

**House of Lords Select Committee inquiry on the Natural Environment and Rural
Communities Act 2006**

Submission from Wildlife and Countryside Link

September 2017

Wildlife and Countryside Link (Link) brings together 46 environment and animal protection organisations to advocate for the conservation and protection of wildlife, countryside and the marine environment. Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together we have the support of over eight million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following organisations:

- **A Rocha UK**
- **Buglife - The Invertebrate Conservation Trust**
- **Butterfly Conservation**
- **Campaign for National Parks**
- **Campaign to Protect Rural England (CPRE)**
- **Environmental Investigation Agency (EIA)**
- **Freshwater Habitats Trust**
- **Friends of the Earth England**
- **MARINELife**
- **National Trust**
- **Plantlife**
- **People's Trust for Endangered Species**
- **Royal Society for the Protection of Birds (RSPB)**
- **The Amphibian and Reptile Conservation**
- **The Association of Local Environmental Records Centres (ALERC)**
- **The Bat Conservation Trust (BCT)**
- **The British Mountaineering Council**
- **The Marine Conservation Society**
- **The Open Spaces Society**
- **The Woodland Trust**
- **Rewilding Britain**
- **Wildfowl & Wetlands Trust (WWT)**
- **WWF UK**
- **Zoological Society of London**

Rural advocacy and the Commission for Rural Communities (CRC)

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

The role of the CRC has not been adequately fulfilled since it was abolished in 2013. Whilst we recognise that Defra has made efforts to advise on rural policy, and particularly on rural proofing, we do not believe they are the appropriate independent advocate or watchdog for rural communities. The CRC previously produced an annual State of the Countryside report, which has largely been replaced by Defra's

‘Statistical Digest of Rural England’¹. The capacity of the Department to take action on such reports is limited, not least due to a lack of sufficient dedicated resource for work on rural policy issues.

2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?

We recognise that Defra has recently developed guidance on rural proofing², to assess the impact of policies on rural areas. This was produced in response to a Government commissioned independent [review](#) of rural proofing led by Lord Cameron of Dillington. Much needs to be done to ensure that national and local Government policies truly consider the needs of rural areas. At the local level, this includes councils ensuring the provision and funding of rural services, such as adequate public transport options, rural broadband and affordable housing for the local community. We recommend the creation of an independent champion for rural communities.

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

Defra does have a role in setting a national framework to enable rural communities to thrive. It is the best placed Government department to carry out this role but it cannot fulfil the role of an independent advocate or watchdog.

In developing the country’s policy response to Brexit there is a risk that the needs of rural communities will not be adequately incorporated into decision making. We therefore suggest that a Defra Stakeholder Working Group be set up to investigate how national policy can be improved to help better deliver for rural communities.

Natural England

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

Natural England plays a critical role in conserving and enhancing the natural environment. The agency also has a vital role to play if the Government is to realise its ambition of being the first to pass on the natural environment in a better state to future generations.³

However, based on recent assessments, Natural England has struggled to fulfil its mandate.^{4 5} We suggest this is predominantly as a result of continued budget cuts and erosion of its independence from the Westminster Government. Due to these cuts Natural England does not have the resources or sufficient numbers of suitably skilled and experienced staff to perform its functions fully and effectively.

¹ DEFRA (accessed 06/09/2017) Statistical Digest of Rural England: <https://www.gov.uk/government/statistics/statistical-digest-of-rural-england>

² DEFRA (2017) Rural proofing: practical guidance to assess impacts of policies on rural areas: <https://www.gov.uk/government/publications/rural-proofing>

³ Conservative Party Manifesto 2017) <https://www.conservatives.com/manifesto>

⁴ The State of Nature Partnerships (2016) ‘State of Nature 2016

⁵ UK National Ecosystem Assessment (2011) ‘The UK National Ecosystem Assessment: Synthesis of the Key Findings. UNEP-WCMC’, Cambridge.

It is extremely concerning that Natural England is roughly half the size it was five years ago and it is difficult to see how further cuts will do anything other than compromise delivery of its core services. As an executive non-departmental body, Natural England's primary source of funding is grant-in-aid from Defra, which has been reduced by roughly 60 per cent from £263 million in the 2009/10 financial year, to £106 million in 2016/17. Correspondingly, the agency's total expenditure has fallen from a high of £257 million in 2010/11 to £155 million in 2016/17. In addition Natural England's 'Conservation Strategy for the 21st Century', is devoid of any detailed funding mechanisms.⁶

A lack of resources has also undermined Natural England's ability to work with its partners, and its ability to leverage the additional resources that are needed to ensure the conservation sector work more effectively. A properly resourced and independent Natural England could better deliver the Government's own ambitions for the natural environment. This would include being able to provide public goods and services - such as timely responses to planning requests - engage with a wide range of stakeholders, and offer the support that business needs to reduce costs and drive sustainable development. Better resourcing and independence from Government would also allow Natural England to provide strategic leadership on the natural environment in England, including enabling effective delivery partnerships. Natural England's recent initiative to create a partnership strategy for enhancing the value of National Nature Reserves is an excellent example of this.

Despite these pressures there are important areas where Natural England is making a significant contribution. For example, Natural England's farm advice is invaluable, as is its management of the Countryside Stewardship budget.

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

The NERC Act 2006 establishes Natural England as a statutory advisor on the natural environment to Government and as a regulator, with its general purpose being '*to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development*'.

To be able to properly fulfil its statutory role, Natural England must be free from political interference, and its engagement with Defra must be entirely transparent and within the public domain. The recently published Natural England Framework Document 2017⁷ sets out the agency's purpose, governance arrangements, ways of working and duties. We would welcome the Committee's assessment of the extent to which Natural England is independent from Government, especially with respect to being able to set its own operational priorities, manage its own budgets and staff resources, and deliver fully its regulatory functions.

One notable change since 2006 is the increased use of charging for Natural England's services. While it is important that Natural England should seek to secure revenue through charging for services, including the Discretionary Advice Service, this must not conflict with being able to fulfil its enforcement role. In addition Natural England must feel enabled and be supported to take legal action where necessary.

⁶ Natural England (2016) Conservation 21: Natural England's conservation strategy for the 21st century: <https://www.gov.uk/government/publications/conservation-21-natural-englands-conservation-strategy-for-the-21st-century>

⁷ Natural England Framework Document 2017 <https://www.gov.uk/government/organisations/natural-england/about/our-governance>

Guidance from Defra relating to Natural England, such as the Natural England Framework, must be amended to articulate clearly that its primary purpose is to conserve and enhance the natural environment, including being a strong, informed voice for England's natural environment and landscapes.

We note that the introduction of the 'growth duty' through the Deregulation Act 2015 has the potential to override the proper exercise of Natural England's statutory purpose to conserve and enhance the natural environment as established under the NERC Act 2006. This is an issue first raised by Mary Creagh MP⁸, speaking at a committee hearing of the Enterprise bill in 2016, she said "*there will often be situations where the objectives of businesses will conflict with the proper exercise of Natural England's regulatory functions and its statutory purpose.*" Under the NERC Act Natural England is already obliged to consider (or have regard to) sustainable development in carrying out its statutory duties, and that its most meaningful contribution to sustainable development is the protection, enhancement and management of the natural environment.

Requiring Natural England to have economic and social primary objectives impedes the ability of Natural England to fulfil its purpose to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, and contribute to sustainable development as set out in the NERC Act. It is therefore inappropriate for Natural England to have economic and social objectives, as primary objectives.

Following the UK's decision to leave the European Union and the Government's commitment to produce a 25 year environment plan, Natural England may play a greater role to play in protecting and enhancing the natural environment. Therefore, any change in its remit must be properly resourced and accounted for.

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

We welcome the recent announcement⁹ by Natural England that they are now working to deliver 100 per cent of the England Coast Path, which it aims to complete by 2020. This indicates that where a project is properly resourced Natural England is able to deliver it successfully.

It is right that our countryside should be made more 'accessible' to the public and we would welcome a Natural England assessment of the wider Public Rights of Way network, ensuring that all public paths are well signed and added to an online map. The delivery of these access improvements are best served by local authorities, but should be supported by national funding.

Natural England are generally good in terms of promoting better access. However, there have been a small number of occasions that suggest that over time Natural England is not consistent with its own evidence based policy on access to nature and sometimes unnecessary restrictions are put in place.

There are also concerns that Natural England does not have a legal duty to promote better access.

⁸ Mary Creagh MP, March 2016: http://www.marycreagh.com/enterprise_bill_should_not_risk_effective_regulation

⁹ World's longest coastal footpath one step closer, (2017): <https://www.gov.uk/government/news/worlds-longest-coastal-footpath-one-step-closer>

Sustainability and biodiversity

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

The NERC Act’s biodiversity duty applies to all public bodies including all Ministers and Government departments. This is perhaps potentially one of the most powerful tools to encourage active conservation in UK legislation as it clearly requires an active engagement from all public bodies. Yet it is predominantly seen as a Defra objective and when it is considered in other departments it is often taken as a relatively low level ambition which can be addressed with a correspondingly low level commitment.

We recommend that, to raise awareness of the duty and for it to be properly applied, it must be seen as a cross-Governmental duty with much greater integration within other departmental policies. We also note that the duty in Scotland and Wales is comparatively stronger than that in Englandⁱ and therefore recommend that Westminster strengthens its ambition in this regard.

The Environment Audit Committee’s report on ‘Sustainability and HM Treasury’ (2016) concluded that the Treasury fails to promote sustainability both in itself and via its influence across Government.¹⁰ Specific areas of concern included examples of the Treasury changing and cancelling long-established environmental policies and projects at short notice with little or no consultation. This is in part due to the technical and political frameworks which the Treasury uses consistently to favour short-term priorities over long-term sustainability. In part, this is because the frameworks do not take sufficient account of future environmental costs and benefits. The Committee reported that it was disappointed in the Treasury’s response and that it is not clear whether the Treasury will make the necessary changes following the publication of report¹¹. The Treasury could play a valuable role in ensuring the biodiversity duty is adopted across Government. Although biodiversity is difficult to place a value on, it could nevertheless be accounted for in decision making.

The Department for Communities and Local Government (DCLG) has a potentially significant impact on the biodiversity of England through local planning and development. Yet DCLG continues to fail to take its biodiversity duty, and requirement for sustainable development as laid out in the National Planning Policy Framework, seriously. This can be highlighted in the Government’s recent Housing white paper which does little to support the delivery of sustainable development.

Wildlife and Countryside Link’s response to the Housing White Paper highlights our concerns and recommendations for delivering more sustainable development https://www.wcl.org.uk/docs/Housing_White_Paper_WCL_020517_.pdf. We also signpost to our response to Government’s consultation on changes to the National Planning Policy Framework <https://www.wcl.org.uk/docs/220216%20WCL%20Response%20to%20NPPF%20consultation.pdf>.

The Government’s drive for development means that biodiversity is often overlooked in order to meet local authority housing targets. High quality and high-density spaces can be achieved through incorporating green and blue spaces, as has been shown in other countries, such as the Netherlands. However, local authorities and planning authorities lack resources and expertise to be able to meet their biodiversity duty and ensure that development is sustainable. The Association of Local Authority

¹⁰ House of Commons Environment Audit Committee (2016) ‘Sustainability and HM Treasury’: <https://publications.parliament.uk/pa/cm201617/cmselect/cmenvaud/181/181.pdf>

¹¹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2015/sustainability-hm-treasury-gov-response-report-published-16-17/>

Ecologists (ALGE) reports that only a third of local authorities have an in-house ecologist¹² and that the majority of local authority planners lack ecological qualifications and had very little ecological training. Without the provision of adequate ecological expertise and data, planning decisions are likely to be seriously flawed, potentially resulting in the loss of some of our most precious wildlife sites and delivering a net-loss in biodiversity. The Government's cuts to Natural England's budget have reduced their capacity to provide ecological support to such local authorities, and others.

As a result of the local authority cuts in 2011 ALGE concluded that local governments will find it more difficult to fulfil their statutory duty to have regard to the conservation of biodiversity in all aspects of its work. Cuts will result in less expertise and resources to work which is likely to lead to more planning decisions being made without taking biodiversity into account.¹³

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

There is limited evidence of the practical impact of the 'Biodiversity duty'. England is currently failing to meet its commitments under Biodiversity 2020 and there has been no significant improvement in biodiversity since the Government made its commitment to leave the environment in a better state than it found it. We suggest that the duty should be strengthened to encourage further ambition across Whitehall to deliver improvements in biodiversity.

Data show that:

- The area of SSSI in favourable condition has decline by 6.8 per cent from 45.3 per cent to 38.5 per cent¹⁴ since 2006 and the areas of SSSI in favourable or unfavourable recovering has fallen below 95 per cent.
- The status of priority habitats is unknown as 43 per cent of England priority habitat is outside protected areas and not subject to a Higher Level Stewardship (HLS) agreement and as such no condition monitoring is undertaken.
- The total extent of land and sea designated as protected in the UK, has increased by 12.9 million hectares to 27.4 million hectares at the end of March 2017. This is almost entirely down to the designation of marine protected areas. However the majority of the new marine sites are not subject to positive active management or monitoring.
- Between 2010 and 2015 the index of the relative abundance of priority species declined by 18 per cent¹⁵.
- The Farmland Bird Index declined by 7 per cent between 2009 and 2014.
- Eight priority species were lost entirely from the UK between 2002 and 2008.

However, there are also areas where efforts have been shown to increase biodiversity. Whether this is as a result of the NERC Act biodiversity duty or not cannot be confirmed. Agri-environment schemes are the predominant method of funding for biodiversity in England and there is evidence that agri-environment management can be successful in increasing populations of species, when it is well targeted and implemented.

¹² Oxford, M. (2013) Ecological Capacity and Competence in English Planning Authorities. What is needed to deliver statutory obligations for biodiversity? Report published by the Association of Local Government Ecologists

¹³ Association of Local Government Ecologists (2011-2012) 'Implications of the Comprehensive Spending Review on biodiversity work within local government: [http://www.alge.org.uk/SiteAssets/publications-and-reports/ALGE%20Report%20on%20Impact%20of%20Spending%20Cuts%20\(2011-12\).pdf](http://www.alge.org.uk/SiteAssets/publications-and-reports/ALGE%20Report%20on%20Impact%20of%20Spending%20Cuts%20(2011-12).pdf)

¹⁴ Defra (2017) The Extent and Condition of Protected Sites:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635184/1_Protected_Sites_2017.pdf

¹⁵ Defra (2011) 'Biodiversity 2020: A strategy for England's wildlife and ecosystem services':

<https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>

Between 2008 and 2014 six species of birds, plus the suite of Farmland Bird Index species, showed enhanced abundance on farms with Higher Level Stewardship¹⁶.

There has also been positive progress with respect to using more natural processes in mitigating and adapting to climate change, for example through natural flood management. However, it is important that evolving procedures to utilise natural processes optimise the potential for multiple benefits such as for biodiversity from the very beginning of scheme inception. Multiple benefits are not intrinsic and must be designed, managed and maintained within programmes of work.

The Climate Change Adaptation Committee report to Government (2017) highlights the natural environment, (such as soil health, the resilience of terrestrial and freshwater habitats to climate change, and biodiversity in the farmed countryside), as of particular concern.¹⁷ It is not clear how Government are planning to address this concern.

The practical impact of the biodiversity duty under the NERC act could be enhanced in a number ways.

These include:

The 25 year environment plan – to ensure that the biodiversity duty is better incorporated across public bodies the objectives and targets in the 25 year environment plan must be applicable, and actively promoted, across public bodies, including all Government departments. The NERC Act duty remit across all public bodies should be supported within the plan.

Improving soil health - Under the duty to conserve biodiversity, Government departments are required to have particular regard to the Convention on Biodiversity, which objectives include the conservation of biological diversity and the sustainable use of its components¹⁸. Soil biodiversity is critical to ecosystem function. However, the Environment Audit Committee report on soil health concluded that there is no evidence that Government is putting in place the policies to achieve Government's aim to manage soil sustainably by 2030¹⁹. As such, under the NERC Act duty, measures should be put in place to ensure this aim is achieved. For example 80 per cent of UK peatlands are damaged, despite the majority being identified as an area of international importance under EU legislation²⁰. We recommend a plan with targets for restoring all designated upland blanket bog habitats to favourable condition by 2030.

Better accounting for biodiversity – Funding for biodiversity measures is limited, and although delivering multiple benefits is often encouraged, some funding is only available to deliver specific outcomes such as flood risk management. This means having regard for biodiversity under the duty is more difficult to fund within projects. We recommend that biodiversity cost and benefit is included in all project options appraisals and given weight in decision making to ensure the duty is met.

New land management policy – Following the UK's decision to leave the EU, we have a real opportunity to change the way our land is managed so that it works better for people and for nature. To ensure the biodiversity duty is adequately fulfilled a new land management policy must have a strong baseline to ensure good practice, which is properly monitored and enforced, moving pillar 1 payments of the EU's

¹⁶ Macdonald, M.A. *et al.* (2012) Welsh Assembly Government Contract 183/2007/08 to Undertake Agri-environment Monitoring and Services: Lot 2 – species monitoring: <https://ww2.rspb.org.uk/globalassets/downloads/documents/conservation-projects/monitoring-of-agri-environment-schemes-report-cymru.pdf>

¹⁷ Climate Change Adaptation Sub Committee (2017): <https://www.theccc.org.uk/publications/>
<https://www.cbd.int/convention/text/default.shtml>

¹⁹ EAC (2016) 'Soil Health': <https://publications.parliament.uk/pa/cm201617/cmselect/cmenvaud/180/180.pdf>

²⁰ International Union for Conservation of Nature (?) 'What's so special about peatlands?': http://www.iucn-uk-peatlandprogramme.org/sites/www.iucn-uk-peatlandprogramme.org/files/160317%20Peatland_leaflet_WEB.pdf

CAP to a scheme which rewards farmers for the public goods they deliver (including biodiversity and landscape) and a targeted scheme to protect areas and species which are at most at risk.

Please see our 'Principles for securing a sustainable future for our countryside'

https://www.wcl.org.uk/docs/Link-GUK%20Agriculture%20Principles%20Briefing_2.pdf

Enhancing urban biodiversity – the NERC Act biodiversity duty should be encouraged through DCLG down to local authorities, so that local authorities are empowered to use the duty to ensure development is sustainable and supports green spaces.

Areas of local authority work where this could apply include:

Funding for local parks and green spaces has been cut in recent years. Over 92 per cent of park budgets have been cut by local authorities, which have suffered an overall 27 per cent budget cut in real terms since 2010-11²¹.

Better integrating green infrastructure strategies within spatial planning can provide a valuable habitat for urban biodiversity. At the same time it can help reduce flood risk, reduce the urban heat island effect, absorb air pollutants and improve people's access to nature and health and well-being. These multiple benefits need to be planned for at early stages of the design concept, and once created need to be managed for in the long term.

Local plans are important in driving sustainable development yet vary widely in how they decide to adopt the biodiversity duty with little direction from Westminster. The new regional development areas and mayors across England are currently developing their own regional development plans and this should be an opportunity to ensure that the biodiversity duty is effectively incorporated into each plan.

Effective application of green infrastructure such as Sustainable drainage systems (SUDs) in any local plan could be a valuable contribution to enhance biodiversity and adaptation to climate change. However plans to retrofit green infrastructure such as SuDS into urban areas is not being promoted by Westminster. We therefore recommend a national retrofit strategy which undertakes opportunity mapping to identify the most beneficial options for retrofitting.

The changing context since 2006

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

The impacts of the UK's decision to leave the EU will undoubtedly have serious implications for biodiversity in the UK. Effective environmental governance is fundamental to the implementation of legislation. As such the European Commission (EC) and its supporting institutions currently play a fundamental role in the implementation and governance of environmental law in the UK, including the coordination of monitoring and reporting, production of guidance and to secure compliance. The structures established by the NERC Act were created within the context of the UK's membership to the EU. These structures are not sufficient to secure the necessary environmental standards post-Brexit. Whilst the Government has committed to transfer the letter of the law, through the European Union (Withdrawal) Bill, the loss of the oversight of the EU and its institutions, including the loss of the scrutiny

²¹ Joseph Rowntree Foundation (2015) 'The cost of the cuts: The impact on Local Government and poorer communities': <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/Summary-Final.pdf>

and enforcement of the European Court of Justice (ECJ), risks undermining the effectiveness of legislation and the maintenance of good environmental standards in the UK.

Ensuring that appropriate protection for nature and environmental standards exists following the UK's decision to leave the EU will not be guaranteed solely through the structures established in the NERC Act. The 25 year plan for the environment must be ambitious and cross-departmental with clearly defined objectives and targets. The Government must replace EU institutions, such as the European Court of Justice, with effective alternatives. In addition, the principles from the Lisbon Treaty must be adopted by UK law, including the polluter pays principle and the precautionary principle. Monitoring must be maintained and funding for enhancing and protecting the environment must not be reduced further. Any replacement to the common agricultural and fisheries policies must work for the environment across the UK as well as for business.

The structures established by the NERC Act have an important part to play in ensuring that conserving biodiversity remains an integral part for all public bodies. However, in this context, the value that our public bodies place on their biodiversity duty needs to be strengthened accordingly in order for the Government to achieve its aim to be the first generation to leave the environment in a better state than it found it.

Wildlife and Countryside Link September 2017

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ⁱ Nature Conservation (**Scotland**) Act 2004: Section 1 states that "It is the duty of every public body and office holder, in exercising any functions, to further the conservation of biodiversity so far as it is consistent with the proper exercise of those functions"

Environment (**Wales**) Act 2016: Section 6 of the Act places a duty on public authorities to 'seek to maintain and enhance biodiversity' so far as it is consistent with the proper exercise of those functions. In so doing, public authorities must also seek to 'promote the resilience of ecosystems'.