

**DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS**

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Department of the Environment,
Transport and the Regions
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COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

Introduction

1. The Countryside and Rights of Way Act received Royal Assent on 30 November 2000. Some of its provisions (those specified in section 103(1)) came into force on that day while certain others will automatically come into force on 30 January 2001 (those set out in section 103(2)). Section 103(3) of the Act provides a power for the Secretary of State to commence, as respects England, the other provisions in the Act. An order has been made¹ bringing into force several other provisions on either 30 January or 1 April 2001. This circular provides guidance to local authorities on these sets of provisions, and also gives brief details of other provisions in the Act which will affect local authorities on which more detailed guidance will be issued in due course.
2. Copies of the Act and the accompanying Explanatory Notes may be obtained from The Stationery Office or accessed at their web site.²

Part I: Access to the countryside

3. Part I introduces a new right of access for open-air recreation to mountain, moor, heath, down (collectively described as open country) and registered common land. There will be restrictions on the new right, including restrictions on dogs and provisions for landowners to exclude or restrict access for any reason for up to 28 days a year without seeking permission. There is also provision for further restrictions on access for reasons of land management, conservation, fire prevention and to avoid danger to the public. The Act also includes a power to extend the right to coastal land by order, and enables landowners voluntarily to dedicate irrevocably any land to public access.
4. The Act provides for certain functions in respect of access land to be exercised by 'access authorities', i.e. National Park Authorities for their areas and local highway authorities elsewhere. These functions include powers to make byelaws (section 17),

¹ The Countryside and Rights of Way Act 2000 (Commencement No.1) Order 2001 (S.I. 2001/114 (C.4))

² www.hms.o.gov.uk/acts/acts2000/20000037.htm

appoint wardens (section 18) and to erect and maintain notices indicating boundaries etc (section 19). Access authorities will have the power under section 35 of the Act to negotiate agreements to provide means of access and to undertake the necessary works themselves if agreement cannot be reached.

5. District councils which are not access authorities also have powers to appoint wardens under section 18.
6. The right of access will be brought into effect in relation to any land by a commencement order and may be commenced at different times in different areas. It is intended that such commencement orders will not be made until all necessary regulations have been made and other preparatory work has been completed. The Department has a Public Service Agreement to implement the right of access by 2005. However, the Act enables access to land over 600 metres and registered common land (which can already be identified from existing maps) to be introduced earlier, ahead of the Countryside Agency publishing statutory maps of open country and registered common land. The Secretary of State will look to commons registration authorities to assist the Countryside Agency in fulfilling its statutory mapping duties by providing the Agency with data from the common land registers and commenting on maps of common land produced by the Agency.
7. Although most of the provisions mentioned in paragraph 4 (except the power to appoint wardens) come into force on 30 January, local authorities are advised that they need to take no action under them at this stage. This is because the powers can only be exercised in relation to land which is access land for the purposes of section 1(1) of the Act. Whilst some land will qualify as access land from 30 January (land over 600 metres and registered common land), most land will not qualify as access land until it has been shown on conclusive maps issued by the Countryside Agency. The Secretary of State does not consider it will be necessary for access authorities to use the powers available to them in Part I until the right of access to access land is commenced by Ministerial Order, or in anticipation of the right being commenced. We shall issue further guidance to access authorities before any such commencement Order is made.
8. The function of determining applications for restrictions and exclusions of access falls to the 'relevant authorities', i.e. National Park Authorities as regards their areas and the Countryside Agency elsewhere. Where land which is dedicated to access under section 16 is woodland, the Forestry Commission is the relevant authority.

Part II: Rights of way and common land

9. The provisions contained in Part II of the Act change the law on rights of way in a number of respects and will affect local authorities' functions in relation to rights of way. Most of these provisions, for example the requirement in sections 60-61 to prepare rights of way improvement plans (see also paragraph 16 below), will be brought into force when the necessary regulations have been made and further guidance issued.
10. Guidance is given in paragraphs 11 to 45 below on those provisions in Part II which come into force on 30 January 2001 under section 103(2) of the Act, or which will be commenced by order on 30 January or 1 April 2001. Authorities should continue

to refer to Department of the Environment Circular 2/93 for matters not affected by the provisions which come into force on these dates.

Restricted byways

11. The Act creates a new category of highway – restricted byways – carrying a public right of way on foot, on horseback or leading a horse, and for vehicles other than mechanically propelled vehicles. On commencement of sections 47 and 48 of the Act, highways which are shown in definitive maps as roads used as public paths (RUPPs) will instead be treated as being shown as restricted byways and will have restricted byway rights created over them. Supplementary provisions are contained in sections 49 to 51. All of these provisions are to be brought into force by commencement orders at a later date.
12. However, section 52 of the Act, which enables the Secretary of State to amend by regulations existing legislation in relation to restricted byways, takes effect automatically on 30 January. This will enable the Department to scrutinise the large body of legislation relating to highways and determine which provisions should or should not apply to restricted byways or how they should be modified.
13. The Act requires that regulations made by the Secretary of State under section 52 be approved by both Houses of Parliament. In addition, the Secretary of State is required to consult the National Assembly for Wales before making provision which affects Wales and to obtain the Assembly’s consent before expressly amending or revoking secondary legislation which the Assembly has made. The Assembly is also entitled to submit proposals to the Secretary of State on how his regulation making power might be exercised.
14. The Assembly itself has the power to make regulations under section 52 amending certain classes of legislation relating to Wales. These are: any local or private Act passed before or in the same session as the 2000 Act and relating only to Wales; and any secondary legislation made before enactment of the 2000 Act which the Assembly has the power to amend or revoke as respects Wales.
15. When section 47 of the Act is brought into force, section 54 of the Wildlife and Countryside Act 1981 will cease to have effect and so surveying authorities will no longer be under the duty in that section to reclassify RUPPs. Until then, however, the duty under section 54 continues to apply and authorities should continue to review their RUPPs and make reclassification orders. Any such orders, or applications for orders modifying the status of a RUPP, which are made before section 47 of the 2000 Act is brought into force are to be processed to a final determination. Section 48(9) of the Act requires that provision is made for this in the relevant commencement orders to be made under section 103(3).

Public path creation orders for purposes of Part I of the Act

16. Section 58 of the Act enables the Countryside Agency to apply to the Secretary of State (or the Countryside Council for Wales to apply to the National Assembly for Wales) to make a public path creation order. This is to facilitate access to land to which the public are to be given access under Part I of the Act. For example, there may be no practicable means for the public to gain access to some areas of access land (sometimes described as “inaccessible islands”). Before making such an application,

the countryside bodies are required to have regard to any rights of way improvement plan prepared under section 60 of the Act by the local highway authority for the area.

17. If requested by the Countryside Agency to use his reserve powers to make a public path creation order, the Secretary of State would not be obliged to do so but would consider carefully whether the circumstances warranted his taking action. Before making an order, the Secretary of State would be required by section 26 of the Highways Act 1980 to consult with local authorities in whose area the new path would be situated. Generally, it will be for local authorities, where necessary, to provide new means for the public to reach access land, either by negotiating permissive access with landowners or by using their existing powers under the Highways Act 1980 to create rights of way by agreement or by order.

Effect of Part I of the Act on powers to stop up or divert highways

18. Section 59 relates to powers, whether or not by order, to stop up or divert highways. It prevents an authority, when exercising such powers from regarding the existence of the new right of access to open countryside under Part I of the Act as, for example, reducing the need for the highway, the need for an alternative highway or the need to reserve a public right of way. In addition, when deciding whether to stop up or divert a highway, it may be necessary for an authority to consider the extent (if any) to which that highway is likely to be used apart from the exercise of the power. The section requires, when assessing that use in relation to a highway situated on or in the vicinity of access land, that particular regard be had to when the right of access would not be exercisable.
19. The purpose of section 59 is to prevent the new right of access from being used to support a case for stopping up or diverting highways, except, for example, where a diversion may be required to help people reach access land.

Wilful obstruction of a highway

20. Section 64 of the Act inserts a new section 137ZA into the Highways Act 1980. The new section empowers a magistrates' court, when convicting a person under section 137 of that Act of wilfully obstructing a highway, to order that person to remove the obstruction. Under new section 137ZA(3), failure to comply with an order, without reasonable excuse, is an offence punishable by a fine not exceeding level 5 on the standard scale (currently £5000). Further fines, not exceeding 1/20th of level 5, may be imposed for each day the offence continues after conviction under section 137ZA.
21. A person who has been ordered to remove an obstruction may not be prosecuted again under section 137 of the Highways Act 1980 in respect of that obstruction during the period set by the court under section 137ZA for removing it. Neither may they be similarly prosecuted during any period set under section 311(1) of the Highways Act 1980 for complying with directions of the court.
22. Highway authorities have powers at common law to remove unlawful obstructions in certain circumstances. Where authorities choose to exercise these powers after a person has been convicted under new section 137ZA(3), then subsection (4) in conjunction with section 305 of the Highways Act 1980 allows authorities to recover their costs through the magistrates' court.

Vegetation overhanging bridleways

23. Section 154 of the Highways Act 1980 enables highway authorities and certain local authorities to require owners and occupiers of land whose trees, shrubs or hedges overhang highways to the extent of endangering or obstructing the passage of vehicles or pedestrians, to cut the vegetation back. Section 65 of the 2000 Act extends section 154 to apply to vegetation which endangers or obstructs the passage of horse-riders. Authorities will, therefore, be able to require that vegetation overhanging bridleways or carriageways is cut back to a height which is suitable for horse-riders.

Traffic regulation orders for purposes of conserving natural beauty

24. Local traffic authorities have powers under the Road Traffic Regulation Act 1984 to make traffic regulation orders to prohibit, restrict or regulate traffic using particular highways. The Secretary of State has similar powers as respects trunk roads. Circular 2/93 sets out one of the purposes for which traffic regulation orders may be made.

25. Section 22 of the 1984 Act enables authorities to make traffic regulation orders in respect of the use of roads in certain areas for the purpose of conserving or enhancing the natural beauty of the area, or of affording better opportunities for the public to enjoy the amenities of the area. In England and Wales the areas concerned include:

- National Parks
- Areas of outstanding natural beauty
- Country parks
- Areas where the Countryside Agency or the Countryside Council for Wales are undertaking experimental projects
- Nature reserves
- National Trails
- Land belonging to, and held inalienably by, the National Trust.

26. Section 66 of the 2000 Act extends section 22 to include Sites of Special Scientific Interest and removes the restriction in that section which prevented orders being made in relation to Greater London.

27. The section also inserts a new section 22A into the 1984 Act. The new section enables traffic authorities to make orders to control vehicular traffic on unclassified roads and byways in areas not covered by section 22 of that Act for the purposes of conserving or enhancing the natural beauty of the area.

28. A definition in sections 22 and 22A makes it clear that conserving the natural beauty of an area is to be construed as including the conservation of flora, fauna, geological and physiographical features of the area.

29. The Secretary of State will consider whether further advice on the making of traffic regulation orders is necessary when other provisions in Part II of the Act are brought into force.

Unauthorised Driving of Mechanically Propelled Vehicles elsewhere than on Roads

30. Schedule 7 to the 2000 Act makes a number of changes to the prohibition of driving motor vehicles elsewhere than on roads contained in section 34 of the Road Traffic Act 1988. The Schedule substitutes a new section 34. It also inserts a new section 34A into the 1988 Act. The latter provision is to be brought into force at a date still to be determined. In part, these provisions address issues brought to attention by various cases in recent years.
31. Section 34 currently relates to the driving of a “motor vehicle”, a term which is defined in section 185(1) of the 1988 Act. The Act extends the offence to cover mechanically propelled vehicles which may not fall within the current offence because they are not intended or adapted for use on roads – i.e. they do not fall within the definition of “motor vehicle”. Schedule 7 makes similar amendments to section 21 of the 1988 Act which relates to the offence of driving or parking “motor vehicles” on cycle tracks.
32. The new offences under section 34 and section 21 do not apply to certain classes of vehicles such as invalid carriages, mechanically propelled vehicles controlled by pedestrians used for cutting grass and electrically assisted pedal cycles.
33. As before, the new section 34(1)(b) prohibits driving on footpaths and bridleways. However, the offence is also extended to the new category of highway, restricted byways.
34. The recording of a way in a definitive map as a footpath or bridleway (or, when the relevant provisions are in force, a restricted byway) does not mean that higher rights do not exist over the way in question. In other words, it does not mean that there are no public rights of way to drive mechanically propelled vehicles over the way. However, section 34(2), which is a new provision, specifies that for the purposes of the offence where a way is shown in a definitive map as a footpath, bridleway, or restricted byway, it is to be presumed to be a way of the kind shown unless the contrary is proved. It is, accordingly, presumed to carry only those public rights of way which a footpath, bridleway or restricted byway carry. Therefore, once the prosecution have proved that a highway is shown in a definitive map as a footpath, bridleway or restricted byway, the burden of proof would be on the defence to prove on the balance of probabilities that there are full public vehicular rights of way.
35. Section 34(2) will be subject to the new section 34A of the 1988 Act when that latter provision is brought into force. However, until then the presumption under section 34 (2) applies without being subject to section 34A.
36. Section 34A provides for the presumption in section 34(2) to be rebuttable only in those circumstances which are expressly set out in it or in regulations made under it. This means that, except where those circumstances apply or the defences in section 34 are made out, the offence under section 34(1)(b) is committed where the way being driven on is shown in a definitive map as a footpath, bridleway or restricted byway. This is irrespective of whether there are public rights of way to drive mechanically propelled vehicles.

Vehicular access over common land

37. Section 68 deals with problems relating to vehicular access across common, and other, land over which it is an offence to drive. Despite the fact that many property owners, or their predecessors, have been using a vehicular access to their property across such land unhindered for many years, they have recently found that they have not acquired a legal right to do so. This is because a prescriptive right through long use cannot be acquired where the activity being undertaken is a criminal offence. To compound the problem, such property owners are sometimes faced with having to pay a substantial sum of money to acquire a legal right of vehicular access, without which the property would probably be unsaleable.
38. This section provides that where a person has used a vehicular access to property across land over which it is an offence to drive, regulations can be made to provide for the creation of a statutory easement, providing certain qualifying criteria are met. Although section 68 itself will be brought into effect by commencement order, the statutory easement scheme will only come into effect when the regulations provided for in section 68 (2) are agreed by Parliament. These regulations will specify such matters as the criteria to be met in order to apply for an easement, the method of applying, the methodology for calculating the price to be paid by the property owner to the owner of the land over which the access is sought, the conditions to which the easement will be subject; dispute resolution procedures and how the easement will be recorded by the Land Registry.
39. This section will have particular relevance to local authorities that own land over which it is an offence to drive. However, where such an authority wish to grant an easement for less than the price due in accordance with the provisions to be set out in the regulations, it will still be open to them to consider whether, in accordance with the provisions of section 123 or 127 of the Local Government Act 1972, they wish to seek the Secretary of State's consent for such a disposal at less than the best consideration reasonably obtainable. Specific consent would only be required if the undervalue exceeded that permitted by paragraph 6 of the Local Government Act 1972 General Disposal Consents 1998.

Provisions in Part II to be brought into force by commencement order.

40. The Secretary of State has made an order under section 103(3) of the Act to bring certain other provisions in Part II into force.

Section 70

41. Section 70 (2) and (4) will come into force on 1 April 2001.
42. Section 70(2) amends section 134 of the Highways Act 1980. Section 134 confers a right to plough or otherwise disturb the surface of a footpath or bridleway which crosses agricultural land, but subject to a duty to make good the surface of the highway and to mark out its width. Failure to comply with that duty is an offence under subsection (4). Currently, subsection (5) restricts who may bring proceedings for that offence to highway authorities and certain councils. Section 70 removes that restriction by causing subsection (5) to be repealed. This means that any person will be able to prosecute the offence under section 134(4) of the 1980 Act but under the

terms of the commencement order, only in respect of offences committed on or after 1 April 2001.

43. Section 70(4) amends section 21(2)(b) of the Road Traffic Act 1988. The amendment provides highway authorities with a defence against prosecution for driving or parking mechanically propelled vehicles on cycle tracks when this is done to prevent or remove obstructions or in the prevention or abatement of any other interferences with the highway. The amendment arises out of a judgement by the House of Lords (*Goodes v East Sussex County Council* [2000] 3 All ER 603) which would appear to mean that the current provisions in section 300 of the 1980 Act and section 21(2)(b) of the 1988 Act do not cover the removal of obstructions or the abatement of nuisances. This is because a narrow interpretation was given to the meaning of “maintenance” that appears to exclude the removal of obstructions and the such like.
44. Subsection (3) of section 70 amends section 300 of the Highways Act 1980 and similarly provides highway authorities with immunity from prosecution for driving mechanically propelled vehicles on footpaths and bridleways. However, the operation of the amended section 300 depends upon amendments being made to secondary legislation and section 70(3) will be brought into force at a later date when those amendments have been made.

Section 72 and Schedule 16

45. Section 72 provides a number of definitions for the Interpretation of Part II. Section 72 and the repeal in Schedule 16 to the Act relating to section 22 of the Road Traffic Regulation Act 1984 are brought into force on 30 January 2001.

Part III: Nature conservation and wildlife protection

46. Part III of the Act amends the law relating to nature conservation and the protection of wildlife, and includes provision on the conservation of biodiversity and the protection of sites of special scientific interest. The following paragraphs summarize the key implications for local authorities.

Biodiversity

47. Section 74 of the Act places new duties on Government Ministers and Departments in respect of the conservation of biodiversity. Local authorities are not covered by these duties. However, the Secretary of State may include local authorities in exercising his duty to promote the taking of steps by others to further the conservation of the habitat types and species of principal importance for biodiversity. In practice the Government expects the lists of habitat types and species of principal importance to be consistent with those that are already the subject of action plans under the UK Biodiversity Action Plan.
48. Local authorities’ responsibilities for preparing their own Local Biodiversity Action Plans do not rely on the provisions of this Act; these plans are amongst the elements local authorities should build upon when preparing the overarching community

strategy required by section 4 of the Local Government Act 2000³. Local wildlife sites will be important components within Local BAPs.

Sites of Special Scientific Interest

49. Schedule 9 substitutes significant new provisions regarding the notification, protection and management of Sites of Special Scientific Interest (SSSIs), in place of section 28 of the Wildlife and Countryside Act 1981: existing notifications made to local authorities under that section remain valid, but the very few remaining notifications under section 23 of the National Parks and Access to the Countryside Act 1949 cease to have effect. English Nature will write to individual authorities about these sites. DETR will also issue further advice, including a revised Code of Guidance containing recommendations, advice and information for the guidance of those exercising responsibilities under the new section 28, but the effect of the new provisions is briefly described below.
50. The revisions to section 28 enable English Nature to refuse consent for operations listed on the site notification as likely to damage the special interest. (Previously, the ability to refuse consent had effect for only a limited period.) They also include powers for English Nature to vary the notification, in relation either to the details of the notification, or the area of land covered; and to remove the notification from land which is no longer of special interest. They must notify the local planning authority of any such changes.
51. English Nature also have new duties, to advertise notifications in local newspapers and to include in the notification, a statement of views about the management of the land: and new powers, to formulate management schemes for conserving the special features on an SSSI, and to serve management notices requiring owners and occupiers to carry out work in accordance with a management scheme. There are rights of appeal to the Secretary of State against refusal of consent and against management notices. Appeal Regulations, together with an accompanying Circular describing the new arrangements more fully, will be issued shortly.
52. A fine of up to £20,000 in the Magistrates' Court (or an unlimited fine, on conviction on indictment) may be imposed, where an owner or occupier carries out potentially damaging works without notifying English Nature or, having notified, without receiving consent. In addition, any person who intentionally or recklessly damages or destroys an SSSI, or intentionally or recklessly disturbs any of the fauna for which the site is notified, may incur a similar penalty: and the Courts may require the restoration of the site to its former condition. English Nature may also make byelaws for the protection of an SSSI. As a consequence of these additional measures, the power of the Secretary of State to make nature conservation orders under section 29 of the 1981 Act has been repealed. Existing orders cease to have effect, and new operations must be the subject of an application for consent.

Duties on public bodies in relation to SSSIs

53. New section 28G, inserted in the 1981 Act, imposes an important new duty on public bodies, exercising statutory functions which may affect SSSIs, to take reasonable steps, consistent with the proper exercise of these functions, to further

³ Preparing Community Strategies: Government guidance to local authorities DETR December 2000.

the conservation and enhancement of the features for which the site is of special interest. Public bodies specifically include local authorities and the duty applies wherever they are exercising their functions. Ministers expect public bodies to apply strict tests when carrying out functions within or affecting SSSIs, to ensure that they minimise adverse effects: and to adopt the highest standards of management in relation to SSSIs which they own.

54. Where a public body, having had regard to this duty, nevertheless proposes carrying out operations likely to damage the special features on an SSSI, new section 28H requires that it must notify English Nature. This applies whether or not the operation is taking place on land included in an SSSI. English Nature must give notice within 28 days indicating whether or not they assent to the operation. If they do not assent, but the public body decides it must proceed with the works, it must give English Nature not less than 28 days notice of its decision to proceed, and explain how it has taken account of any of their advice. In addition, in carrying out the works it shall give rise to as little damage to the SSSI as is reasonably practicable, and if damage does occur, shall restore the site to its former condition, again in so far as is reasonably practicable. It is an offence, liable to a penalty on summary conviction of a fine of up to £20,000, or on conviction on indictment an unlimited fine, if a public body fails to comply with the requirements of section 28H.
55. An authority (including a planning authority) which has power to grant permission for other parties to carry out proposed operations, or change the way that land, or buildings on it, are used, must consult English Nature where such operations are likely to damage an SSSI. This applies whether or not the operation etc would actually take place on the SSSI. It must then wait for 28 days before deciding whether to issue its consent, unless English Nature have notified it earlier that it need not wait, and must take account of their views, including views on attaching conditions. If the public body decides that it will issue a permission against their advice it must notify English Nature, and then allow a further period of 21 days before the operation may commence. Once issued, a planning permission granted on an application under Part III of the Town and Country Planning Act 1990 constitutes a 'reasonable excuse' for the purpose of new section 28P(4) should damage occur to the SSSI during the legitimate exercise of that permission.
56. Where an owner or occupier wishes to exercise permitted development rights on an SSSI, and the works involved are listed on the SSSI notification as operations likely to damage the special interest, then he or she must apply to English Nature for consent under section 28 in the usual way. If English Nature refuse consent for such works it will not be possible to exercise the permitted development rights. In such cases, or where English Nature attach conditions to a consent the applicant may appeal to the Secretary of State. Alternatively, the owner or occupier may apply to the local planning authority for planning permission under Part III of the Town and Country Planning Act 1990. Such applications will be considered by local planning authorities in the normal way; likewise, the normal arrangements would apply to any appeal against a local planning authority's refusal of an application for planning permission, or against conditions attached to an approval.
57. The Government will be consulting in the near future on a revised draft Planning Policy Guidance Note 9 on nature conservation and biodiversity, taking account of the new Act.

Ramsar sites

58. Section 77 of the Act requires the Secretary of State to notify English Nature when he has designated, under the Ramsar Convention, a wetland for inclusion in the list of wetlands of international importance. English Nature must then notify the local planning authority as well as owners and occupiers of the land, and other relevant bodies.
59. In England, this provision has been supplemented by policy guidance on the protection and management of English Ramsar sites, issued in November 2000, giving them a level of protection equivalent to that currently afforded to European sites (as defined in the Conservation (Natural Habitats &c) Regulations 1994). This gives guidance to local planning authorities and other public bodies on issues which should be taken into account in making decisions on development proposals likely to impact on sites which are listed as wetlands of international importance and the exercise of their duties under new section 28G. If, unusually, consent is given to development on or affecting such sites, lost wetlands interests will have to be replaced, by restoring and recreating habitats. The Government also expects that developers will have normally to bear the cost of these compensatory packages, under the polluter pays principle.

Limestone Pavement Orders

60. County or unitary planning authorities continue to have powers under section 34 of the 1981 Act to make limestone pavement orders prohibiting the removal or disturbance of limestone on land covered by the order. Under section 78 of the Act the penalty for an offence under such an order has been increased to £20,000, in line with the penalty for damaging SSSIs and emphasising the importance which the Secretary of State attaches to this nationally-important habitat.

Wildlife Enforcement

61. Part III also contains measures to strengthen the enforcement of the provisions in the Wildlife and Countryside Act 1981 relating to the protection of certain wildlife species. Section 25 of the 1981 Act already requires local authorities to bring Part I of that Act to the attention of the public, and empowers them to institute proceedings for offences committed in their area.
62. Schedule 12 of the Act makes certain offences ‘arrestable’ – this will bring with it stronger search and seizure powers for the police; it creates new reckless disturbance offences; it gives increased powers to the police and DETR wildlife inspectors – they will have the power to enter premises to check species sales controls and can require tissue samples to be taken from wildlife species for DNA analysis; and it enables Courts to impose heavier fines and prison sentences for virtually all offences under Part I of the Wildlife and Countryside Act 1981.

Part IV: Areas of outstanding natural beauty

63. Part IV of the Act introduces provisions to enable the better management and protection of Areas of Outstanding Natural Beauty (AONBs). It requires the preparation and publication of a management plan for every AONB. It places a duty on ‘relevant authorities’ when exercising or performing any function in relation

to, or so as to affect, land in an AONB, to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. It provides for the creation of conservation boards for individual AONBs by means of an establishment order made by the Secretary of State. It also consolidates the AONB provisions previously contained in the National Parks and Access to the Countryside Act 1949.

64. The new duties imposed by Part IV include the requirement for local authorities at county and district levels (including unitary authorities), having land in an AONB, to participate in the preparation and publication of a management plan for the AONB. A management plan must be in place for each AONB by 31 March 2004. Under the commencement order referred to in paragraph 1 above, from 1 April 2001, all local authorities will also be under the duty imposed by section 85 (see paragraph 69 below) to have regard to the purpose of conserving and enhancing the natural beauty of an AONB, when exercising any function in relation to land in that AONB.

AONB Management Plans

65. Section 89 of the Act requires a management plan to be prepared and published for each AONB. The responsibility for doing so rests with the local authorities (counties, districts or unitaries) having land within the AONB, except in cases where an AONB conservation board comes into existence (see paragraphs 70-75). Local authorities within an AONB will therefore need to establish a mechanism for joint working in preparing, publishing and reviewing these plans. Non-statutory management plans already exist for many AONBs and there is already experience of joint working mechanisms among the local authorities.
66. The Government intends the introduction of a statutorily required AONB management plan to raise the profile of AONB management issues and to demonstrate the commitment of local authorities and other stakeholders to the management of the AONB. The Countryside Agency expects to issue detailed guidance on the preparation and content of management plans during 2001; the guidance is being produced in close co-operation with the Association of AONBs and will draw on experience in the National Parks, which already have a statutory duty to produce management plans. Local authorities preparing AONB management plans will be aware of the need for consistency with the content of other plans they are required to produce, including Community Strategies under the Local Government Act 2000.
67. Management plans must be prepared and published by the responsible local authorities within three years of the commencement of the relevant section on 1 April 2001. An existing non-statutory plan which has been prepared by a local authority or joint committee may be reviewed and adopted as the AONB management plan. Once a plan has been published, it must be reviewed at intervals not exceeding five years. The Government is providing increased funding to the Countryside Agency from 2001/02 to enable the Agency to offer an agreed level of support for the carrying out of core functions in each AONB in England, including the production of management plans. The increased support available from the Agency will be significantly in excess of the estimated cost to local authorities of producing management plans. As well as core funding, the Agency will also make grants available for appropriate projects within AONBs consistent with the management plan.

68. AONB management plans will not form part of the statutory development plan system. But an AONB management plan may be adopted by a local authority as Supplementary Planning Guidance if the requirements set out in Planning Policy Guidance Note 12, paragraphs 3.15 – 3.18 (as to content, consultation and adoption) are fulfilled. Those elements in an AONB management plan which relate to the development and use of land, and supplement and support the policies set out in the development plan, may be material considerations to be taken into account in determining a planning application.

Duty on Public Bodies

69. Section 85 of the Act places a duty on any relevant authority, in exercising or performing any function in relation to, or so as to affect, land in an AONB, to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. ‘Relevant authority’ is defined as any Minister of the Crown, any public body, any statutory undertaker or any person holding public office. ‘Public body’ includes any local authority. This section is modelled on the similar duty towards National Park purposes which was introduced by section 62(1) of the Environment Act 1995. The requirement to have regard to conserving and enhancing natural beauty will not override particular considerations which have to be taken into account by relevant authorities in carrying out any function, but is intended to ensure that the purpose for which AONBs have been designated is recognised as an essential consideration in reaching decisions or undertaking activities impacting upon an AONB.

AONB Conservation Boards

70. Section 86 of the Act enables the Secretary of State to establish conservation boards for individual AONBs by means of establishment orders. Conservation boards are expected to be most suitable for some of the larger AONBs which cross a number of local authority boundaries, where unified management of the AONB would bring benefits. The Government has no target to create a particular number of conservation boards and expects the first moves towards a board to be instigated from within the AONB. The core funding formula which the Countryside Agency is developing with the Association of AONBs is intended to be applicable regardless of the management model adopted in a particular AONB.

71. The Countryside Agency will be able to provide assistance to any local authorities contemplating the establishment of an AONB conservation board. The Secretary of State must consult the Countryside Agency and any affected local authorities before proceeding with an establishment order, and must be satisfied that a majority of the local authorities consent. Establishment orders will be subject to the affirmative resolution procedure in Parliament.

72. In exercising its functions a conservation board will be required to have regard to two principal purposes, i.e. (a) to conserve and enhance the natural beauty of the AONB, and (b) to increase public understanding and enjoyment of the special qualities of the AONB. If there is conflict between the two purposes, then greater weight is to be attached to (a) (under the same ‘Sandford’ principle as operates in the National Parks). In having regard to its two purposes a conservation board will also have to seek to foster the economic and social well-being of local communities within the AONB, but without incurring significant expenditure in doing so. Boards

will be expected to co-operate with other organisations (such as local authorities and Regional Development Agencies) to fulfil this requirement, which is based on the similar provision applying to National Park Authorities. In both National Parks and AONBs the intention is that the body set up to manage the designated area recognises the importance of the social and economic well-being of the local communities, while focusing its own spending on the specific purposes for which it has been established.

73. Conservation boards, where established, will take over responsibility for the AONB management plan from the local authorities. Their further specific functions will be laid down in their individual establishment orders, following consultation with the local authorities as to what is required in a particular AONB. Section 86(3) provides that specified powers may be transferred from local authorities to the conservation board by the establishment order or, where appropriate, may be shared between the two. But the transfer or sharing of the principal development plan and development control functions contained in the Town and Country Planning Act 1990 is specifically excluded by the legislation.
74. Schedule 13 to the Act provides for local authorities with land in the AONB to appoint at least 40% of the members of the conservation board, and for parishes to appoint at least a further 20%. The remaining members (a maximum of 40%) will be appointed by the Secretary of State to reflect a variety of interests such as conservation, land management and recreational use of the AONB.
75. Conservation boards will be eligible to receive grants which may come either direct from the Secretary of State or via the Countryside Agency. The local authorities which have co-operated in the establishment of the conservation board will also be expected to provide continued funding, particularly in respect of local authority functions transferred to or shared with the conservation board. Boards will not have levying powers. The establishment of a conservation board is likely to help in negotiating effectively for supporting funds from elsewhere, eg from the European Union, the lottery funds or corporate sponsorship.

Part V: Miscellaneous and supplementary

Local access forums.

76. Section 94 places a duty on highway authorities and national park authorities to establish local access forums to advise on the improvement of public access for open-air recreation and the enjoyment of the area. Relevant decision-making authorities will have to have regard to forums' views in reaching decisions, for example in relation to draft maps, the imposition of byelaws, and proposals for long term closures of access land (under Part I), as well as on wider access issues contained in new rights of way improvement plans (under Part II). The duty will not arise until regulations are made setting out the constitution and functions of the forums. The regulations are expected to be issued later this year and will be subject to public consultation. The regulations must provide that membership of forums will include users of rights of way and the new right of access, landowners and occupiers, together with any other interests especially relevant to the area. The duty does not apply to London boroughs, but any such council will have the power to set up a forum if it wishes to do so. The Secretary of State may exclude the duty in

respect of any other local authority – for example, if there is little or no access land and an insignificant network of recreational rights of way in the area.

Management agreements.

77. Section 39 of the Wildlife and Countryside Act 1981 enables local authorities to enter into management agreements with the owner of land in the countryside for its conservation (and for other related purposes). Section 96 of the 2000 Act amends section 39 in order that the Countryside Agency, the Countryside Council for Wales, and conservation boards in areas of outstanding natural beauty, may also enter into such agreements, and to enable agreements to be made in respect of any land, whether or not it is in the countryside. These amendments will allow these bodies, for example, to make agreements with the owner of land both for its dedication to access, and the long term conservation of access (by ensuring that dedicated land cannot become excepted land for the purposes of Schedule 1).

Norfolk and Suffolk Broads

78. Section 97 of the Act places a duty on any relevant authority, in exercising or performing any functions in relation to land in the Norfolk and Suffolk Broads, to have regard to the purposes for which the Broads have been designated (conserving and enhancing natural beauty, promoting public enjoyment and protecting the interests of navigation). This brings the treatment of the Broads into line with that for National Parks and AONBs (see paragraph 69).

Town and Village Greens

79. Section 98 of the Act revises and clarifies the third limb of the definition of town and village greens contained in section 22 (1) of the Commons Registration Act 1965.

80. Under the first part of the revised definition the land will be regarded as village green provided that it is land on which for not less than 20 years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right. The implications of this are that the commons registration authority will need to be satisfied only that a significant *number* of local inhabitants have used the land in a qualifying manner. Use by people not from the locality will therefore be irrelevant. Furthermore, use of the words “.. any locality, or neighbourhood within a locality...” is intended to clarify that a locality does not necessarily equate to an administrative area, e.g. an entire parish, but rather to a suitable area which the land in question might reasonably be expected to serve as a green.

81. The second part of the revised definition provides that the local inhabitants must either continue to use the land in a qualifying manner or must have ceased to use the land within any period prescribed in regulations. These regulations may also require that specific procedures relating to the process of applying to register land as a green are followed.

82. The revised definitions contained in this section come into effect on 30 January 2001. The Government is still considering what provisions should be contained in subsequent regulations.

Isles of Scilly

83. The commencement order referred to in paragraph 1 above brings into force certain parts of section 100 of the Act which deals with the application of various provisions to the Isles of Scilly. Section 100 prevents Part I and sections 58 to 61 and 71 from applying to the Isles of Scilly except by order made by the Secretary of State after consultation with the Council of the Isles. Section 100 also amends the Highways Act 1980 to make similar provision in respect of certain provisions in Schedule 6 that will be inserted into the 1980 Act and in respect of the power for highway authorities to recover the costs of removing certain obstructions which is described in paragraph 22 above. Finally, section 100 empowers the Secretary of State, after consultation with the Council of the Isles, to make an order modifying the application of Part IV of the Act to the Isles of Scilly.
84. Section 100, with the exception of subsections (3) and (5)(a) will be brought into force on 30 January 2001. Subsection (3), which relates to Part IV of the Act, will be brought into force on 1 April 2001. Subsection (5)(a) will be brought into force when the new provisions in the Highways Act 1980 to which it relates are also brought into force.

CLL BRAUN

Assistant Secretary

The Chief Executive:

County Councils in England
District Councils in England
Unitary Authorities in England
London Borough Councils
Council of the Isles of Scilly

The Town Clerk, City of London

The National Park Officer, National Park Authorities in England

The Chief Executive, The Broads Authority

Head of Paid Services, Greater London Authority