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The Natural Environment and Rural Communities Bill

HC Bill 3 2005-06

The Bill provides for the merger of English Nature with part of the Countryside Agency and part of the Department for Environment Food and Rural Affairs to form a new agency responsible for conserving, enhancing and managing England's natural environment, to be called "Natural England". The Commission for Rural Communities, formed out of another part of the Countryside Agency, will take on the Rural Advocate role of ensuring the Government policies take rural needs into consideration. The Bill extends only to England and Wales except for a very few points.

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Summary of main points

The *Natural Environment and Rural Communities Bill* would implement part of the Government's rural policy, which has developed over the past five years through a White Paper, a review on rural delivery by Lord Haskins and *Rural Strategy 2004*. The Bill would provide for English Nature to be merged with part of the Countryside Agency and part of the Department for Environment Food and Rural Affairs (Defra) to form an integrated agency called Natural England. This body would retain the conservation remit of English Nature and combine it with the administration of Environmental Stewardship. That scheme offers incentives for farmers to farm in a manner that is friendly to the environment.

The remainder of the Countryside Agency would be divided into two parts. The economic function of the Countryside Agency, which administers demonstration and pilot schemes in the countryside, was transferred to Regional Development Agencies on 1 April 2005. The Countryside Agency's remaining functions, particularly that of "Rural Advocate", remain in a rearranged form, to be called the Commission for Rural Communities. The Commission will continue to carry out a commitment by Government to ensure that all its domestic policies take account of rural circumstances and needs.

The Bill contains various other measures relating to wildlife, to Sites of Special Scientific Interest, National Parks and rights of way for mechanically powered vehicles. These are only very briefly covered in this paper but are detailed in the Explanatory Notes.

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I Introduction

The *Natural Environment and Rural Communities Bill* would implement part of the Government's rural policy. The policy has been developed over several years, with a White Paper in 2000, a review of rural delivery by Lord Haskins in 2003, a review of the White Paper in 2004 and then *Rural Strategy 2004*. The Bill was published in draft in February 2005. The House of Commons Environment, Food and Rural Affairs Select Committee reported on it in March 2005. Some parts of the policy are not in the Bill. In particular, one of the main recommendations of the Haskins Report was the rationalisation of the many funding streams for the countryside. The Government accepted that recommendation but said that many of the changes do not require primary legislation.

II Background

A. The Rural White Paper 2000

On 28 November 2000 the Government published the Rural White Paper, which set out the Government's vision of a 'living, working, protected and vibrant countryside'.¹ The plan included measures to:

- deliver high-quality health, education, transport and housing services, backed up with a set of new standards by which to measure success;
- tackle the causes of social exclusion by boosting the provision of jobs and affordable housing;
- support the rural economy with new measures to encourage diversification; attract new businesses; and support existing shops and pubs with 50 per cent rate relief;
- provide better protection for the countryside; and
- give more local choice, with new powers for parish and town councils, which meet quality standards.²

In response to the White Paper, some newspaper articles questioned whether it fully addressed those issues seen as causing a decline in rural communities.³ One commentator also questioned the need for such wide ranging measures since '[i]n terms of crime,

¹ Department of the Environment, Transport and the Regions, *Our Countryside: The future – A fair deal for rural England*, Cm 4909, 28 November 2000, p167

² Department of the Environment, Transport and the Regions Press Release, *Government unveils blueprint for rural prosperity*, 28 November 2000

³ "Broad acres, long faces: Can Labour be the countryside's friend?" [leader article], *Guardian*, 29 November 2000; "First they insulted us: now they patronise us", *Daily Telegraph*, 1 December 2000

education, health, quality of life and affordable housing, the countryside still beats the town easily.⁴

The epidemic of Foot and Mouth Disease in 2001 highlighted a major problem of rural policy. The measures to curb the disease followed an agricultural agenda. However, the funeral pyres and closure of footpaths caused dramatic losses for the tourism industry. While farmers were compensated for the destroyed livestock, tourism received no compensation, although their losses were far greater than those of farming. The Government report on lessons to be learnt from the epidemic estimated the direct loss to agricultural producers at £355m. It estimated the effects on tourism at between £2.7bn and £3.2bn.⁵

There was much comment at the time that farming, with its own department - the Ministry of Agriculture, Fisheries and Food – and its own Cabinet Minister, had been treated more favourably than other rural interests. Much of that criticism was unfair, in that it was not open to the Ministry of Agriculture to decide not to eliminate Foot and Mouth Disease by slaughter in order to avoid losses to tourism. The strategy had already been agreed at European Union level. However, it seemed anomalous to some that future decisions of such importance to the countryside should be taken by a Government Department so committed to agriculture.

Another factor in rural policy is the small economic importance of agriculture to the UK. Provisional figures for 2004 (very similar to earlier years) show agriculture contributing only 1.8% of the total workforce in employment and 0.8% of national gross value added at current prices.⁶

The Department for the Environment, Food and Rural Affairs (Defra) was created in June 2001. This brought together responsibilities for the environment, agriculture, fisheries and food so that ‘for the first time we have a single department with responsibility for driving forward the Government’s rural policy agenda.’⁷ This policy remit was based upon the Rural White Paper.

B. Review of the Rural White Paper

In November 2002, the Government commissioned a review of the Rural White Paper by a Defra-led team, which appeared in January 2004. It noted that the Secretary of State, Margaret Beckett, had made it clear that she expected Defra to take a radical modernising

⁴ “There is no countryside crisis; in terms of crime, health, education, quality of life and affordable housing, the countryside still beats the town any day”, *Independent*, 29 November 2000

⁵ Department for the Environment, Food and Rural Affairs, *Foot and Mouth Disease 2001: Lessons to be learned Inquiry Report* (Chairman: Dr Iain Anderson), 22 July 2002, HC888 2001-02 p133

⁶ Defra, *Agriculture in the United Kingdom 2004, 2005*, p13

⁷ Department for Environment, Food and Rural Affairs, Press Notice 453/2002, *Working in partnerships to revive the rural economy*, 8 November 2002

approach to rural policy, challenging old assumptions and approaches within Government and focusing clearly on delivering against a clear set of priorities. It summed up the position three years after the White Paper:

In conclusion:

- the vision of sustainable development for rural areas is universally welcomed and should be reinforced; and
- three years of experience in delivery have demonstrated the need for new methodology to be put in place to quantify targets and for new approaches to shared responsibility for meeting them, with clearer accountabilities.

The main challenges are:

- clarifying the objectives, achieving greater prioritisation and targeting need;
- delivering properly integrated sustainable development;
- understanding and defining national, regional, sub-regional and local roles better, as well as the linkages between urban and rural areas (and the substantial variations within rural areas);
- improving governance and delivery arrangements; and
- continuing to develop a solid evidence base and evaluation framework.

An evaluation framework assists in measuring outcomes but can be academic unless performance improvement and a focus on best practice assists those concerned to improve their delivery. It is therefore recommended that performance improvement mechanisms be built into the design of the evaluation framework, and that it is implicit in all references to the evaluation framework.

Rather than replacing the White Paper, Government will build on its successes. The thinking and conclusions from this Review will feed into a refreshed rural strategy that Defra is currently preparing. This will set out the key priorities and actions to deliver the Government's rural affairs agenda over the next few years.⁸

C. The Haskins Rural Delivery Review

In November 2002, at the same time as commissioning the Review of the White Paper, the Government invited Lord Haskins to carry out an investigation into the mechanisms behind rural delivery. He published his report in October 2003.⁹ It recommended: improved accountability for actions through clearer definitions of responsibility; greater devolution of power to regional and local organisations; improved coordination of operations; and improved and simplified regulations. In addition, Lord Haskins made a number of recommendations relating to the rationalisation of “agencies with overlapping

⁸ Defra, *Review of the White Paper, 2004*, Summary
http://www.defra.gov.uk/rural/rwpreview/exec_summ.htm

⁹ Christopher Haskins, *Rural Delivery Review: a report on the delivery of Government policies in rural England*, October 2003

agendas into a new agency responsible for sustainable land management”.¹⁰ He considered that: “too many organisations are involved in rural delivery, resulting in confusion (delivery of sustainable management for example is handled by at least six national agencies working with multiple regional and local organisations).”¹¹ The large number of agencies involved caused confusion about their roles and responsibilities.

Lord Haskins recommended that:

The government should establish an integrated agency to promote sustainable use of land and the natural environment. This is necessary in order to prepare for the expanding land management agenda and to improve co-ordination and service delivery to customers. This would be achieved through a merger of English Nature, Defra’s Rural Development Service and some functions of the Countryside Agency. Its remit should embrace biodiversity, historical landscape, natural landscape, natural resources, access and recreation.

In its response, the Government recognised the concerns that Lord Haskins raised, saying that they echoed ‘the concerns which led us to commission his report.’¹² Margaret Beckett, Secretary of State for Environment, Food and Rural Affairs, said that the Government’s first priority would be a “full review of rural funding schemes to provide a clearer and simpler framework for applicants and to achieve a reduction in bureaucratic procedures”. The Government also broadly accepted the need for an integrated agency as described by Lord Haskins. They also stated that the devolution of power would be discussed with relevant stakeholders.

However, the Government rejected Lord Haskins’s recommendation to close the Countryside Agency. They said that it would be given a new role ‘providing independent policy advice to Government from a national perspective on issues affecting people in rural communities, and analysing and reporting on best practice in the delivery of the Government’s rural policies.’

D. Rural Strategy 2004

Defra published *Rural Strategy 2004* in July 2004, identifying three key priorities for rural policy and explaining the modernized delivery arrangements:

The Government’s three priorities for rural policy are:

- Economic and Social Regeneration - supporting enterprise across rural England, but targeting greater resources at areas of greatest need.

¹⁰ Christopher Haskins, *Rural Delivery Review*, October 2003, pp10-11

¹¹ Christopher Haskins, *Rural Delivery Review*, October 2003, p62

¹² HC Deb 11 November 2003 cc11-16WS

- Social Justice for All - tackling rural social exclusion wherever it occurs and providing fair access to services and opportunities for all rural people.
- Enhancing the Value of our Countryside - protecting the natural environment for this and future generations.

These priorities will inform the Government's rural policy for the next three to five years and the modernised delivery arrangements that will drive progress forward. This Strategy sets out the specific action that will be taken.¹³

Rural Strategy 2004 also included a summary of the proposed delivery arrangements:

Rationalised funding programmes. There are currently around 100 rural funding schemes by which grants are provided to beneficiaries. Defra will reduce these to three major funding programmes linked to Defra strategic priorities:

- Rural Regeneration
- Agriculture and Food Industry Regeneration
- Natural Resource Protection

More professional and streamlined support for rural people, targeted on their needs. Defra will work with DTI, the RDAs and others to ensure that the national network of advice and support provided through Business Links and other business support providers meets the needs of rural businesses...

We will also commission – with the Devolved Administrations – an independent and fundamental review of the role of the five statutory, producer levy-funded organisations covering the various agricultural sectors (meat, milk, cereals, potatoes and horticulture)...

Clear responsibilities for policy and delivery and hence better accountability. Defra will assume full responsibility for rural and environmental policy functions, including the policy functions of the Forestry Commission in England. This will allow Defra better to address strategic issues across the board. Defra is also reviewing its policy-making function for the future. We will continue to devolve delivery responsibilities from core Defra...

Better mainstreaming of the Government's response to rural socio-economic needs, and better targeting of deprivation in lagging rural areas through the devolution of decision-making to regions and of funding to RDAs. Defra will devolve some £21 million additional socio-economic funding, previously disbursed by the Countryside Agency, to the RDAs' Single Pot. We will also, from January 2007, devolve to the RDAs control of the EU social and economic schemes of the successor to the England Rural Development Programme (ERDP); to ensure the EU funding is joined-up with other rural regeneration and

¹³ Defra, *Rural Strategy 2004*, July 2004
<http://www.defra.gov.uk/rural/strategy/overview.htm>

sustainable farming and food programmes. In the meantime, we will involve RDAs in decision-making in relation to the current ERDP...

Key to these new arrangements will be the adoption of mechanisms to provide the 'Rural Priority Board' prioritisation function envisaged by Lord Haskins; and the strengthening of the Regional Rural Affairs Forums or some similar institution to provide a strong voice into the regional decision-making process from the customer perspective – for example on the quality of support provided to rural businesses. Also important will be the involvement of key delivery partners such as local authorities in the regional decision-making process. And the processes put in place should build on existing mechanisms, and build on good practice in relationship-building and partnership ways of working...

Thinking 'rural', accepting regional variation, but holding to account against national standards. Devolving regional decision-making on the delivery of social and economic regeneration to RDAs, working in close partnership with local authorities and others – and avoiding imposing the same institutional solution on all regions – will help address regional variations in a more sophisticated way. This needs to be matched by a strong performance management framework. Defra will expect to see robust performance management arrangements for our delivery partners.

To provide challenge to Government and fresh thinking on rural solutions, the Countryside Agency will be refocused as a New Countryside Agency – a small expert body providing expert advice to government and advocacy on behalf of rural people and businesses, especially those suffering disadvantage, and monitoring results. It will no longer be distracted from this important charge by delivery functions...

More coherent and effective environmental outcomes through organisational streamlining. English Nature, the landscape, access and recreation part of the Countryside Agency, and the environmental functions of the Rural Development Service will be brought together into an Integrated Agency with a remit across England's rural, urban and marine environment. The Integrated Agency will be a statutory executive NDPB...

Sustainable development proofing the delivery arrangements. All delivery bodies should seek to work in partnership to achieve sustainable outcomes. It is right for each delivery organisation to have a primary economic, social or environmental remit – this provides focus and avoids confusion and overlap. But by coming together in partnership within a shared sustainable development framework, such organisations and bodies can integrate their goals towards sustainable rural communities and countryside...¹⁴

¹⁴ Defra, *Rural Strategy 2004*, July 2004
<http://www.defra.gov.uk/rural/strategy/chapter4.htm>

III The Draft Bill and the actual Bill

A. The Main Aims

On 10 February 2005, the Government published the Draft Natural Environment and Rural Communities Bill.¹⁵ Defra announced that the main provisions were to:

- * create an integrated agency to provide an integrated approach to sustainable land management, enhancement and use of the natural environment;
- * formally establish a new Commission for Rural Communities as a lean and expert adviser, advocate and watch-dog for rural communities, especially those suffering disadvantage;
- * provide powers for the Secretary of State to fund directly activities within Defra's remit;
- * make powers to delegate EFRA functions by mutual consent, in order to provide structural flexibility and limit duplication and
- * create powers to take forward the findings of a forthcoming review of Levy Bodies.¹⁶

The Integrated Agency, combining English Nature, part of the Countryside Agency and Defra's Rural Development Service, has since been named "Natural England".

B. Environment Committee Report and Government Response

The Environment, Food and Rural Affairs Select Committee reported quickly, publishing its report on 24 March 2005.¹⁷ The Government's reply was published on 26 May 2005.¹⁸ The following extracts from the Committee recommendations relating to the draft Bill and Government response are designed to flag up the main points, but the full arguments are available only in the original documents. The Committee broadly welcomed the Bill but noted some points of concern. As in the original document, the Committee recommendations are in bold and the Government response in plain text.

The Integrated Agency: Recommendations 18 to 26

18. We...recommend that provision be made in the Bill for the 'Sandford principle' [which roughly means favouring conservation over recreation in case of a conflict] **to apply in those exceptional circumstances where there is an**

¹⁵ Defra, *Draft Natural Environment and Rural Communities Bill*, February 2005, Cm6460

¹⁶ Defra Press Notice, *Draft Natural Environment and Rural Communities Bill Published*, 10 February 2005

¹⁷ Environment, Food and Rural Affairs Select Committee, *The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill*, 24 March 2005, HC 408 2005-06

¹⁸ Defra, *The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill: Government response to the Environment Food and Rural Affairs Committee's Report*, May 2005, Cm6574

irreconcilable conflict, to make clear that the aim of conserving and enhancing the natural environment takes precedence over other purposes.

...Natural England will be an independent NDPB with the expertise to champion and in some cases deliver, integrated land management. It would be inappropriate to curtail its decision-making ability and its discretion within the framework of managing and enhancing the natural environment and helping people to enjoy it. This will, however, be one of the areas for which the Natural England confederation of partners will set out the general approach for Natural England in an early strategy document, for consultation with staff and stakeholders.

19. ...We...recommend that, for the avoidance of doubt, Clause 2(2)(b) be amended to include reference to the "protection" of the English landscape.

The Government agrees that, in some instances, Natural England will want to take action to protect landscapes...As drafted, clause 2(2) indicates continuity with both landscape and biodiversity legislation. References in existing 'landscape' legislation to "conserve and enhance" have not curtailed the ability of the Countryside Agency to take action to protect landscapes should that be required...On balance, the Government therefore considers it would be inappropriate to add "protect" to clause 2(2)(b).

20. We ...recommend that Clause (2)(2)(d) of the Bill be amended so that the relevant purpose would read: "promoting access to the countryside and open spaces and encouraging quiet open-air recreation".

The Government understands the Committee's concern that inclusion of the term "open-air recreation" risks Natural England promoting unsustainable activities. However, practical experience from the Countryside Agency, which has this remit¹⁹, shows that this fear has not been realised. The Government believes that as an independent NDPB, Natural England should have the legislative freedom enjoyed by its predecessors to make decisions on a case-by-case basis...

21. We...recommend that Clause 2(2)(e) be amended so that the Integrated Agency's purposes include "promoting, and contributing in other ways to, social and economic well-being through management of the natural environment". Any potential conflict between this purpose and the wider role of the Agency as a champion of the natural environment could be resolved through the application of the 'Sandford principle' recommended above.

And

22. We...recommend that Clause 2(1) of the draft Bill be amended so that the general purpose of the IA includes "to promote sustainable development", rather than simply "contributing" to it through its work.

¹⁹ *The 1968 Countryside Act.*

The Government strongly agrees that Natural England should play an active role in promoting sustainable development. The purpose clause as drafted allows it to do this while making it clear that its contribution is made within the context of its role as an environmental body...

23. We are unclear why Defra believes that requiring the Integrated Agency to take appropriate account of actual or possible environmental changes would stop the IA having a unified purpose, or why such wording is so important for the Joint Nature Conservation Committee while being unnecessary for the IA. We...recommend that it be included, as parallel wording was in the 1990 Environmental Protection Act in respect of English Nature.

The Government accepts that Natural England should take account of actual or possible ecological changes in all its environmental management decision-making, but believes that the purpose clause as currently drafted includes and updates this requirement...

24. We...recommend that the advisory powers of the IA, set out in clause 10, be extended to include a duty to contribute to Regional Spatial Strategies...

The Government agrees with the importance the Committee has placed on the relationship between rural delivery and the planning system...the Bill has been amended to include a new sub clause at 15(1) which places an additional duty on the Secretary of State to give Natural England guidance as to which regional planning and associated matters Natural England should engage with.

25. ...We are concerned that the Bill as currently drafted gives the impression that the IA would have less independence from Ministers than either English Nature or the Environment Agency. This is unacceptable. We welcome Defra's statement that the IA would not be bound to follow guidance from the Secretary of State, but believe this should be spelt out on the face of the Bill, by making clear that the IA should only "have regard to" such guidance...For the same reason, we also recommend that the Bill be amended to make clear that guidance relates to objectives which the Secretary of State considers it appropriate for the Agency to pursue; and that guidance would be issued only after consultation with the Agency. We also recommend that Defra explain why the limits on Ministerial directions to English Nature have not been replicated in the draft Bill in respect of the IA.

The Government agrees that Natural England should not be any less independent than its predecessor bodies or the Environment Agency. Accordingly, all the provisions in the Bill are taken from precedents set in the legislation establishing English Nature, the Countryside Agency or the Environment Agency. Amendments have been made to the Bill to make this level of independence clearer...

26. ... We...recommend that the provisions of Schedule 1 to the draft Bill, relating to membership of the Integrated Agency, be amended as follows:

- **A minimum and maximum number of members should be specified, as is the case with the Environment Agency**
- **The Secretary of State should have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the Agency**
- **It should be clear on the face of the Bill that the chairman of the Agency, as well as the Secretary of State, has power to appoint some members.**

...[I]n order to make the independence of Natural England clearer on the face of the Bill, this provision in Schedule 1 has been amended to provide a range of 8-15 in line with the Environment Agency²⁰, and variable by order in line with English Nature²¹...

Providing the Chairman of Natural England with the power to appoint board members would undermine accountability of boards to Ministers...The Government therefore does not intend to give Natural England's Chairman powers to appoint board members.

Commission for Rural Communities: Recommendations 27 to 31

27. We are not convinced that it is necessary to lay down in statute that the Commission for Rural Communities should play a special role in respect of particular groups of rural people...We therefore recommend that the definition of "rural needs" in Clause 18(2) be amended to read: "the social and economic needs of persons in rural areas in England"...

The Government appreciates the point being made here by the Committee... However the Government has also made clear, reflecting Rural Strategy 2004, that it wishes the Commission to have particular regard to the needs of persons suffering from social disadvantage and areas suffering from economic under-performance. Hence these points are highlighted on the face of the Bill, to make the intent clear. The Government does not accept the Commission's having particular regard to these needs will prejudice its duty to look across the wider rural scene.

28. We have already noted that the Commission for Rural Communities needs to be able to seek the "rural proofing" of all levels of Government. In the context of the draft Bill, we believe this function could be strengthened by amending Clause 19 as follows:

- **Clause 19(b) should include a provision allowing the CRC to require a "relevant person" to confirm whether its advice has been rejected.**

²⁰ *Environment Act 1995* s.1

²¹ *Environmental Protection Act 1990* s.128

- **Clause 19(c) should include a requirement on the CRC to report publicly on the outcome of its monitoring of the extent to which policies are meeting rural needs**

The Government does not agree with the proposed change to clause 19(b) since, unlike in the case of Natural England, advice from the Commission is not necessarily requested. It would therefore be inappropriate to require that explanation be given as to whether advice has been rejected or accepted. The Government is, however, content to accept the proposed change to clause 19(c) as a way of emphasising this part of the CRC's remit. Clause 19(c) has been redrafted accordingly.

29. ...We...recommend that the draft Bill be amended to make similar provision for appointments to the CRC as we have recommended in respect of the Integrated Agency...We...recommend that Defra consider ways in which the power of direction relating to the CRC contained in the draft Bill could be made less all-encompassing, in order to make clear the CRC's independence from Ministers.

...[I]n order to make the Commission's independence clearer on the face of the Bill, the provisions for Board membership (other than the Chairman) have been amended (Schedule 2, 3(b)) to provide a range of 8-15 in line with the proposals for Natural England. It is not, however, appropriate to allow the Chairman to appoint Board members, for the reasons set out in response to Recommendation 26. As for the matter of directions, given that the Commission is to be an advisory body only it is unlikely that this power would need to be used. However, such a provision is a standard safeguard in legislation of this kind. The Commission's independent status is clearly established in the Bill.

Flexible delivery: Recommendations 30 and 31

30. We...require more clarity about precisely what is envisaged before we can agree to the provisions relating to agreements with designated and non-designated bodies...

And

31. We recommend that, in its response to our Report, Defra makes a clearer statement about how each of the provisions in Clauses 41 to 43 will operate in practice, including further concrete examples; and about the role to be played by non-public bodies, and how such bodies will be held accountable for their discharge of their functions.

The Government is aware that this is an area of some uncertainty since it is essentially providing for future flexibility. The Government accepts the Committee's arguments around clarity and accountability with respect to private bodies. The Bill has been amended (73(4)) to restrict functions which can be delegated to private bodies to non-regulatory functions. Inspection and enforcement functions would not be delegated to private bodies.

Recommendations 32 to 34 covered the levy boards. The Committee recommended that orders revising the levy bodies should be laid in draft for pre-legislative scrutiny, which

the Government accepted. The Government also accepted the recommendation to state explicitly in the bill the requirement for consultation. The Committee recommended a change in the definition of “agriculture” but the Government opted to maintain the definition in the *Agriculture Act 1947*.

Recommendations 35 – 38 cover order-making powers over which the Committee was generally content, although in a few cases it recommended affirmative procedure instead of negative procedure. Recommendations 39 and 40 covered items for inclusion in the final regulatory impact assessment, to which the Government agreed.

C. How the Bill differs from the draft Bill

The Bill is substantially the same as the draft Bill. The two differences are certain drafting points noted above and the addition of more topics, not directly related to the formation of the new agencies or to rural delivery.

The amendments can be summarised briefly. Clause 15 of the Bill has been amended to take note of the Committee’s concerns relating to guidance for Natural England. Clause 19 has been amended to require the Commission for Rural Communities to report on the extent to which policies meet rural needs. Clause 73 has been amended to clarify relations with private bodies. Clause 88 has been amended to require consultation following the review of agricultural levy boards. Schedule 1 of the Bill has been amended in relation to number of members of Natural England.

The additions to the Bill come in parts 3, 4, 5 and 6. Many of them were published in the document accompanying the draft Bill, but the Committee did not have time to consider them in view of the tight timetable. Part 3 would tighten wildlife protection. Clauses 43 and 46 would increase the protection afforded to some rare species, including birds of prey. Clauses 49 and 50 would make it an offence to sell any listed invasive non-native species. Clause 51 would enhance the powers of police and wildlife inspectors to help combat wildlife crime. Part 4 would create new offences relating to Sites of Special Scientific Interest. Part 5 would amend procedures relating to national parks and the Broads.

Part 6 would amend provisions relating to rights of way. The basic principle of law relating to rights of way is that if a path has been freely used by the public for twenty years, it becomes a right of way. It only stops being a right of way if a legal procedure is followed. The issue of rights of way for mechanically powered vehicles has caused considerable trouble over the years. That is partly because of uncertainty over the status of paths and partly because of increasingly powerful vehicles whose disruptive effect is potentially much greater than was originally envisaged. Clause 61 would prevent new rights of way for mechanical vehicles being created by twenty years of use. In addition, where there is illegal use of a way by a mechanically powered vehicle that would not be able to give rise to lower public rights of way such as a footpath. Clause 62 would end certain existing unrecorded rights of way for mechanically powered vehicles. The clauses

are part of a process of recording rights of way rather than having to argue whether at some period that right had been earned.

IV Decentralisation

A. Haskins on the need for decentralisation

Haskins saw his recommendations as amounting to considerable decentralisation. The main element of decentralisation in the Bill is removing from Defra the management of Environmental Stewardship – the agri-environment scheme for farmers - and transferring it to Natural England. The following passage from Haskins’s report indicates his reasons:

1.20 Decentralisation has been happening elsewhere in government and needs to happen in Defra.

1.21 National policy objectives must be designed to take account of local needs, and the government has recognised this in creating Regional Development Agencies. It is the job of these organisations to transform national policies into regional strategies and to arrange for the delivery of these strategies through a network of regional, sub-regional and local partnerships, with democratically accountable local authorities as the lead partner in most of these delivery activities.

1.22 I am recommending that Defra pursues this approach and, wherever possible, uses regional and local delivery networks as opposed to national ones. Delivery must take forms that not only target but are also appropriate to local circumstances. This is very difficult to achieve from the centre.

1.23 Many Whitehall civil servants pursue a top-down philosophy of government and overestimate their capacity to effect change in the lives of individuals. The media’s intolerance of failure in the political sector can compound the problem, as does a system that seeks to meet unrealistic expectations. This adds to the bureaucratic complexity of delivery. In overcoming these problems civil servants must recognise and accept the cultural obstacles that continue to exist in many quarters.

1.24 Whilst this top-down approach might have been acceptable a generation ago it is not appropriate today. In the past, citizens’ high trust of governments contrasted with their relatively modest expectations of state intervention. Today, the reverse is increasingly the case, reflected in an uneasy combination of distrust and excessive expectation. People want to know what is going on and resent a system that lacks transparency and does not adequately recognise individual circumstances. They seek tailored responses to their problems and become impatient when they do not get them.

1.25 My report aims to satisfy demands for more localised delivery, by recommending the devolution of delivery of government services, so that people can connect to the system at their local level, and to increase the transparency of

the government machine by separating, as much as possible, responsibility for policy development from responsibility for policy delivery.

1.26 Good businesses have realised the shortcomings of over-centralisation. Thirty years ago most corporations had similar shortcomings to those I have noted in modern government departments. Today they have slimmed down their central staff, who concentrate on macro-strategy and the auditing of delivery. They allocate responsibility for delivery, including selection of the best methods for achieving those goals, to those who are most competent and best placed to influence things: the operators themselves. The centre must challenge operators and, if necessary, replace them where they underperform. It must not try to do their job for them or second-guess their decisions.

Haskins acknowledged the problems faced by Ministers but criticised Whitehall for too much intervention. Amongst various advantages of separation, he mentioned a possible disadvantage:

A criticism of the principle of separation is that it may lead to an even wider misunderstanding between policy development and delivery, whereby policy teams pay little attention to the concerns of delivery. But if policy developers no longer have the responsibility for detailed delivery, I would argue that they will be obliged to consult much more closely with their delivery agents during the policy development process. Indeed the obligation to consult is much more effective if the separation is transparent. I am also recommending that policy makers are given specific training to understand the problems of delivery and to consult more formally with deliverers during policy development.

Haskins returned to the fundamental problem with separation, that the Government retains responsibility for the outcome:

- If Ministers and senior officials are dissatisfied with the performance of those executive boards who have the responsibility for delivery, then they have the power to replace them with more suitable appointments (where the statute provides for this).
- Ministers (and senior ex-Ministers) have told me that media-sensitive delivery failure always ends up with Parliament laying the responsibility at their doorstep, and that the temptation to intervene and meddle in the delivery process is overwhelming. But if the separation between policy development and delivery is clear-cut, as it is in France and Germany, then the ability to distinguish between a policy and a delivery problem makes it easier to take corrective action.
- Many other countries successfully make this separation, and it should be a priority in Whitehall to follow suit.²²

²² C. Haskins, *Rural Delivery Review: a report on the delivery of Government policies in rural England*, October 2003

Haskins's said more about the separation of delivery from policy-making in evidence to the EFRA Select Committee in 2004. The Committee reported:

Lord Haskins sought to correct any misunderstanding of his position on this issue. He told us that his intention had been:

"to make sure that policy-makers, who do not have control over delivery, have to consult properly on the policy-making process with delivery people. That means the delivery people under my proposal would have a stronger influence in policy-making than they do at the present time where the whole thing is controlled by the policy-makers at the centre".
(Q115)

In the same reply he said: "the more I look at it the more I realise that if you have policy-makers responsible for the delivery function, the delivery function does not get proper attention".²³

B. Comment

The Centre for Rural Economy at Newcastle, in evidence to the EFRA Committee, was sceptical about the separation of delivery from policy making:

[T]he Haskins Review made great play of the need to separate policy from delivery. However, treating policy and delivery as distinct and separable is a simplification. The Haskins analysis risked suggesting that policy development gets "done" at the centre, while delivery is the realm of the region and local level. Our work with rural bodies in the north of England suggests a more complex continuum, involving experimentation & policy advice; policy-making; strategic planning; programme administration; client advice & facilitation; and project delivery. There is also a strong appetite for greater discretion in developing new and distinctive policies in the regions, rather than in just delivering policies decided elsewhere. Yet, in the aftermath of the Haskins Review and the publishing of the Rural Strategy, we still lack clear models of local delivery—ie what works best where. This silence, and the rash of institutional change at the centre, is symptomatic of a process that has been dominated by the perspective of the centre, with insufficient interest in what works locally, on the ground.

It went on to cast doubt on the proposed decentralisation in the Rural Strategy:

4.2 *Confused Decentralisation*: We are not convinced by the Strategy's repeated exhortations that delivery will be more decentralised. Local government is a logical place for decentralised delivery, but we urge the Committee to reflect on

²³ EFRA Committee, *The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill*, 24 March 2005, HC408-I 2004-5

Footnote 7 on page 20 of the Strategy, which speaks volumes. "In the event that any new burdens for local authorities were to emerge in due course, these would be reflected in a budgetary transfer in the normal way". In other words, nothing specific or different is currently expected of local authorities, and should anything crop up, the Government will think then about how to accommodate it.²⁴

The Countryside Agency also criticised the proposed separation of delivery from policy making:

Separation of delivery agencies under social, economic and environmental goals could make it more difficult to achieve sustainable development. Much will depend on delivering continuing integration of those goals at national levels among government departments, and among all the national agencies with responsibilities that touch on rural areas. At regional level, the Government Offices face a significant challenge in their task of encouraging an alignment of the policies and operations of national, regional and local bodies to deliver sustainable development goals in the countryside. The New Countryside Agency [i.e. The Commission for the Rural Communities] will have an important watchdog role, looking at the impact of policy integration translated into experience on the ground from the perspective of rural people, businesses and places.²⁵

The Countryside Agency also noted some problems about the proposed decentralisation:

ii) Devolution of delivery to regional and sub-regional bodies is welcome but a great deal of work is needed to clarify the roles and responsibilities between bodies, whether in the Defra family or wider—as seen from the perspective of rural people and businesses.

(iii) Time is needed for regional and sub-regional bodies to establish their new roles, re-organise and manage internal change. There is a risk of a hiatus, that much good work will be lost and that rural areas may suffer during this implementation period.

(iv) The Strategy is significantly silent on the role of local authorities in achieving rural progress, whether in their own right or in working with town and parish councils (see evidence on question 3 below).

(v) The Rural Strategy is not recognisable as a strategy in the way that the Cabinet Office recommends as good practice. It is insufficiently clear what it is trying to achieve and there are no measurable outcomes or priorities. The Strategy needs to set the scene, be clear about the hard choices which have been made and

²⁴ EFRA Committee, *The Government's rural Strategy and the draft Natural Environment and Rural Communities Bill*, Memorandum of Evidence of 2 November 2004, HC 408-II 2004-5

²⁵ EFRA Committee, *The Government's rural Strategy and the draft Natural Environment and Rural Communities Bill*, Memorandum of Evidence of 9 November 2004, HC 408-II 2004-5

give a clear context for policy-makers, deliverers and customers against which everything else can be judged.

The Government's response to the EFRA Committee Report suggests that it is not slavishly following the Haskins recommendations:

Our drive is not towards separation of policy and delivery, but towards a new **partnership** between policy makers and deliverers. Because the evidence tells us that a differentiated and targeted approach is what is needed to make rural policy and delivery more effective in meeting the needs of rural communities, we are devolving decision-making to the regional and local levels. This will enable decisions on funding to better reflect regional and local priorities and give rural communities more confidence that the decisions taken are relevant to their needs.²⁶

One important point is that Natural England will combine its delivery functions – for example on Environmental Stewardship – with its remit to advise the Secretary of State on conservation.

V Some issues for Natural England

A. English Nature on benefits of Natural England

The response to the Bill by English Nature sees several clear advantages in the formation of Natural England:

- 1 A more powerful champion of the natural environment, and the benefits that the environment brings for people, than the three existing organisations can achieve separately. With a broad remit and a single voice, Natural England will be able to advise and act at national, regional and local levels, to ensure the environment is properly taken into account.
- 2 It will make an essential and fundamental contribution to the country's sustainable development, as Natural England safeguards and builds natural resources that contribute to economic growth and quality of life, and maintains that resource for future generations.
- 3 Integrated action to conserve and enhance biodiversity, landscape and the historic environment, and the protection of soil and water – better protecting the quality of the natural environment, increasing its ability to cope with change and offering greater opportunities for recreation and

²⁶ Defra, *The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill: Government Response to the Environment Food and Rural Affairs Committee's Report*, May 2005, Cm6574 p2

enjoyment, Natural England will operate from sea bed to mountain top to city centre.

- 4 Integrated action at the landscape scale, particularly through the use of new agri-environment schemes, will better deliver the government Public Service Agreement (PSA) targets on both Sites of Special Scientific Interest (SSSIs) condition and farmland birds.
- 5 Opportunities to strengthen the link between people, places and nature. A strong emphasis on promoting understanding and enjoyment of the natural environment that will foster a greater public commitment to the environment and its wider benefits – health, community cohesion and wellbeing. This will apply just as much in towns and cities, and on the coast and sea, as it does to the rural countryside.²⁷

B. Will Natural England face internal conflicts of interest?

As already noted, Natural England will combine delivery functions with its role as adviser on nature conservation to the Secretary of State. The Agency will have an extended remit, but it will not include economic factors. That is why English Nature did not want Natural England to have a statutory duty to promote sustainable development. In 1999, the Government set out four aims for sustainable development: social progress which recognises the needs of everyone; effective protection of the environment; the prudent use of natural resources; and the maintenance of high and stable levels of economic growth and employment.²⁸ Thus, a commitment to promote sustainable development could involve promoting high economic growth. An agency committed to promoting sustainable development might find itself having to decide internally on the balance of advantages between the economic benefits of a particular project and the damage to nature conservation.

Defra said that Natural England will be:

[A] new and powerful integrated agency that will, for the first time, bring together and integrate responsibilities for protecting and enhancing the value and beauty of our natural environment alongside functions to promote access, recreation and public well-being for the benefit of this and future generations. The agency will provide a single focus for those who manage and protect our countryside and green spaces – making access to advice and support simpler and easier.²⁹

²⁷ English Nature, *Parliamentary Briefing: Natural Environment and Rural Communities Bill*, 24 May 2005

²⁸ DETR, *A Better Quality of Life – A Strategy for Sustainable Development for the UK*, May 1999, Cm 4345

²⁹ <http://www.defra.gov.uk/rural/ruraldelivery/bill/>

It is worth considering whether Natural England might have trouble reflecting conflicts of interests within its remit. English Nature has a nature conservation remit. Natural England will also manage the Environmental Stewardship Scheme for farmers. Might there be occasions in which the two could conflict? For example, might there be pressure to make Environmental Stewardship a good way to pay more money to farmers for activities that did not do enough for nature conservation?

English Nature expressed no such concerns in positive evidence to the EFRA Committee:

3.2 The broad scope of the "Integrated Agency" will build on the successes and world class reputation of its constituent bodies, the legislative changes of the Countryside and Rights of Way Act 2000, and the expected benefits of CAP reform. The establishment of the new body will provide a positive opportunity to take further the change in focus of nature conservation, signalled by the England Biodiversity Strategy "Working with the grain of nature" (Defra, 2002), from defensive protection of special sites against damage to positive management, habitat restoration and action at a landscape scale to secure better outcomes for the natural environment and for the people who enjoy its benefits and depend upon it for their livelihoods and well being. The new body will continue to rely on its constituent bodies' current blend of advice, advocacy, incentive and regulation to achieve these outcomes.

3.3 Natural processes must function properly to sustain resilient ecosystems, and English Nature has international expertise based on over 50 years of research and experience in this area. Healthy ecosystems (including the biodiversity and geodiversity they contain) in turn contribute to high-quality landscapes. The work of the Countryside Agency and its predecessors, English Nature's work with others on pilot approaches to area based delivery, and future work with the Environment Agency to develop River Basin Management Plans will form the basis for action at a landscape scale to sustain and enrich nature and natural features. Working at the landscape scale will not only ensure that change addresses multiple public policy objectives but also provide a link to people's sense of place and their cultural heritage. Changes in the agri-environment schemes will play a critical part in ensuring that landscapes, special sites and the habitats and features that they contain are all sustained by advice and incentives that deliver benefits for people and for the economy as well...³⁰

Friends of the Earth, on the other hand, noted its concerns at the time of the Haskins Review:

Friends of the Earth today called on the Government to guarantee that any new countryside body replacing English Nature as a result of the Haskins's review remains independent of Government.

³⁰ EFRA Committee, *The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill*, Memorandum of Evidence of 9 November 2004, HC 408-II 2004-5

Friends of the Earth is concerned that the new "integrated agency" will not be able to be critical of Government and lack English Nature's current independence...

Recent successful interventions by English Nature have been:

- GM crops
- Road schemes (i.e. Hastings bypass)
- Airports (especially Cliffe proposals)
- Ports (especially Dibden bay)
- Housing expansion ...³¹

Publication of Defra's *Rural Strategy 2004* brought an even stronger response from *Friends of the Earth*:

Friends of the Earth reacted with alarm today (Wednesday 21st July) at proposals that could seriously set back official nature protection efforts in England. The Rural Strategy 2004 proposals, presented to Parliament by Environment Secretary Margaret Beckett, will lead to the effective abolition of English Nature, the country's official nature protection watchdog. It will be subsumed into a new integrated body covering a rash of rural issues.

English Nature (EN) has been a thorn in the side of Government in recent years, querying ministers over the impact on wildlife of GM crops and objecting to their plans for damaging airport, port and road schemes. Because of its outspoken stance, EN has earned the respect of environmental groups which previously saw the body as overly compliant with government policy, as over the Twyford Down M3 extension and the third Newbury Bypass.

With the newly announced Rural Strategy, it is feared that the clear and focused remit of EN to conserve biodiversity (the diversity of England's wildlife species and habitats) will be lost as the new integrated body will embrace a far wider set of issues from payments to farmers, diversifying the rural economy and access to the countryside...³²

The Environment Food and Rural Affairs Committee was less worried about possible conflict of interest, but did recommend one change to the Bill in the context of the purposes laid down in Clause 2 of the draft Bill:

120. The Minister stated that "there is always bound to be some conflict between the objectives of the agency" but he did not accept that "conservation should always override everything". Defra further explained:

It would be inappropriate to automatically give primacy to biodiversity and landscape over access and recreation in rural and urban environments in general. There might well be instances where access and recreation

³¹ Friends of the Earth Press Release, *Fears for new countryside watchdog*, 11 November 2003

³² Friends of the Earth Press Notice, *England's wildlife watchdog threatened with extinction*, 21 July 2004

considerations outweigh biodiversity and landscape ... We do not want to constrain the Agency's future decision making ability and its discretion, within its overall general purpose.

121. We agree that conflicts between the purposes of the Integrated Agency listed in Clause 2(2) of the draft Bill should be rare, and that good management and cooperation between parties should allow them to be overcome. But we recommend that provision be made in the Bill for the 'Sandford principle' to apply in those exceptional circumstances where there is an irreconcilable conflict, to make clear that the aim of conserving and enhancing the natural environment takes precedence over other purposes.³³

The Bill does not contain a provision for priority to be granted automatically to conservation over recreation interests, known as the Sandford Principle. English Nature, which welcomed the Bill, did not support the call for such a provision in the Bill. They welcome the freedom offered by the Bill, although they would normally expect to favour conservation. There might be occasions on which Natural England would prefer some sort of compromise, for example perhaps establishing a visitor centre on a small part of a rare habitat. An explicit requirement to favour nature conservation over recreation might lead to a challenge in the High Court by Judicial Review.

The Select Committee was also concerned about the wording of Clause 15 of the draft Bill relating to guidance from the Secretary of State. The Government appears to have followed the Committee's suggestions on this point. Amongst other points, the wording of Clause 15 of the Bill makes it clear that "Natural England must have regard to guidance given under this section". Clause 16 would give the Secretary of State the power to issue directions. Natural England would have to comply with any directions given under that section.

English Nature does not object to the Government having either power. An important point is that both guidance and directions would have to be published. English Nature accepts that on occasions its own priorities might have to be overruled. For example, there might be major economic reasons for some decision to be taken. Natural England would not take that into account because of its terms of reference, but would accept that the Government would want to take it into account. It would prefer the system of published directions and guidance to a system of informal pressure. Of course, there would be a political price to pay for a Government that was frequently directing Natural England to act in a way contrary to its own advice.

Another possible problem for Natural England is that the work of monitoring Environmental Stewardship might prove so onerous that the nature conservation work

³³ EFRA Committee, *The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill*, HC 408-I 2004-5

formerly undertaken by English Nature would be starved of resources.³⁴ English Nature is confident that they could cope with the monitoring work, even though they plan staffing reductions as efficiency savings resulting from the merger. They believe that technological advances such as satellite observation mean that monitoring the compliance of each farm to the environmental rules should be manageable.

C. Natural England and the Environment Agency

The Environment Agency is the leading public body protecting and improving the environment in England and Wales. It advises government on sustainable development and has a central role in delivering the rural strategy. For example it is the competent authority for European legislation that underpins the strategy, the Water Framework Directive. At first sight, it might appear that Natural England – the new integrated agency – would cover much the same field as the Environment Agency. However, they do have distinct roles. An over-simplified view would be that the Environment Agency ensures compliance with environmental controls while Natural England will provide economic incentives for activities that benefit the natural environment.

The Environment Agency evidence to the EFRA Select Committee explained what it wanted from the relationship between the two bodies:

2.2 The new agency will have a distinct role from the Environment Agency (and the title chosen for it must reflect this). The focus of the new agency will be on biodiversity, landscape, access, recreation; the focus of the Environment Agency will remain protection and enhancement of air, land and water, management of waste and flood risk. However Lord Haskins stated that working closely with the Environment Agency will strengthen the benefits of the new agency.

It went on to state where it considered the biggest joint challenge lay:

2.5 The biggest challenge for close collaboration is to tackle diffuse pollution from agriculture on a catchment wide basis. The costs of diffuse pollution are substantial: for example costs of removing fertilisers and pesticides from drinking water are estimated at £120million per year. The impact of siltation of rivers (often the result of poor soil management) on rural flood risk is also becoming increasingly apparent. Reduction in pollution will require shifts in farming practice^[9] and regulation will deliver only part of the solution. A range of techniques including incentives, advice and voluntary action are needed to address a number of farming practices, including waste management, soil husbandary, cropping practices and pesticide use.

³⁴ see section VIA of this paper

2.6 Tackling this challenge is central to meeting our obligations under the Water Framework Directive. The new agency and the Environment Agency will need to work together with farmers who manage land around river catchments. We are therefore putting in place now, with English Nature and the Rural Development Service, catchment management projects which will bring together the range of measures available together with specialist officers who can co-ordinate effort, target areas most at risk and provide advice to farmers.

The Environment Agency conclusions made some more general points:

6.1 The important question for the Environment Agency (which it also posed during the Haskins review) is whether the strategy and the arrangements for its delivery will result in better environmental outcomes.

6.2 We believe that it will do so only if the issues outlined above are addressed in implementation: by Defra, and by the new integrated agency, the Regional Development Agencies and by the Environment Agency. This means that:

— The Environment Agency and the Integrated Agency need to work closely together, particularly in tackling the environmental challenges from farming in water catchments.

The new Environmental Stewardship Scheme must encompass action for soil water and air and be targeted [at] areas where we need to meet statutory environmental considerations:

— The streamlined funding streams cannot be operated in isolation: those responsible for delivery must all consider environmental, economic and social targets in order to achieve sustainable development.

— Resource allocations must ensure adequate funds for environmental outcomes, and regional priorities must be lead by a clear national framework of environmental outcomes.

— Funds for Rural Regeneration must also support environmental improvements.

— Environmental policy must be set at a national level and be driven by international statutory obligations.

— Delivery of environmental policy must be driven by a clear national framework and must ensure:

— consistency across administrative boundaries;

— integration of regulation with other policy instrument (advice, incentives, cross compliance, voluntary action); and

— integration of measures to protect soil air and water together.³⁵

³⁵ EFRA Committee, *The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill*, HC 408-II 2004/5, Memorandum by the Environment Agency

VI Natural England and Environmental Stewardship

A. Environmental Stewardship

A major part of the work of Natural England will be managing the Environmental Stewardship Scheme, which is an agri-environment scheme. Agri-environment schemes, aimed at making farming more beneficial to the environment, operate under the EU Rural Development Regulation and form part of the Common Agricultural Policy. Current schemes are managed by Defra. These schemes have different origins and traditions from environmental control schemes deriving from pollution control in areas like rivers.

Over the past two decades or so, the public has become increasingly aware of the environmental problems caused by intensive agriculture. Until 1992, the Common Agricultural Policy (CAP) operated via price support, which meant that subsidies increased with each unit of extra production. The 1992 reform of the CAP introduced area payments for arable farmers and reduced the importance of price support. The 2003 CAP reform ended price support completely in favour of direct payments. The European Union has moved from a position where farm subsidies were paid to maximise food production to one where they are increasingly justified in terms of the environmental benefits that result.

Environmental policy is linked into farming in several ways, particularly with the reformed CAP. First, farmers have to comply with some basic environmental standards in order to receive Single Farm Payment. That is known as cross-compliance. Second, they have the option of entering into environmental stewardship, under which they receive additional payments. However, those payments are financed by deductions from the overall total paid out in Single Farm Payments, under a scheme known as “modulation”. Therefore farmers need to adopt environmentally friendly policies in order to maintain their incomes.

According to the Defra website:

Environmental Stewardship is a new agri-environment scheme which provides funding to farmers and other land managers in England who deliver effective environmental management on their land.

The scheme is intended to build on the recognised success of the Environmental Sensitive Areas scheme and the countryside Stewardship Scheme. Its primary objectives are to:

- Conserve wildlife (biodiversity)
- Maintain and enhance landscape quality and character
- Protect the historic environment and natural resources
- Promote public access and understanding of the countryside
- Natural resource protection

Within the primary objectives it also has the secondary objectives of:

- Genetic conservation
- Flood management
- Environmental stewardship has three elements:

Entry Level Stewardship (ELS) is a 'whole farm' scheme open to all farmers and land managers who farm their land conventionally. Acceptance will be guaranteed provided you can meet the scheme requirements. If you have a mix of conventionally and organically farmed land, or if your land is farmed organically, you should apply for OELS.

Organic Entry Level Stewardship (OELS) is a 'whole farm' scheme similar to ELS, open to farmers who manage all or part of their land organically and who are not receiving aid under the Organic Aid Scheme (OAS) or the Organic Farming Scheme (OFS)

Higher Level Stewardship (HLS) which will be combined with ELS or OELS options, aims to deliver significant environmental benefits in high priority situations and areas.³⁶

B. English Nature and Farm Payments

Although Natural England will be administering Environmental Stewardship, it is not an uncritical supporter of the reformed Common Agricultural Policy (CAP). A recent English Nature briefing on CAP reform and the Environment contained the following summary points:

The 2003 CAP reforms were driven by trade, not environmental objectives and while they will have some positive outcomes, there will also be significant negative effects that pose a serious threat to delivery of the Government's environmental targets.

There is an urgent need to monitor and evaluate the environmental impacts of the reforms to understand these better and to help shape the Government's response.

The Single Farm Payment has no purpose: it is not an environmental payment, nor is it an efficient means of supporting farm incomes and can't be claimed to be a compensation for policy change since it is not phased out over time.

A well managed and wildlife rich countryside will not be delivered by the current CAP but neither can it be delivered by markets alone. The 2003 reforms need to be linked to further shift of resources into Pillar II of the CAP to help fund future rural development programmes and deliver environmental objectives.³⁷

³⁶ <http://www.defra.gov.uk/erdp/schemes/es/default.htm>

³⁷ English Nature Briefing Paper, *CAP Reform and the Environment*, October 2004

English Nature has been involved in the design of Environmental Stewardship.

C. The Proposed new EU Rural Development Regulation

The current EU Rural Development Regulation, Council Regulation (EC) 1257/99, expires at the end of 2006. The regulation is of great importance in laying down the broad headings under which rural spending, financed by modulation for CAP payments, can take place. Each country – England, Scotland, Wales, Northern Ireland - produces a Rural Development Plan that requires the approval of the European Commission, showing the schemes it will operate within the Rural Development Regulation headings.

In July 2004, the European Commission published for consultation a proposal for a new Rural Development Regulation, Consultation Document 11495/04. It is expected that agreement on it will be reached by the end of June 2005. Its simplification of spending streams would fit in with the UK Government's Rural Strategy. The new Rural Development Regulation, coming into operation on 1 January 2007, will be managed by Natural England from that date.

11495/04 would replace the 1999 Regulation covering the Rural Development Regulation. In August 2004, the UK Government noted the link to its own Rural Strategy, while announcing a consultation exercise:

New European proposals for driving rural development were welcomed today by Rural Affairs Minister Alun Michael as a step in the right direction...Alun Michael said:

"I am pleased that the proposals for the new Rural Development Regulation are in step in many ways with one of the aims of the Government's Rural Strategy 2004 - to simplify rural funding streams. In particular there is a proposal to target funding along three axes: farm and forestry competitiveness, land management and environment, and support for wider rural diversification."

Under the current Rural Development Regulation Defra operates the England Rural Development Programme, ten schemes to protect and improve the countryside, develop sustainable enterprises and help rural communities to thrive. The new Regulation will form the basis of future rural development programmes across the EU from 2007 to 2013. Alun Michael added that the UK Government would prefer a greater proportion of funding be allocated to the second axis - land management and environment - than that currently suggested by the Commission, in order to contribute to wider EU environmental objectives, and that the UK would want the Commission to consider a more equitable allocation of funding between Member States. He commented:

"We will engage robustly in the forthcoming negotiations to push for a fair, objective criteria-based allocation of the available funding, and a greater emphasis on environmental objectives. While we will be open to getting feedback to this consultation through traditional channels, we would encourage people to make use of the web-based system wherever possible to join the debate.

Not only will it reduce the volume of paper needed for a full public consultation, it offers the convenience of submitting comments online, and gives access to a message board for exchanging views. It will also enable us to analyse responses more quickly and ensure those views can feed into the early negotiation stages."...³⁸

VII The Countryside Agency

A. Background

The Countryside Agency, according to its website, is the statutory body “working to make the quality of life better for people in the countryside and the quality of the countryside better for everyone.”³⁹ On 1 April 2005, responsibility for managing demonstration and pilot projects related to rural development was transferred from the Countryside Agency to the Regional Development Agencies. The *Natural Environment and Rural Communities Bill* would replace the Agency by the Commission for Rural Communities.

The Countryside Agency was the result of a merger between the Rural Development Commission and the Countryside Commission. It has had a short life, only starting work on 1 April 1999. This merger followed an earlier decision that the regeneration programmes of the Rural Development Commission should be transferred to the Regional Development Agencies on that date. Those changes predated the formation of the Department for Environment Food and Rural Affairs (Defra). The Select Committee on the Environment, Transport and the Regions noted at the time:

6. The formation of the Countryside Agency has been generally welcomed by our witnesses. They have acknowledged its potential to act as a "rural champion", as a stronger advocate of countryside concerns than either of its predecessors were able to be, and its potential to integrate the economic, social and environmental concerns which were dealt with separately by the Rural Development Commission and Countryside Commission. We endorse these sentiments. Some doubts nevertheless remain about whether the new Agency will be able to achieve these laudable aims in practice. Much will depend on the action which the Government takes to complement the formation of the Agency in terms of developing and implementing a comprehensive policy for rural areas.

However, the Committee also noted:

4. The formation of the Agency by merging the remains of the Rural Development Commission with the Countryside Commission represents, as one of our witnesses said, "a rather uneasy merger of rural development issues with landscape, wildlife and countryside issues."... The decision to "cobble together"

³⁸ Defra Press Notice 326/04, *Europe's draft Plans for Rural Development*, 17 August 2004

³⁹ <http://www.countryside.gov.uk/>

these two bodies seems to have been more a matter of administrative convenience than a vital part of a new strategy for rural areas.⁴⁰

The *Natural Environment and Rural Communities Bill* would undo the arrangements made in 1999. However, the thinking is not completely different, as shown by evidence in 1998 from John Edwards (Chief Executive of the Rural Development Commission). He was asked whether the merger was simply a consequence of the Government's legislation on Regional Development Agencies:

(Mr Edwards) In that context the RDA Bill provided an opportunity. It is, in many ways, an extremely brave decision to bring together for the first time organisations primarily concerned with environment, access and beauty of the countryside, with the organisation concerned with the economic wellbeing, social need of those who live and work in the countryside; so if you can bring those two policy agendas much closer together and deliver a coherent policy to address all those issues, then I think you have actually produced something which will be much greater than it was in the past.⁴¹

In other words, the 1999 merger was partly motivated by the aim of producing a co-ordinated approach to rural problems.

The Chairman of the Countryside Agency was also given the role of "Rural Advocate" in November 2000:

Ewen Cameron, chairman of the Countryside Agency, is to champion the needs of rural England at the heart of government in a new role as 'rural advocate'. The Deputy Prime Minister announced today (28 November) that Mr Cameron will have direct access to the Prime Minister and other Ministers, and will join the Cabinet Committee of Ministers which co-ordinates rural affairs. His role will be to tell ministers what the countryside needs from the government, drawing on the Countryside Agency's own extensive research programme and practical experience.

Commenting on the government's Rural White Paper published today, Mr Cameron said: "This Rural White Paper recognises the wider challenges facing those living in the countryside and the government has shown it has been listening to rural people. This is a good start which now needs to be translated into action.

"I want to see every government department test it[s] policies against rural needs - does the policy work for or against, include or exclude, rural people and places?"

⁴⁰ Environment, Transport and the Regions Committee, *The Countryside Agency*, 28 January 1999, HC 6 1998-9

⁴¹ Environment, Transport and the Regions Committee, *The Countryside Agency*, 28 January 1999, HC 6 1998-9

This so-called rural proofing will be a tougher test of the government's commitment to the countryside than setting up a new rural department. It will mean there is no opt-out clause for any government activity. Rural concerns are no different from urban worries on health, jobs, services, transport, housing, education - but they need rural solutions.”...

The Countryside Agency will also work closely with other partners to provide:

- ‘health checks’ and tool kits to help regeneration of market towns;
- vital village services through a new Community Service Fund;
- and improving the quality of the countryside environment, especially around towns.⁴²

This Rural Advocate role was handed on to his successor as Chairman, Dr Stuart Burgess. The Countryside Agency website provides further information about “rural proofing”:

Rural Proofing is a commitment by Government to ensure that all its domestic policies take account of rural circumstances and needs (Rural White Paper, 2000).

It is a mandatory part of the policy process, which means that, as policies are developed, policy makers should systematically:

- Consider whether their policy is likely to have a different impact in rural areas, because of particular rural circumstances or needs;
- make proper assessment of those impacts, if these are likely to be significant;
- adjust the policy, where appropriate, with solutions to meet rural needs and circumstances.

Rural Proofing applies to all policies, programmes and initiatives and it applies to both design and delivery stages.

It also has a reporting requirement. Government Departments and Government Offices for the Regions are required to report annually on how their policies have been rural proofed. The Countryside Agency also publishes an annual assessment of the rural proofing of central Departments and Government Offices for the Regions.⁴³

B. Abolition recommended by the Haskins Report

The Haskins Report recommended transfer of the Countryside Agency's functions to other bodies and abolition of the Agency:

⁴² Countryside Agency Press Notice, *Rural Advocate to Countryside Champion*, 28 November 2000

⁴³ <http://www.countryside.gov.uk/EssentialServices/ruralProofing/index.asp>

9) In pursuit of the objectives of separating policy from delivery and of devolving delivery, the functions of the Countryside Agency should be transferred to the appropriate specialist organisations. Thus:

- policy development (including the commissioning of pilots and demonstration projects), together with the promotion of rural proofing, would pass to Defra and the Government Offices for the Regions;
- social and economic programmes would pass to regional and local networks of Regional Development Agencies (RDAs), local authorities and the voluntary and community sector;
- environmental, landscape, access and recreational programmes would pass to the new, integrated agency proposed below (see Recommendation 16);
- review of rural proofing, challenge and external advice would pass to a reformed Rural Affairs Forum for England.

In the light of these changes the Countryside Agency would cease to be required as a separate organisation.

Haskins argued that the “rural champion” role of the Countryside Agency had been rendered unnecessary by the formation of Defra:

4.62 While Defra and the Countryside Agency have worked to overcome the rivalry that exists between them, I am not convinced that the relationship will succeed in the longer term. The need for a champion is predicated on the inability of rural stakeholders to secure a fair share of attention within government. It would be a poor reflection on Defra if it were unable to meet that challenge.

4.63 It has been put to me that an independent body is capable of thinking creatively and taking risks to an extent that could not be expected of a Ministerial department. I would challenge that view. It should be a duty of all government departments to recruit people with the skills to find new and imaginative solutions to problems. One must ask serious questions about the cost of funding two centres of expertise on rural policy. There is a need for more streamlined and effective arrangements that provide clearer accountability for policy. While the Countryside Agency has undoubtedly made an important contribution to policy and succeeded in raising the profile of rural affairs in government, Defra must be given the scope to develop its role and credibility as policy leader.

4.64 My assessment is that the Countryside Agency, as a policy-development body, is no longer necessary in government. I accept that there continues to be a need to test the government’s ability to stay attuned to the complex and diverse needs of the countryside. I believe that the England Rural Affairs Forum can provide such a basis, as I explain below.

Haskins also pointed to confusion within the Countryside Agency as to whether it was engaged in delivery or merely concerned with time-limited demonstration and pilot projects.

C. The Decision to retain part of the Countryside Agency

In Annex C of *Rural Strategy 2004*, the Government gave its response to Lord Haskins's recommendation that the Countryside Agency should be abolished:

The Government **agrees** that policy-making should be the responsibility of core Defra, and that delivery-related functions of the [Countryside Agency](#) should be transferred to delivery bodies.

However, the Government believes that the role for a strong and independent Rural Advocate is as important now as ever, to advise on the issues affecting rural communities. The Government has therefore decided to reshape the [Countryside Agency](#) into a small, expert body to provide strong and impartial advice to Government, and act as watchdog and advocate for rural people and communities, especially those suffering disadvantage. This will be a new and distinctive role, building on the successes of the [Countryside Agency](#) and of the Rural Advocate. The New [Countryside Agency](#) will have a strong, focused and impartial voice, unfettered by delivery responsibilities of its own but with a responsibility to monitor and report on the delivery of others.

This decision obviates the need to reform the Rural Affairs Forum for England as suggested in this recommendation; this would be to duplicate the role of the New Countryside Agency.

To enable the refocused New [Countryside Agency](#) to concentrate on its fresh and distinctive role, by April 2005, Defra will:

- assume full responsibility for rural policy development;
- assume lead responsibility for encouraging policy-makers and delivery bodies to rural-proof policies, activities and funding programmes effectively;
- devolve resources associated with the Countryside Agency's socio-economic activities to RDAs so that socio-economic interventions in rural areas are better mainstreamed, and need can be more effectively targeted;
- channel funding via Government Offices for the rural voluntary and community sector, including Rural Community Councils, to strengthen local capacity (see Rec. 14);
- align the Countryside Agency's landscape, access and recreational responsibilities with other parts of the future Integrated Agency, through close joint working between the three organisations (see Rec.16); and
- establish a New Countryside Agency, with a new name to be determined, initially as a distinct body within the Countryside Agency's legal framework, to provide expert advice to Government and act as watchdog and advocate on behalf of rural people and communities, especially those suffering disadvantage.

In addition to establishing the New [Countryside Agency](#) as rural adviser, advocate and watchdog, Defra will ensure Ministers continue to have a direct relationship with rural stakeholders, by:

- holding an annual rural conference to act as a sounding board for rural stakeholders from national, regional and local organisations; and
- putting greater emphasis on the voice of rural people based in the regions, through more regular direct meetings between Ministers and regional Forums and their Chairs (see Rec. 25).

➤

Together these arrangements will build on the current Regional Rural Affairs Forums and subsume the Rural Affairs Forum for England.

By 2007, subject to legislation, Defra will:

- formally establish the Countryside Agency's landscape, access and recreational responsibilities within the new Integrated Agency; and
- formally establish the New [Countryside Agency](#) in its new form as a small expert advisory body.

The new form of the Countryside Agency is called the Commission for Rural Communities. The Countryside Agency has already started preparation:

The Commission for Rural Communities was established on 1 April 2005 as an operating division of the Countryside Agency. The Commission will provide well-informed, independent advice to government and will ensure that policies reflect the real needs of people living and working in rural England, with a particular focus on tackling disadvantage.

The Commission has three key functions:

Rural advocate: the voice for rural people, businesses and communities.

Expert adviser: giving evidence-based, objective advice to government and others.

Independent watchdog: monitoring and reporting on the delivery of policies nationally, regionally and locally.⁴⁴

The EFRA Select Committee agreed with the Government's decision:

59. We welcome the fact that the Countryside Agency is not to be abolished. There is a continuing need for an expert policy adviser and rural watchdog. This important role must be recognised by the Government and its activities funded accordingly. It is vital that the expertise developed by the Agency is not lost during the restructuring process. We expect the new Commission for Rural Communities to have sufficient resources, influence and independence to act as an effective champion of rural issues across the whole of Government. The CRC should seek to ensure the 'rural proofing' of all levels of Government which are engaged in rural delivery and highlight cases of both poor as well as good practice.

⁴⁴ <http://www.countryside.gov.uk/CRC/index.asp>

60. The role of Rural Advocate is a vital one and we welcome the commitment that the Chairman of the CRC will be the Rural Advocate. To be effective, the Rural Advocate needs proper back-up, and we would be very concerned at any suggestion that the role should be detached from the CRC.⁴⁵

The Rural Advocate is not a statutory position and is not mentioned in the Bill, although the Government has said that the Rural Advocate will remain with the Commission for Rural Communities.

VIII Agricultural Levy Bodies

A. The Haskins Review on Levy Boards

Levy boards are statutory bodies that collect industry levies to fund research and development and other activities on behalf of the agriculture sector. Their aim is to improve the competitiveness of the sector through better marketing and higher quality standards.

Recommendation 20: Levy-funded Organisations

Defra should seek opportunities to rationalise the various levy-funded organisations that it sponsors in respect of certain agricultural sectors for marketing, developmental and other purposes. There is scope to share resources (administrative, economic and research) between the various boards and to strengthen support for industry programmes if savings are realised through rationalisation.

Why change is needed

6.57 To my surprise, most farmers have told me that they are generally content to pay the obligatory levies needed to fund these boards but would welcome any steps to reduce operational costs and improve marketing effectiveness.

6.58 There is scope to achieve financial and efficiency gains by partial rationalisation, but with each organisation retaining responsibility for activities directly related to the sectors that they represent.

The sharing of common services would provide for significant savings, particularly in reducing overhead costs and enabling a more efficient collection of levies across the sectors.

6.59 Rationalisation would provide the opportunity to combine certain market research, promotional and marketing projects, thus achieving better value for money.

⁴⁵ EFRA Committee, *The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill*, 24 March 2005, HC408-I 2004-5

Making it happen

6.60 Defra should consult with representatives of the levy-funded organisations to identify where and how the detailed efficiencies could be achieved. It should be possible as a first step to implement the above recommendation without the need for legislative amendments. This should however be checked as detailed proposals for rationalisation of functions are developed.

Rural Strategy 2004 contained the response to Haskins:

The Government **agrees**. During 2004/5, Defra will:

- continue to work with the Agricultural and Horticultural Levy Boards Forum on how to rationalise and improve co-operation on cross-cutting and strategic issues in the short to medium term; and
- commission, with the Devolved Administrations, an independent, fundamental review of the levy-funded organisations, to report in 2005. Defra will conduct a wide consultation on proposals arising from the review to ensure that all stakeholders have the opportunity to contribute.

The Select Committee noted that the levy boards themselves and other interested parties, such as the National Farmers Union, had generally welcomed the proposal for a review, while stressing the need for full consultation. The Bill would give the Secretary of State the power to amend various Acts through secondary legislation, through the affirmative resolution procedure. The Committee was content in principle for such revision to take place but noted that the proposals might involve the wholesale abolition of existing bodies “some with a long history and all of them of great importance to those who pay the compulsory levies that fund them”. Therefore the Committee recommended further Parliamentary scrutiny though pre-legislative scrutiny of draft orders (paragraph 172).⁴⁶ The Government accepted that recommendation.

Although levy boards may operate under old legislation, they are not necessarily irrelevant to modern farming. One of the major problems of British agriculture is that individual farmers need to co-operate to improve quality and reliability as well as to pay for certain generic marketing. Levy boards offer a useful model. Farmers are allowed to vote every five years on whether a particular board should continue, accepting its compulsory levy. Increases in the levy require statutory instruments and are often debated. Some are the remnants of state marketing boards that used to have statutory powers to control the level of planting and to some extent the price of the produce. On the Continent, there are often large producer co-operatives, but that model has not been adopted in the UK.

⁴⁶ EFRA Committee, *The Government's rural Strategy and the draft Natural Environment and Rural Communities Bill*, 24 March 2005, HC 408-I 2004-5

B. What the Bill would do

The Bill would include powers to reform agricultural levy bodies. The Government and Devolved Administrations have announced an independent, cross-cutting review of the five main GB and UK statutory agriculture and horticulture levy bodies -:

- British Potato Council
- Horticultural Development Council
- Home Grown Cereals Authority
- Meat and Livestock Commission
- Milk Development Council

The parent primary legislation for all of the Boards dates back 30 years or more (pre-CAP accession). Defra notes that the aim of the review is to look forward to ensure that the agriculture and horticulture sectors are best placed to respond to the challenges ahead, especially in the wake of CAP reform, and to reflect the strategic priorities of the UK Government and the Devolved Administrations for their respective industries.