The CLA (Country Land & Business Association) consists of more than 30,000 members who between them own or manage around half the rural land in England and Wales.

CLA members are active in all aspects of the rural economy, engaging in farming, forestry, tourism and a whole range of other activities. As a result, we were heavily involved in the production and passage of what became the Natural Environment and Rural Communities Act 2006 and have followed closely how its provisions have subsequently operated in practice.

We are very much a member led organisation and work closely with our members. We therefore have a good understanding of the perspective of the practical land manager. Moreover, we liaise frequently with all levels of Defra, members of the “Defra family” and other departments with a rural responsibility.

As such we believe we have a particularly well-informed insight on the matters raised.

Rural Advocacy and the Commission for Rural Communities

1. **Since the closure of the Commission for Rural Communities (CRC) and subsequent winding up of the Defra Rural Communities Policy Unit how – if at all – are the CRC’s original functions of advocate, adviser and watchdog being fulfilled?**

The CRC played an important role in advising government (Defra and other government departments) on the importance of the rural economy and communities. The State of the Countryside report it produced is still regarded as an essential source of data.

The CRC was only ever one of a number of bodies that advised government though. Before the CRC came into being a variety of external stakeholders, such as trade associations, membership organisations and NGOs did so. Since the closure of the CRC, its place has to a significant extent been filled by those same bodies.

What has changed, is the way in which Defra engages with its stakeholders. It does so much more effectively and in a much more co-ordinated way than was the case previously.

2. **Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead for such matters?**
Rural proofing has always been a challenge, irrespective of which government is in power. All attempts to put in place a coherent and workable policy of rural proofing have proved unsuccessful. Although the principles that underpin rural proofing have been accepted across government, the monitoring mechanisms put in place have failed to achieve significant results.

Not everything that happens in the countryside or which affects the rural economy falls within Defra’s remit. Land use planning and connectivity, for example, are both key concerns for farmers and rural land managers, but Defra has no responsibility for either of them. Ensuring that those departments that do recognise the rural perspective and take it seriously can be a challenge. All too often Defra’s ability to influence other departments depends on individual relations between ministers or officials than any formal structure. This is not satisfactory,

We see three reasons why other departments fail to engage. Firstly, as Defra exists to deal with rural issues, the other departments can be inclined to assume they do not need to. Secondly, those departments inevitably have their own priorities which they will want to pursue in preference to other departments concerns. Finally, in many cases, the overriding rural aspect of many issues is simply the additional cost resulting from sparsity and other departments are unwilling to incur the cost of providing equivalent levels of provision to those which they do in urban areas.

The situation is much the same with local government where there is a myriad of different bodies; local authorities, LEPs National Park Authorities, AONB boards and Internal Drainage Boards all with their own functions the inevitably conflict or overlap on occasion. This creates a form of institutional conflict that is not always conducive to efficient or effective policy making. Moreover, many of these bodies are too small, or too focused on a particular purpose, to fully recognise the complexity of a number of rural issues.

3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests – of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?

Under the current departmental structure, Defra must provide the lead role.

Notwithstanding how matters have been dealt with to date, Brexit provides government with an opportunity to fundamentally change the way in which rural policy is decided and delivered.

As noted, to date Defra’s ability to influence other departments has been somewhat inconsistent. There are two reasons why this could and should change. Firstly, with the need to repatriate so many policies that fall within the Defra portfolio, the department’s size and standing has grown significantly. It is hoped that this will strengthen its voice in other departments.
Secondly, the administrative structures that have been put in place to oversee Brexit, with DexEU and International Trade all having fairly pervasive roles, may well engender a greater sense of inter departmental working.

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?

Natural England lacks any clear obligation to have regard to economic or social considerations; its general purpose is limited to environmental concerns. Although its purpose includes an obligation to contribute “in other ways to social and economic well-being through management of the natural environment” it is not required to have regard to the economic implications of the way in which it discharges its functions. This is not to say that economic considerations should prevail over environmental ones, just that they ought to be taken into account.

We were concerned at this when the Bill was first published at remain so.

Although various governments have expressed a desire for Natural England to adopts a much more business friendly approach, which in recent years it has, the point has not been addressed in legislation.

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?

Following Brexit, the UK loses the oversight of and the need to account to, the EU institutions, particularly the Commission and the ECJ. This could be a significant loss. As was said by former government adviser to the EU select committee last year, “the threat of infraction drove [UK] environmental policy ...and the sums of money that we were going to be fined were absolutely at the heart of that process.”

There are, of course, UK institutions that can apply a degree of scrutiny, but it is difficult to see that they will be equally effective. Judicial review is only concerned with the process that led to the decision, not its merits. Parliament can hold government to account, but it has its obvious limitations.

The issue is further complicated by devolution and the need to maintain similar or equivalent standards across the UK.

It is therefore worth considering alternative governance models going forward. The US has the Environmental Protection Agency (EPA), which carries out a number of functions,
including holding state governments to account, although its ability to hold the federal
government to account is limited.

Australia and Hungary both have Ombudsmen which appear to have been effective in
scrutinising and challenging executive decisions.

India deals with the issue by having constitutional obligations to protect the environment,
which can be enforced through the courts, backed up by giving legal personality to
significant environmental features such as the River Ganges.

Our initial thoughts are that judicial review, together with satisfactory access to justice
provisions, particularly as regards costs, and an Ombudsman with powers to compel the
production of evidence will be sufficient.

National Parks require specific consideration. The 1949 Act introduced two protected
landscapes: Areas of Outstanding Natural Beauty (AONBs) and National Parks. National
Parks were the wilder more remote areas with a significant amenity value and AONBs were
the equally attractive, but more managed, landscapes.

National Parks should be the nation’s most significant and iconic sites. However, in recent
years it seems the distinction between them and AONBs has become blurred, particularly
with a number of AONBs holding themselves out as being almost the equivalent of National
Parks.

Moreover, the way in which the criteria for designation have been applied of late, has made
designation much easier. Whilst this has resulted in more land being designated as National
Parks, it has also resulted in the overall quality of the National Park network being reduced.

For example, with the recent Lakes to Dales extension, the ways in which the tests for
designation were applied seemed to involve a significant watering down to ensure the
extension went ahead. Firstly, what was deemed to constitute “compelling evidence”, in the
words of the statute, that the area of land has “become suitable”, to use the wording of the
statute, for National Park designation was somewhat surprising, appearing to consist of little
more than a statement that the extension was desirable.

Secondly, the Natural England guidance on application of the “especially desirable” test
gave Natural England a degree of discretion beyond what appears in the legislation;
presumably to make designation more certain.

The probable result of this approach is that the overall National Park network becomes less
special, and more like other rural areas, which would be unfortunate. Far better to retain
the original approach and regard National Parks as the “jewels in the crown”, that warrant
particular promotion and protection.

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?
This question is dealt with in the response to Question 11.

**Sustainability and biodiversity**

7. Is the duty to ‘have regard’ to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?

As in a number of other contexts, the refusal of the Government to provide guidance on how legislation is to be applied presents a number of challenges, not least uncertainty. The government’s original and comprehensive guidance on the duty was withdrawn in 2014 and replaced by just a page of bullet points on a website.

This is not just an issue for those bodies subject to the duty, it is also one for land managers who need to be able to predict how the bodies will go about discharging their functions respond in a particular situation.

Moreover, complying with the duty involves a number of practical challenges. Firstly, the need for data; a body cannot have regard to biodiversity without knowing what biodiversity there is. Secondly it requires people with the ability to interpret and apply that data. Both of these come at a cost, which can be significant.

8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?

Public authorities certainly seem to be giving greater weight to biodiversity considerations. We do not see any need to modify the duty, just to explain and resource it.

9. How does the English duty to ‘have regard’ to biodiversity compare to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?

Discussions with colleagues in Wales and Scotland suggest that the use of different language has little practical impact, if any.

**The changing context since 2006**

10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?

This was dealt with in the response to Question 5.
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?

In response to the problems caused by mechanically propelled vehicles, Part 6 of the Act significantly restricted their use, but not in all cases. One of those exceptions was in respect of unsealed unclassified county roads (UUCRs).

Since then, there has been continuing and growing use of UUCRs by motorised vehicles. Local authorities that try to regulate such use through traffic regulation orders (TROs) have found themselves subject to expensive and time-consuming litigation. This has had the effect of serving to discourage authorities from making such orders.

There is a simple remedy. This is to amend section 67 of the Act to extinguish unrecorded motor vehicle rights along unsealed routes, (exceptions can be retained enabling private access to property).

This would enable the protection of those lanes for the use of those who seek quiet access to the countryside, as well as access to property, whilst relieving the burden of recreational motorised vehicular use from unsuitable routes.

8 September 2017