Natural England – written evidence (NER0082)

1. Introduction

1.1. Natural England was created by the Natural Environment and Rural Communities Act (2006) which merged most of the functions of 3 previous bodies: English Nature, The Countryside Agency and Defra’s Rural Development Service. 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. This includes: promoting nature conservation and protecting biodiversity; conserving and enhancing the landscape; securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment; promoting access to the countryside and open spaces and encouraging open-air recreation; and contributing in other ways to social and economic well-being through management of the natural environment’. Our delivery of Countryside Stewardship is an example of our contribution to appropriate land management. Another major part of our role is providing evidence-based advice to inform decision making.

1.2. Part 4 of the NERC Act gives Natural England the power to provide advice to any public body on matters relating to its general purpose and requires Natural England to provide such advice when asked by a public body. It also has duties as a statutory consultee, for example under land use planning laws, the Conservation of Habitats and Species Regulations 2010 and the Wildlife and Countryside Act 1981.

2. Summary of evidence

2.1. Natural England believes the NERC Act has successfully brought together previous legislation and has proved fit for purpose in helping Natural England achieve its current aims. We suggest a few practical developments in the legislation that would help our purpose going forward. Protection and enhancement of the natural environment also relies greatly on other legislation such as the Habitats and Birds Regulations, and land use planning law and policy.

2.2. The NERC Act has allowed Natural England to innovate. We have significantly reformed the way we work with business and regulatory customers, ensuring we provide pragmatic, proportionate advice, regularly liaising with industry sector groups, and changing the approach we take to protected species licensing. Our new approach to Great Crested Newt licensing reduces the burden on developers while securing improved conservation for protected species.

2.3. Natural England is developing its chargeable services to achieve cost recovery and is using other external funding sources to help improve the natural environment in a challenging context for government funding. The NERC Act powers have helped Natural England develop its new approach to charging for discretionary advice.
services. Developing this strategy further would be aided greatly by minor changes to the NERC provisions should there be a legislative opportunity.

2.4. Building on a strong organisational inheritance, NERC has enabled Natural England to generate significant achievements within a significantly reduced resource base. These include more national protection designations for Sites of Special Scientific Interest (SSSIs) and National Parks; 95% of SSSI area now in favourable or recovering condition; enhanced populations of some of our most threatened species; better protection of marine wildlife; and the England Coast Path, targeted for completion by 2020.

2.5. Despite these achievements, the overall picture remains one of declining biodiversity. In order to help reverse this decline, Natural England is taking a new approach with its ‘Conservation 21’ strategy. Our ambition is for a healthy, resilient natural environment, benefitting people and the economy. Our strategy aims to deliver more effective conservation through a landscape-scale approach, taking people with us, and focussing on outcomes. Natural England has also championed the concepts of green infrastructure and net gain which are important approaches to improving the natural environment.

3. Responses to select committee questions

3.1. Questions 1-3: rural policy.

Natural England does not have a remit for advising on wider rural policy issues other than those involving environmental impacts or environmental delivery programmes.

3.2. Q4: How well has Natural England fulfilled the mandate that it currently has?

- In the 11 years of Natural England’s existence, it has led important achievements in the protection, enhancement and enjoyment of the natural environment. These outcomes have been achieved working with Defra group, other Government Departments, conservation partner organisations, the scientific community and industry. Working with partners has been an especially important aspect of our efforts to improve the natural environment.

- Natural England believes the NERC Act has helped it deliver these outcomes, with partners, especially in the following areas (details about these are in annex A):
  - Protecting and restoring terrestrial biodiversity;
  - Delivering the Environmental Stewardship programme and its predecessor, and the new the Countryside Stewardship programme;
  - Reducing agricultural pollution;
  - Managing our National Nature Reserves;
  - Advising Government to establish and manage Marine Protected Areas;
  - Completing the England Coast Path by 2020; and
  - National Park designation including extending the Lake District and Yorkshire Dales National Parks.
3.2.3 Despite the achievements of all conservation bodies in the past decade, there is much further progress needed before we can say that our wildlife is thriving. It is clear that we need to act to achieve the commitment to leave the environment in a better state for future generations. We have been working closely with Defra on their emerging 25 Year Plan. Our approach is encapsulated in our own conservation strategy, ‘Conservation 21’, which requires us to shift our focus to a larger scale - to create resilient landscapes and seas, moving beyond sites to think about ecological networks, landscapes and ecosystems, and to become more integrated in our delivery. Natural England’s ‘Conservation 21’ strategy wants to put people at the heart of the environment - helping people recognise the relevance of the natural environment to their day to day lives and the choices they make, inspiring them to be more imaginative and ambitious for the natural world around them. Our ambition is for a healthy, resilient natural environment, benefitting people and the economy.

3.3. Q4: How well do its wide-ranging functions fit together?

3.3.1 Natural England’s area teams are the main way we integrate wide ranging functions to make a difference in priority locations. In the past few years, recognising that with public sector resource constraints, we cannot treat all areas as a priority, we have developed the idea of focus areas for our proactive partnership engagement work. We have initiatives which integrate our different work programmes in area teams, so that for example the Coast Path also furthers nature conservation, and the Catchment Sensitive Farming programme contributes to a wide range of benefits like flood management. The present arrangements allow us to specialise appropriately in each area, maintaining a “sense of place”, and to collaborate with other bodies.

3.4. Does Natural England have the appropriate powers and resources to perform these functions?

3.4.1 Natural England believes the NERC Act 2006 has been sufficient for the current Government policy goals for our natural environment. Other laws, such as the Marine and Coastal Access Act 2009, land use planning laws which give Natural England statutory consultee status, and international laws and treaties, have also been very important. The NERC Act provides a sufficiently flexible framework for the immediate future, including the Secretary of State’s powers to give Guidance and Direction.

3.4.2 To illustrate how the NERC Act has enabled Natural England’s work to date:
- It has transferred effectively the previous environmental and organisational legislation.
- Section 4 on the powers and duties to advise others has been useful in reinforcing the key advisory role of Natural England.
- Section 41 has given greater status to the protection of priority species and habitats as part of our commitment to global biodiversity protection. The s41 list is a key source of information for decision-makers on habitats and species outside the SSSI series that are of conservation importance. It is of great importance to local planning authorities and the Environment Agency in helping
to inform their decisions over development proposals or the permitting of activities that may have impacts on biodiversity.

- NERC has aided wildlife crime work through the powers to appoint wildlife inspectors and giving powers of entry to ensure wildlife licencing conditions are being put into effect properly.
- It widened the biodiversity duty to cover all public bodies.
- The powers for the Secretary of State to give direction or guidance have been very rarely used, but do offer clarity and transparency on government policy position if required.
- The delegation powers have been helpful for Defra to organise delivery in the most effective way. For example, Natural England now advises on marine renewables’ impacts right to the 200nm limit.

3.4.3 The NERC Act has facilitated our ability to charge for discretionary services such as providing more bespoke help with environmental assessments by developers. However, Natural England is likely to develop its charging base in future, for example charging for a wider range of activities on the land it manages or for its various statutory services. Wider, more flexible powers, would help. This would allow us to charge for more activities in our move away from reliance on government Grant in Aid (see also our response to question 5 below).

3.4.4 There are some anomalies in the way the NERC Act helps our species licensing work, compared with other protected species legislation. To be more flexible and proportionate in our enforcement of European Protected Species Licence breaches, we would welcome the ability to be able to serve Civil Sanctions. A further strengthening could be gained by making it an offence to breach a condition of a Wildlife and Countryside Act 1981 Section 16 Licence.

3.4.5 On resourcing, Natural England’s budget for 2017/18 (as at May 2017) was £112m, of which £90m is pay-related (2,060 full time equivalent staff) and £16m programme. Of the total budget, £86m is government grant in aid; the remainder is EU technical assistance funding, other external funding and income from discretionary services. This compares on a like for like basis with an overall budget of £177m (including a £76m programme allocation) in 2006/07. In addition Natural England manages and delivers part of the Rural Development Programme in England through which £324m is being paid to land managers in 2017/18; at its peak (2013/14), Natural England managed about £443m of such funding. Natural England has, as with all public bodies, faced significant resourcing challenges in the recent financial climate. It has adapted by making efficiencies in programme delivery and, more recently, by broadening its income base.

3.5 Q5. 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?

3.5.1 These are not Brexit related but we have highlighted four areas where the NERC framework for Natural England may benefit from modification to meet
Government’s ambitions (see also the response to questions 9 and 11). Note that these recommendations may require primary legislation so there is a question of legislative opportunity:

- Consideration of strengthening the biodiversity responsibilities for public bodies to help restore ecosystems and ecosystem services over a broad scale.
- Consideration of minor but important changes to the NERC Act which would be worth considering to assist our charging strategy. For example, the definition of services (which we can charge for) in section 11 is potentially limiting given the wider range of activities we might pursue and get income for, consistent with our general purpose. It is now Treasury policy that charging schemes should be introduced by way of a Statutory Instrument; however the NERC Act does not contain broad, general powers for Statutory Instruments to be created for this purpose. We are also now increasingly using our powers under section 7 to create management agreements that are better tailored to biodiversity outcomes. However, the wording of section 7 agreements is not sufficiently broad to cover the range of activities Natural England would seek to engage in.
- Consideration of the introduction of conservation covenants as a broader, more permanent tool, to secure environmental outcomes alongside its current section 7 powers. This would give Natural England, as well as other bodies who might be included in the legislation for conservation covenants, the tools needed to better protect, restore and enhance areas of environmental quality outside of statutory protected sites and secure the value derived from ecosystem services. The Law Commission published a report (in 2014) recommending the introduction of a new statutory scheme of conservation covenants in England and Wales, see (1).
- Minor but important amendments to the NERC Act to improve our enforcement powers as described above.

3.6 Q6. 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?


3.6.1 Since its creation in 2006 the number of legally secure public access rights has risen and Natural England has evolved new standards of good practice in managing public access both informally and legally, thereby minimising conflicts with other land use objectives. We have supported Defra in various national access initiatives – see below. Natural England has also been at the forefront of initiatives to promote local community access and engagement with nature, providing a range of health and well-being benefits. These include green infrastructure initiatives, Walking for Health, Farm Care and promoting children’s engagement with nature.
3.6.3 *England Coast Path (ECP)* – Natural England was an early champion of the coast path idea and worked with Defra to enable this in the Marine and Coastal Access Act 2009. This path will create a walking route around the whole English coast, together with secure rights of access to beaches. To date 314 miles of the path is open, with a further 521 miles already approved or proposed for approval. All stretches around the country are now being worked on, and we plan to open the full 2,700 mile coast path by 2020, delivering significant health and economic benefits in the process. This new national trail will be the longest continuous coast path in the world.

3.6.4 *National Trails (NTs)* – Natural England launched a ‘New Deal’ with English NTs in 2013. It clarified future funding, given resourcing challenges, and gave local trail partnerships more responsibility. While setting national standards, it gave them more discretion on how to deliver the detail, and established the independent website nationaltrail.co.uk as a promotional platform for the NTs family. In 2012 we opened the Pennine Bridleway, the 13th English NT (we are working to complete the last 3 stretches). The local Trail Partnerships involve over 100 stakeholders.

3.6.5 *National Nature Reserve (NNR) Dedication* – Natural England has dedicated wholly or partly 64 of our NNRs. These dedications, together with the Public Forest Estate, have created public access rights to over 160,000ha of land.


3.7 **Q7.** 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?

3.7.1 In a 2010 Defra-commissioned survey, there was wide variation in awareness of the duty and in the level of biodiversity action that had been taken by the public authorities that responded, see (1). Over 60% of responding local authorities were aware of the duty and over half reported that biodiversity had benefited through their activities. Outside of the government and local authority sector, awareness was lower and less than half reported taking action under the duty. Natural England’s experience tends to reflect the survey findings with widespread awareness principally among Government bodies and local authorities. But there is also good awareness among specific sectors such as Internal Drainage Boards and water companies acting in their role as statutory undertakers.


3.7.2 Since 2006, awareness of the duty has continued to be raised by Government and public conservation bodies. Subsequent biodiversity policy – such as the Natural
Environment White Paper, Biodiversity 2020, the National Planning Policy Framework, and the National Pollinator Strategy – has provided the framework for action. Whilst not all public bodies are aware of the duty they do tend to be aware of the Biodiversity 2020 strategy and its objectives.

3.7.3 A number of initiatives that promote the incorporation of biodiversity considerations continue to have a beneficial effect. There are also a range of external tools that help public bodies take account of the value of biodiversity and the natural environment more widely, such as the biodiversity planning toolkit and the National Ecosystem Approach Decision Tree, which are published by third parties and are available to support Local Authorities. There are biodiversity Net Gain good practice principles for local authorities and developers – see (3). and UK guidance on biodiversity Net Gain is currently being developed by CIRIA, CIEEM and IEMA. The Government also issued guidance in October, 2014, see (4) that set out the broad scope of the duty.

3.8 Q8. 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?

3.8.1 Defra’s review in 2010 demonstrated positive impacts of the duty across diverse public bodies. Types of actions undertaken by public bodies include biodiversity enhancements through managing land and buildings; improving the status and management of wildlife sites; contributing to local or national biodiversity target delivery; undertaking biodiversity surveys etc.

3.8.2 However, about half of the local authorities and around a quarter of all public bodies reported experiencing barriers to the implementation of the duty.

3.8.3 Natural England has championed the concept of ‘net gain’ and it may be that strengthening biodiversity duties, and related land use planning guidance, could aid the implementation of that approach. Utilising the ‘Defra biodiversity metric’, or variants of this, developers, local authorities and infrastructure companies are starting to go beyond ‘no-net-loss’ of biodiversity and exploring approaches to delivering measurable biodiversity net positive outcomes. Natural England has for example worked with Highways England to deliver big scale biodiversity creation projects including 3,500ha of species rich grassland. In 2013 the UK ecosystems market task force estimated that this could revolutionise conservation, creating and ensuring long term management of in excess of 300,000 ha of habitat over 20 years.

3.8.4 A number of publicly funded major infrastructure projects and increasing numbers of local authorities, including Warwickshire, Oxfordshire and Greater Manchester amongst others, plan to secure biodiversity net gain outcomes from infrastructure and housing development.
3.9 Q9: 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?


3.9.1 It is difficult to come to firm conclusions on the comparative merits of the three different duties given the limited evidence available. However, the 2010 review commissioned by Defra did note that the measures taken in Wales over and above those taken in England to promote the 2006 duty. The new duty on public bodies in Wales since 2016 seeks to maintain and enhance biodiversity and to promote the resilience of ecosystems. The 2010 review also noted that whilst the overall level of action for biodiversity was similar in Scotland, there were a number of actions where a greater proportion of Scottish authorities cited the duty as a driver for action than in England and Wales. There is no requirement in England for a public body to report on the activities it has taken to fulfil its biodiversity duty, but such a requirement does exist in both Scotland and Wales.

3.9.2 Given the significant challenges we face in halting the continuing decline in biodiversity, there could be merit in considering a strengthened duty on public bodies in England, in the context of the Government’s ambitions and also the emerging concept of ‘net gain’ for biodiversity as highlighted above.

4 The changing context since 2006

4.1 Q10: 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?

4.1.1 Natural England has been contributing to Defra’s work on EU exit issues. On standards, Natural England’s main area of focus is to ensure that the Government and its agencies have sufficient powers to continue our commitment to the provisions of international treaties, including for example important environmental principles and monitoring processes. The UK government has a long history of environmental protection and we understand that its intention is to safeguard and improve on this record, and uphold all our obligations under international treaties.

4.2 Q11: 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?

4.2.1 We recommend further consideration of the Law Commission's Wildlife Law report which might lead to further improvements to the provisions of the Wildlife and Countryside Act 1981, additional to those modified by NERC. There will are also
minor modifications to SSSI legislation that could be made should such an opportunity arise.

Natural England
September 2017
Annex A: Summary of main outcomes of Natural England’s main activities and outcomes to date

Terrestrial biodiversity protection:

- Natural England has continued to assess and where appropriate designate nationally important SSSIs. Since vesting in October 2006, Natural England has notified 50 SSSI cases resulting in a net increase of over 14,000 hectares (ha) in the SSSI series. In the last year, a total of 8,195 ha of SSSI has been newly notified, the highest total since Natural England was established. Natural England (and its predecessors) has now notified 4,126 SSSIs with a cumulative area of 1.1m ha.

- A priority has been the target to improve the condition of SSSIs. As a result of significant attention from 2006, 95% of the area of SSSIs were in favourable or recovering condition by 2010. A focus now is to increase the proportion of SSSI area that has reached the benchmark of favourable, as opposed to recovering, condition.

- Wildlife outside SSSIs is equally important. Natural England leads the delivery of terrestrial targets for Defra’s Biodiversity 2020 strategy. Just over 100,000 ha of priority habitat has been created to meet Biodiversity 2020 targets.

- Natural England’s species recovery programme works with partners and communities to help recover populations of threatened species, and there have been notable success stories for species like Bitterns, Large Blue Butterflies, and Cirl Buntings.

Stewardship

- Natural England delivered the previous Environmental Stewardship scheme for land managers. By 2013 Natural England was managing nearly 50,000 ES agreements of different types, serving 45,000 customers and delivering a rural development programme of £477m per year. We removed 55% of the processing costs in the Higher Level Scheme and 75% in the Entry Level Scheme. The Entry Level Scheme delivered basic countryside features, for example to aid farmland bird recovery, and the Higher Level Scheme is the primary policy mechanism for restoration of priority habitats.

- We are now implementing the new Countryside Stewardship scheme, which is a more targeted and competitive scheme to maximise environmental outcomes from public funds. The scheme operates under a tightened EU control framework and its introduction was affected by these EU compliance requirements and delays in delivering full computing functionality, resulting in a poorer initial customer experience than the previous scheme.

- The scheme has been continuously improved in response to customer and industry feedback since it was launched in 2015. While the opportunities to make significant changes are constrained by the lead in time required to make information technology changes, disallowance risks and wider CAP delivery dependencies, a programme is in place to make the scheme more straightforward to access and more efficient to process.
This will also see a postponed move of the CS transactions hub to the RPA being implemented.

- We now have nearly 6,000 agreements under the new scheme. Interest in Countryside Stewardship continues to rise strongly, with a significant recent increase in applications. We have also developed the Countryside Stewardship Facilitation Fund, leading to 61 Groups working with 1,350 land managers, across 277,000 ha delivering improvement to their local environment. In 2016 we delivered advice to 2,000 land managers including 85 events and 1,200 personal advice clinics.

Reducing agricultural pollution

- The Catchment Sensitive Farming project was initiated in 2006. Diffuse pollution from agriculture has been reduced through working with 19,000 farms covering about 2.6 million ha. Our Capital Grant Scheme has contributed to approximately £89m of environmental improvement, match-funded by the recipient farmers. Overall 200,000 individual mitigation measures have been advised to farmers. 85% of farmers involved in CSF say they now give water pollution management a higher priority. CSF has contributed to a 50% reduction in pesticides in our rivers. This project has encouraged farmers to invest in reducing pollution with support from Natural England and the Environment Agency.

Managing National Nature Reserves (NNRs)

- Natural England has continued to work with local partners to deliver its strategy for England’s 224 NNRS (covering 94,000 ha). These are the jewels in the crown for Natural England and include iconic places such as Holy island and the Great Fen. These sites have the highest proportion of area in favourable condition (54%), contain most of our rarest species, and host over 800 research programmes. They have 1,800 active volunteers and attract 4m visitors annually. Natural England is approaching the conservation of NNRS in new and exciting ways that rely on mature partnerships with approved bodies, delivering together at a landscape scale, and combining resources.

Protecting marine wildlife

- A major achievement over the past decade has been the advances in England’s marine conservation. Working with regional stakeholder groups, Natural England supported Defra’s development of the Marine and Coastal Access Act in 2009 and has since provided the scientific analysis and advice to enable Defra to designate 38 Marine Conservation Zones to date in inshore waters (ie wholly or partly in the 0-12nm area), covering about 330,000 ha of our marine waters.

- Marine Protected Areas need to be well managed to ensure they are properly protected from fishing and other impacts. We have worked with Defra and the fishing industry to help marine regulators implement 45 byelaws or other measures to manage fishing activity appropriately in sensitive habitats.
**England’s coast path**

- We are working with local authorities and landowners across the country and aim to have the path fully open by 2020. The England Coast Path is the most exciting and ambitious footpath project for a generation - when completed in 2020 it will be the longest continuous coastal walking route in the world. The completed sections of coastal path are already providing a boost for local economies with small businesses and communities starting to provide services for walkers and visitors to the coast.

**Lake District & Yorkshire Dales National Park Extension**

- In 2012 Natural England submitted proposals to extend the Yorkshire Dales National Park by approximately 24% in area, and the Lake District National Park by approximately 3%. Both orders were confirmed by the Secretary of State in 2015. Yorkshire, Cumbria and Lancashire now share the largest area of almost continuous National Park in England. This will further boost tourism, support rural businesses and potentially add significantly to the £4 billion already generated by visitors to our National Parks each year.

*26 September 2017*