long-term and secure future for our National Trails and will work with the National Trail Partnerships, the new coastal access authorities and other stakeholders to explore options including sponsorship as part of a more sustainable funding model so that these important national assets are maintained in future years while making them less reliant on the public purse.

Recommendation 24

The Government is consulting upon a new system of farm and environmental payments to be applied following the withdrawal of the UK from the EU and the cessation of Common Agricultural Policy payments. We recommend that the Government should include payments for maintenance and enhancement of public access within this new system of public funding, although we note that this could have implications for food production and the natural environment (Paragraph 167).

The government recognises that public access to the countryside can enrich health and well-being, providing opportunities for recreation and clean air. Maintenance and improvement of public access will therefore be considered within the scope of the new Environmental Land Management system.

Recommendations 25 and 26

The general purpose of Natural England, set out in the Natural Environment and Rural Communities Act 2006, includes responsibility for promoting access to the countryside. This element of the general purpose is not, at present, being delivered effectively. We believe that Natural England should have sufficient resources to deliver against all elements of its general purpose. It must also have the capacity to undertake effective promotional work and awareness raising activity. (Paragraph 174)

Our earlier recommendations seek to increase the funding, independence and capacity of Natural England. Public access to the countryside would benefit from enactment of these recommendations, and should be appropriately prioritised by Natural England following their implementation, with due regard for the protection and management of sensitive wildlife sites. (Paragraph 175)

The government recognises the role of Natural England in promoting access to the countryside and that its primary focus over the next 2 years will be the very challenging target to complete the England Coast Path by 2020. Once the new coastal access rights are introduced on the completed England Coast Path, Natural England will aim to focus attention on its championing role for the National Trails and other access routes, following the policy steers in the 25 Year Environment Plan, and with due regard for the protection and management of sensitive wildlife sites.

Recommendation 27

As part of this proactive, balanced and responsible approach to promoting public access we also recommend that Natural England should revise and relaunch the Countryside Code. (Paragraph 176)

The Countryside Code was launched in July 2004 by the Countryside Agency and promoted through the Aardman Animation campaign. The Code was revised in 2009/10 to account for changes on access brought by way of the Marine and Coastal Access Act 2009.

Natural England and Natural Resources Wales are committed to the Countryside Code and will consider a review and relaunch of the Code after the completion of the England Coast Path in 2020.

Recommendation 28

Natural England's role will change following the departure of the UK from the European Union. These changes will also have an impact upon the work of the Environment Agency and the Rural Payments Agency as, indeed, will the implementation of the 25-year environment plan. Accordingly, we recommend that Defra should commit to a longer-term review of the distinct functions, responsibilities and purposes of these bodies, and an examination of the case for any restructuring or rearrangement to deliver against new priorities. (Paragraph 181)

The government's recent consultation on the future for food, farming and the environment set out how we want a reformed agricultural and land management policy to deliver a better and richer environment in England. Once we have the freedom to move away from the Common Agricultural Policy, there will be an 'agricultural transition' period in England. This will give farmers time to prepare for

new trading relationships and an environmental land management system and will last a number of years after the end of the implementation period in December 2020.

As regards the 25 Year Environment Plan, the government recognises that the joining up between organisations (including those in the Defra group) and partnerships at a local level is mixed and wants environmental effort to be more integrated and efficient. This has started, aligning larger environmental delivery bodies around a common geography of 14 areas. Each now has its own Area Integrated Plan (effectively, a joint statement of intent between the Environment Agency, Natural England and the Forestry Commission) that we propose to develop into natural capital plans, which will be aligned with the 25 Year Environment Plan. These plans will be co-designed between the Defra Group and external stakeholders. We have also committed to a system operator model as a long-term aim.

Given the agricultural transition and our desire to build on and strengthen existing delivery frameworks as part of our 25 Year Environment Plan, any review of the type proposed by the Committee would therefore be most effectively carried out in several years' time. It would be premature to commit to something more specific at this stage. In the interim, we will continue to make sure that delivery is as efficient and joined up as possible – as illustrated by the recently announced decision to move the administration of Countryside Stewardship and Environmental Stewardship from Natural England to the Rural Payments Agency.

Chapter Four: The biodiversity duty

Recommendation 29

It is clear from the evidence we have heard that the biodiversity duty is ineffective as it stands, for a range of reasons including poor awareness, poor understanding, the weakness of the wording of the duty, the lack of a reporting requirement or enforceability, and the lack of biodiversity knowledge and resources. It may not be possible to correct all of these weaknesses in short order, but some action must be taken. (Paragraph 206)

The government notes the Committee's recommendation and agrees that action can be taken to make sure public bodies take steps to integrate biodiversity and wider natural capital considerations into their decision making. Public bodies can contribute substantially to the government's ambitions for wildlife-rich habitat, habitat for pollinators and improving the status of threatened species. The government recognises that different public bodies will have different roles and function in supporting and conserving biodiversity and that different approaches may be required for different functions.

The government recognises there may be a need to update advice to help public bodies understand how, in carrying out their obligations under the duty, they can best contribute to the ambitions set out in the 25 Year Environment Plan (as set out in our response to recommendation 31). Defra will publish information to accompany existing guidance once the planned consultations on net gain and the new environmental body have been completed. The government is keen to promote action on the ground through partnerships of public, private and voluntary sector and by using a range of incentives and other measures.

A government priority, in terms of helping public bodies take account of biodiversity and wider natural capital, is to embed further the principle of environmental net gain, including through the planning system. The government recently consulted on stronger wording on net gain in the draft revised text of the National Planning Policy Framework. We are considering what further measures may be necessary to ensure delivery of net gain. We recognise that any stronger incentives or requirements may need to be coupled with appropriate standards and guidance developed with stakeholders, including industry partners, so that they are practical and proportionate. The government is considering a range of policy options; aligning to the biodiversity duty is one option although it may not be the most effective and we would not wish to pre-judge our planned consultation on net gain.

The government believes it can work with other public bodies to do more. In Defra's written evidence to the Committee we cited several examples of public bodies implementing biodiversity plans and strategies - covering training, land management and decision making, including through net gain. These include several Local Authorities, water companies and Highways England. We will continue to work with these public sector bodies to build on good practice and help them apply a natural capital approach so that they can make better decisions about biodiversity and the wider environment.

We believe collaboration and partnership working have a significant role to play in driving better decision making for the environment, without introducing additional regulatory burden. Natural England has formed excellent partnerships with public bodies, for example working with National Parks and Areas of Outstanding Natural Beauty and convening the Major Landowner's Group, so that public bodies can better manage their landholdings for biodiversity or integrate biodiversity into the plans and strategies. We can build on these examples of best practice.

The NERC Act is not the only legislation that promotes biodiversity, for example the Habitats and Birds Directives provide a framework for protecting and conserving habitats and species including birds. The government has made clear that protection of our best sites and most threatened species will not weaken as we leave the EU.

Recommendation 30

The Government should consider changes to the wording of the duty, as the requirement to “have regard” for biodiversity is weak, unenforceable and lacks clear meaning. The stronger wording used in Scotland and Wales should be considered as alternatives if the evidence becomes clear that they have had a positive effect. (Paragraph 207)

The government notes the Committee’s recommendation but would wish to see clearer evidence that it has led to improved outcomes elsewhere and is the most effective means of achieving the government’s ambitions. Evidence presented to the Committee suggested that the change to the wording in Scotland did not strengthen the duty and that in Wales the change was perhaps too recent to make a meaningful assessment.

As we set out under recommendation 29 above, the functions of different parts of the public sector differ significantly and different action is required of each part. A targeted response may well be more effective than blanket changes to the wording in the Act. This would be the case with planning net gain where standards and guidance will be developed with a range of stakeholders, including industry partners.

Furthermore, the government does not accept that the duty lacks clear meaning. It is intended to generate action beyond that required by statute and the government’s current guidance provides examples of how public bodies can fulfil their duty. We have seen many examples of good practice, and we would want to continue to work with particular sectors to build on this good practice and to promote further action.

Recommendation 31

The Natural Environment and Rural Communities Act 2006 should also be amended in order to introduce an obligation to report to the new environmental body on the implementation of the Section 40 biodiversity duty. Such a duty could apply either to all public bodies, or a smaller number of bodies with biodiversity responsibilities, to be listed by the Secretary of State. (Paragraph 208)

The government notes the Committee’s recommendation but is mindful of placing additional or undue reporting burdens on public bodies. Furthermore, the shape and role of the new environmental body will be subject to consultation and we would not wish to pre-judge the outcome of that consultation.

In our 25 Year Environment Plan we have set out priorities for improving biodiversity. We want to see the condition of our protected sites improve and we want to create and restore wildlife-rich habitat outside the network of protected sites to allow nature to recover. We also want to act on key pressures that impact on biodiversity, for example on water quality. For these priorities, there is already reporting in place.

The Environment Agency reports on the quality of our waterbodies. Natural England reports on the extent and quality of our protected sites and Defra has a range of partnerships in place to track the status of threatened species. Local Authorities report on how they are managing local wildlife sites. The Defra group publish these reports annually, applying Office of National Statistics standards in our biodiversity indicators which we use to assess progress with our biodiversity commitments. As government implements with others our 25 Year Environment Plan, we will look to build on existing reporting mechanisms to drive further improvement.

A net gain approach and the metrics that support it might provide opportunities for efficiently capturing information on habitat and land use change. The government will continue to explore this opportunity and reporting arrangements with relevant stakeholders, including local authorities, as policy is developed.

As set out in recommendation 29 above, Defra and Natural England work closely with major landowning public bodies and regularly receive updates on progress with delivering biodiversity gains on protected sites. This collaborative venture represents a more productive way of gathering key information and of planning future action.

Recommendation 32

We further recommend that, following implementation of these changes, the Government should publish, and promote effectively, new guidance on implementation of the biodiversity duty. (Paragraph 209)

The government accepts the case for producing further information to accompany existing government guidance and help public bodies understand how, in carrying out their obligations under the duty, they can best contribute to the ambitions set out in the 25 Year Environment Plan. These ambitions include developing a Nature Recovery Network and improving the status of our pollinators and other declining species. This approach will help improve understanding of the duty and help Natural England to forge positive partnerships, without adding to the regulatory burden on public bodies.

The government will also consider whether, following completion of planned consultations on net gain and the new environmental body, changes to existing guidance are necessary to clarify the relationship with net gain, or otherwise to clarify which actions contribute to the duty.

More generally, there is a large body of government, industry and voluntary sector guidance on integrating biodiversity and wider natural capital considerations into existing public sector plans and strategies, and the 'duty guidance' is not the only place where public bodies can go for information.

For example, government is consulting on revising the NPPF and Defra and the Ministry for Housing, Communities and Local Government are working together to update the Planning Practice Guidance. Defra provides guidance on valuing the environment in policy appraisal for Other Government Departments, so that their decisions take account of the implications for biodiversity.

On net gain, the government's statutory nature conservation body, Natural England, has been supporting the development of industry standards and guidance on planning net gain. The government recognises that any stronger incentives or requirements on net gain will need to be coupled with appropriate standards and guidance.

The Bees' Needs website hosted by voluntary sector partners, the Bumblebee Conservation Trust provides detailed information on how public bodies can take action on their land-holdings to benefit pollinators.

Defra will continue to work with Natural England to make sure guidance and information are relevant and up-to-date.

Recommendations 33 and 34

Natural capital is an important tool for environmental sustainability and for the support and enhancement of biodiversity. It is not yet, however, a fully comprehensive concept, and in particular may not yet be advanced enough to offer a framework for investment in land management. We believe, however, that as the concept expands it has strong potential to be applied more widely as a tool of environmental policy, and we welcome the provisions to take account of natural capital in the draft revised National Planning Policy Framework (Paragraph 222).

We would encourage the Government to take concrete steps to fulfil the intentions set out in the 25-year environment plan to incorporate natural capital approaches into its environmental strategy. In particular, the Government should consider how the biodiversity duty contained in the NERC Act 2006 might be expanded or combined with a natural capital approach to enhance its effectiveness. This consideration should take into account the fact that limits of resource and understanding could mean it is not yet possible to establish a formal natural capital duty in law. The Government should also ensure that the Natural Capital Committee receives satisfactory resources to continue developing the concept and exploring its potential (Paragraph 223).

The government agrees that natural capital is an important tool to help integrate and shape environmental policy and delivery. It sits at the heart of the 25 Year

Environment Plan, features strongly in the government's updated Green Book³, and the Natural Capital Committee continues to provide world leading advice on the topic. We will continue to work with experts and practitioners to develop a natural capital approach that works effectively at different scales to improve environmental decision making. At a national level we will continue to work with the Office for National Statistics to develop pioneering national natural capital accounts. We will also work with partners and stakeholders to develop local natural capital plans. Biodiversity is an important natural asset but we recognise not all aspects of it are currently amenable to quantification and economic valuation. Bespoke measures, such as our proposal for a nature recovery network in England, as part of a wider nature strategy post 2020, are necessary to achieve our goal of thriving plants and wildlife.

Chapter Five: Rural communities

Recommendation 35 and 36

The Commission for Rural Communities lacked the teeth and powers to perform a watchdog role on behalf of rural communities. The Commission did, however, play an important part in ensuring that the Government, other public authorities, and Parliament, had access to detailed and unbiased research on rural communities, informed opinion as to the potential impact of policies, and independent insight into their needs. The loss of the Commission has diminished the Government's understanding of rural society, rural economies and rural communities, and the ability of Parliament and others to hold the Government to account. (Paragraph 247)

Of particular concern is the loss of the CRC's independent research capacity. The State of the Countryside reports, and other CRC research, provided a level of granularity, detail and understanding which is not being matched currently. We have consistently heard that this lack of detailed data makes it harder for the Government to design and implement policies that work for rural areas. It also makes it particularly difficult to monitor the impact of any such policies. (Paragraph 248)

The government disagrees that the abolition of the Commission has reduced its understanding of rural issues. The government has a strong evidence base supporting policy formulation to understand and address the opportunities and needs of rural areas. This evidence base is refreshed and developed on an on-going basis. For example:

³ The Green Book: Appraisal and Evaluation in Central Government - <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

- Defra collects and publishes (via the Rural Statistical Digest web pages, Statistical Digest of Rural England and Rural Economic Bulletin) a wide range of official statistics on the economic, demographic and social characteristics of rural areas to inform national level policy formulation across government departments. These statistics utilise the data collected across departments and Defra is expanding them to incorporate data and evidence held by stakeholders beyond government.
- Substantial rural research studies are commissioned to explore issues such as service costs. Current projects include an assessment of the dynamics of rural economies and a study investigating how agricultural supply is connected to the wider economy.
- Defra collaborates with other government departments and independent research institutes to instil a rural focus in specific thematic studies, for example with the Cabinet Office on a study examining digital exclusion.
- Defra set up a Rural Academic Panel in February 2018 that provides independent research advice to policy officials.
- Defra also participates in rural research networks, convenes round table discussions on rural research needs and regularly engages with academic research centres on rural issues.

Recommendation 37

The Government should be setting the agenda for the undertaking of research and data collection that can support the development, implementation and evaluation of rural policy. This is not happening at present. We recommend that the Government should produce a statement of priorities for rural research and understanding, focused upon the social and economic needs of rural communities, and should then commission new research accordingly. The statement of priorities should be assessed and revised on a regular basis. (Paragraph 249)

Defra published in March 2017 its areas of research interest⁴ in line with the recommendations from Sir Paul Nurse's review regarding government departments communicating clearly with the Research Councils about where their long-term research challenges lie. This includes research on rural communities.

⁴ Defra Group Areas of Research Interest - <https://www.gov.uk/government/publications/defra-group-areas-of-research-interest>

The government will produce and consult on a more detailed 'statement of priorities' for rural research. The statement will be aligned with key government priorities to inform the development, implementation and evaluation of policies across departments that impact on rural communities and businesses and will provide a steer to departments, research councils and academia for funding priorities.

Recommendation 38

While the name of the Act is the Natural Environment and Rural Communities Act 2006, most of the Act's provisions pertaining to rural communities have been annulled with the dissolution of the Commission for Rural Communities, and the abolition of the Regional Development Agencies. This has had a profound negative impact upon the way in which the Government handles rural needs but, equally importantly, has diminished the focus on the economic potential of rural areas and the level of support available to deliver that potential. The closure of the Rural Communities Policy Unit compounds the situation. Our remaining recommendations on these matters will, we believe, help to address this unfortunate situation. (Paragraph 255)

The government wants thriving rural areas – with a strong and sustainable economy building on its diversity and with vibrant communities, so that people at whatever stage in their lives have the same opportunities as those who live in towns and cities.

The government has taken many steps to address rural needs. It has, among other things:

- Increased the local authority Rural Services Delivery Grant for the 2018-19 settlement by £31 million to a total of £81 million - the highest ever level;
- Set up 14 new rural Enterprise Zones;
- Funded 2 rural pilots to test 5G digital connectivity;
- Made available an additional £30m of funding from the Rural Development Programme for England (RDPE) Growth Programme to support rural broadband projects in England;
- Provided £160m funding to protect rural branches where the Post Office is the last shop in the community.

Defra continues to have a policy team devoted to rural affairs and also now has a separate team managing the RDPE. This reflects the high priority attached to rural issues, the EU Exit context and the need to work closely across government and with external organisations.

Recommendation 39

Responsibility for rural policy and rural communities does not sit well within Defra, with the department being predominantly focused upon the important environment, agriculture and food elements of its remit. This focus will

intensify as a result of Brexit. We therefore recommend that responsibility for rural affairs should be transferred from the Department for Environment, Food and Rural Affairs to the Ministry of Housing, Communities and Local Government. This change would ensure that responsibility for rural communities sits within the central Government department that is responsible for communities as a whole as, indeed, it did prior to the creation of Defra. It would also ensure that the responsibility rested in the department which oversees local authorities, who are the key delivery agents for most services to rural communities. (Paragraph 279)

The government does not intend to change departmental responsibilities in respect of rural affairs.

The environment, agriculture and rural communities are highly interconnected and dependent on each other, so it makes sense for the same department to oversee all three, working across departments to make sure broader government policy addresses the needs of businesses and communities.

Defra works closely with the Ministry of Housing, Communities and Local Government on key policy areas, including the Local Authority Fair Funding Review, the UK Shared Prosperity Fund and the National Planning Policy Framework that have an impact on rural areas.

Defra also works closely with other departments such as Department for Culture, Media and Sport on digital connectivity, Department for Education, Department for Transport and Department for Health and Social Care responsible for key services delivered to rural communities and Department for Business, Energy and Industrial Strategy on the Industrial Strategy.

Recommendation 40

The delivery of services can be challenging—and sometimes more expensive—in rural areas as a result of population sparsity and more limited infrastructure. Policy changes by Government departments that fail to account for these challenges can have negative impacts for rural people. (Paragraph 295)

The government agrees that the delivery of services in rural areas can be more challenging. Research commissioned in 2014 by the Ministry of Housing, Communities and Local Government and Defra recognised that there were specific challenges in rural areas, which included scattered and remote populations, a lack of private sector services providers and poorer broadband or mobile phone coverage. The research also found evidence, based on a survey of local authorities, that services which required more travel time generally incurred higher unit costs.

Through rural proofing, the government aims to make sure these challenges are properly considered and will continue to do so. Sparsity or other factors reflecting rurality are taken into account across relevant government policy, for example schools funding and local government finance.

In its consultation paper “Fair funding review: a review of relative needs and resources”, the government proposed that rurality should be included in the relative needs assessment as a common cost driver. The government is currently analysing responses to the consultation.

Recommendation 41

Each and every Government department should be seeking to take account of the circumstances facing rural communities when developing policy. At present, the responsibility for promoting rural proofing across Government rests with Defra, but Defra does not have the cross-Government influence or capacity required to embed rural proofing more widely. (Paragraph 296)

Government has a clear approach to rural proofing - it is best mainstreamed into all policymaking across government as well as delivery at the local level. The government remains committed to rural proofing all policies from the earliest stages.

There is a range of advice available to departments to develop and assess the implications of their policies on rural areas, including Defra’s revised rural proofing guidance⁵ (March 2017), the Treasury’s revised Green Book⁶ (March 2018) and the Better Regulation Framework guidance⁷ (February 2018).

Defra already engages directly with departments, for example working with Department for Education on schools funding, childcare and skills; Department of Business, Energy and Industrial Strategy on the Industrial Strategy and Energy Department of Culture, Media and Sport on digital connectivity and tourism; and Ministry of Housing, Communities and Local Government on local government funding and housing.

The Rural Policy Team in Defra will continue to co-ordinate rural proofing activity, including the development of new approaches and tools.

⁵ Rural Proofing - <https://www.gov.uk/government/publications/rural-proofing>

⁶ The Green Book: Appraisal and Evaluation in Central Government - <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

⁷ Better Regulation Framework - <https://www.gov.uk/government/publications/better-regulation-framework>

Recommendation 42

Rural proofing should be driven and promoted from the centre of Government and, as such, it is vital that the Cabinet Office takes the lead. We therefore recommend that responsibility for promoting and embedding rural proofing across all Government departments should be clearly assigned to the Cabinet Office, within a single purpose unit with the necessary resources and breadth of experience required to exert influence on all departments. (Paragraph 297)

The government does not intend to change departmental responsibilities in respect of rural proofing. The Rural Policy Team in Defra will continue to co-ordinate rural proofing activity, including the development of new approaches and tools.

Recommendation 43

Additionally, we recommend that the Government should establish a mechanism by which departments report, to the Cabinet Office, on the actions that they have taken to ensure that rural proofing takes place. The Government should revise and strengthen its rural proofing guidance, in order to facilitate much earlier engagement with rural communities and their representatives. The revised guidance should then be promoted properly, with workshops used to raise awareness across and beyond Whitehall. (Paragraph 298)

The Cabinet Office requires departments to produce annual plans (Single Departmental Plans) that outline their objectives and how they will deliver them. The Cabinet Office's guidance on these plans highlights the need for rural proofing and the Cabinet Office will continue to request that departments make sure rural issues are considered.

The Rural Policy Team in Defra will continue to co-ordinate rural proofing activity, including the development of new approaches and tools.

Chapter Six: Green lanes and rights of way

Recommendations 44 and 45

We accept the evidence that the exemptions contained in the NERC Act 2006 may result in damage from motorised vehicles if green lanes are not sensitively managed. Unfortunately, local authority resource constraints mean that these routes are not always properly maintained, and the process of drawing up Traffic Regulation Orders can be slow and resource consuming, and also creates the risk of legal action. Given that trail riders and protection groups alike welcomed the use of TROs in particular circumstances, we believe that improving these should be the first step in any new approach. (Paragraph 316)

The Government should take steps to simplify the process for—and thus reduce the costs of—establishing Traffic Regulation Orders, with the aim of securing better value, greater flexibility and applicability in the use of TROs to manage problems resulting from ‘green-laning’. This might include provision for more selective closures, reduction in bureaucracy in the application process and reduced, updated, advertising requirements. (Paragraph 317)

Natural England ran a one-off stakeholder forum (November 2016) to listen to concerns about the possible damage caused from motorised vehicles to green lanes and agreed to chair two further meetings to reach consensus on future action. The forum has evolved into the Motor Vehicle Stakeholder Working Group and currently meets quarterly, with four sub-groups investigating various issues, including one sub-group focussing exclusively on Traffic Regulation Orders.

The government is expecting the Motor Vehicle Stakeholder Working Group to produce a report including recommendations for how the Traffic Regulation Orders process could be used more efficiently by local highway authorities. The government would like these recommendations to be finalised before considering any changes to the Traffic Regulation Orders system, as any measures that are taken forward in the light of an agreement between stakeholders are likely to be more effective. The government will then consider whether to take forward any legislative changes in light of the Motor Vehicle Stakeholder Working Group’s report.