

Environment, Food and Rural Affairs Committee inquiry on the Agriculture Bill

Written evidence submitted by the Open Spaces Society, October 2018

1 Summary of Open Spaces Society's recommendations to the committee

1.1 We are a charity campaigning, among other things, for the protection and enhancement of public access to the countryside.

1.2 We welcome the broad powers conferred by the Agriculture Bill.

1.3 But we seek greater assurance that the broad powers will be employed by the Government, and employed to deliver greater and better public access.

1.4 We also wish to see much more assurance that grant assistance will be made conditional on terms similar to the cross compliance currently imposed under the CAP. Grants should be subject to more vigorous enforcement, greater penalties for breaches of the rules, and greater transparency to the enforcement process.

1.5 And we wish to see the Government take express powers to structure the payment of grants in relation to common land, which will pose special challenges and complications.

2 Introduction

2.1 The Open Spaces Society is Britain's oldest national conservation body, founded in 1865. We campaign for the protection and management of common land, town and village greens, open spaces and public paths, in town and country, throughout England and Wales. Our members are individuals, organisations and local councils. We are a registered charity.

3 Analysis

3.1 The society supports the Government's intention to replace the Common Agricultural Policy with a new system which pays public money for public goods, and for the new agricultural policy to be underpinned by payment of public money for the provision of public goods.

3.2 We wish to see the creation of new or better access as a public good which merits the payment of public money. Among many other benefits, public access improves people's health and well-being and boosts rural economies.

Clause 1

3.3 The society welcomes the Government's publication of the Agriculture Bill. Clause 1(1)(b) enables the Secretary of State to give financial assistance in connection with, 'supporting public access to and enjoyment of the countryside, farmland or woodland and better understanding of the environment.' (We will assume for the purposes of our submission that financial assistance comprises grants.)

3.4 We believe that these words confer a broad power on the Secretary of State to use public money to procure public access in the countryside, which we likewise welcome.

3.5 We note that none of the key expressions in clause 1(1)(b) are defined in the Bill: 'support[ing]', 'countryside', 'farmland' and 'woodland', but we trust that they will not restrict the Secretary of State's scope to provide grants for any of the following purposes:

- providing new public access (e.g. new public rights of way or access land),
- enhancing existing public access (managing existing rights of way to improve user experience or opportunities, such as mowing a headland path), and
- promoting public access (such as funding notice boards about local access opportunities).

Moreover, the inclusion of reference to both 'public access to' and 'enjoyment of' the countryside *etc.* is helpful. However, we shall wish to test the Secretary of State's position during debates on the Bill.

3.6 There must be some considerable commonality between the expressions, 'countryside', 'farmland' and 'woodland', but again, this does not cause us concern since the normal meanings have a wide scope.

3.7 In our response to Defra's consultation on *Health and Harmony: the future for food, farming and the environment in a Green Brexit*, we put forward our proposals for delivering support for public access as part of post-Brexit agricultural funding — these are annexed to this submission. We are reasonably confident that such proposals could be delivered within the powers conferred by clause 1(1)(b).

3.8 However, what the Bill does not do is provide any assurance that the Secretary of State will use the powers conferred on him, that the power in clause 1(1)(b) will be used, still less that the power will be employed to deliver access along the lines advocated by the society in our response to the Defra consultation. The Secretary of State will exercise his discretion to establish a scheme to deliver grants under clause 1, and is not compelled to ensure that the scheme provides grants for all of the purposes identified in clause 1(1) and (2).

3.9 We think that the Government, having consulted on and adopted the principle of public funding for public goods, should be obliged — when preparing and implementing a scheme for grant assistance — to make provision to support all of the purposes identified in clause 1(1). We therefore wish to see clause 1(1) amended so that any scheme of grant aid must target all of the purposes in that provision.

3.10 Of course, any such obligation would not ensure an equitable distribution of funding between each of the purposes identified in clause 1(1) — but it would provide some assurance that public access would not be side lined or ignored.

Clauses 2 and 3

3.11 Clauses 2 and 3 make provision about the conditioning, monitoring and enforcement of grant aid.

3.12 In our response to *Health and Harmony*, we commended the continuation and reinforcement of the present application of cross compliance to public rights of way. Under the single payment scheme in England, farmers in receipt of CAP subsidies must adhere to cross compliance: among the obligations of cross compliance is the existing legal framework for the maintenance and protection of public rights of way.

3.13 We wish to see the same cross compliance rules applied to all those who are in receipt of grants under clause 1. But we also wish to see those rules strengthened, so that there is more vigorous enforcement, greater penalties for breaches of the rules, and greater transparency to the enforcement process. Greater transparency would enable the public to identify whether farmers and landowners were in receipt of clause 1 grants, whether such grants included support for public access (and if so, details of the commitments entered into), to report where those commitments were in breach or there was a breach of cross compliance (whether in relation to rights of way or generally), and to be kept informed of the enforcement process (for example, so that a walker might know when enforcement action has been taken to reopen an obstructed path which the walker wishes to use).

3.14 All of this may be possible under clauses 2 and 3, but none of it is required to be done. There is insufficient assurance in the Bill about these aspects. The public is entitled to robust assurance that, where the Secretary of State makes grants for the provision of public goods, not only that such goods are delivered in accordance with the terms of the agreement, but that there are strong disincentives to wilful non-compliance, and where the grantee is in breach of any condition, there are sufficient penalties.

3.15 Moreover, we think that the scope of clause 2(2), taken with clause 2(3), does not obviously enable the imposition of broad requirements for cross compliance — relating to the imposition of conditions having nothing directly to do with the grant assistance being given — and the Bill should be amended expressly to enable conditions to be imposed as to any matter relating to the management of the land and of any farming operation carried out on the land.

3.16 We also believe that there should be a duty on the Secretary of State, and not a power, in clause 2(7), to make regulations requiring the publication of data about grants given.

Clauses 2 and 3: common land

3.17 The society campaigns for the management and protection of common land. In England, common land occupies around 3% of the total land area. Common land is land owned by one person but which is subject to the rights of others ('commoners') to take some product of the land — typically, grazing with animals, but occasionally wood, peat or fish.

3.18 We are concerned that, where grants are to be given in relation to the management of common land, the Bill makes no specific provision for the structure under which such grants are given.

3.19 For example, it may be appropriate to make grants to two or more (often many more) commoners acting jointly to deliver public goods, or to a voluntary unincorporated commoners' association for the same purpose. The Bill makes no provision for the structuring of these grants, such as:

- whether grants or obligations may be shared among several persons (whether the commoners, the landowner or others);
- how any grants or obligations should be shared among the parties, and on what terms;
- how conditions may be enforced against multiple parties, or against a voluntary unincorporated commoners' association;
- how grants paid can be recovered, where appropriate, from multiple parties.

3.20 We think that the Secretary of State should take express powers to vary the terms of any scheme for grants given in relation to common land (or any land subject to shared grazing rights), and to structure such grants to make allowance for the special circumstances inherent in managing common land.

Open Spaces Society: proposals for support for public access as part of post-Brexit agricultural funding

1. The United Kingdom's departure from the EU provides an opportunity to model funding schemes for agriculture to ensure that public money achieves maximum public benefit and promotes public wellbeing.
2. Public benefit should include public access, whether by paths or open access to land (freedom to roam), because such assets support local economies, and improve people's health, wellbeing and safety. Public access also helps to connect those who use paths for whatever reason (non-motorised transport, for health reasons and for recreation) and those who own and manage the land. Naturally we advocate that the public exercise its rights and freedoms responsibly and with respect for landowners, land managers and other users.

Proposal 1. Funding for public access within any scheme

3. Any new scheme should include financial support for landowners who provide additional access or improvements to existing access.

Proposal 2. Additional access

4. Payments should be available for the provision of new access, either along defined paths or as freedom to roam, or both. It should be well publicised. It should be targeted and selective, with bids from farmers and land managers assessed against criteria, such as public demand, achievement of the objectives of the local rights of way improvement plan, linking up existing routes, or improvement of safety (for example, enabling walkers, riders and cyclists to avoid using roads, especially those which are busy, used at speed, or have limited visibility).
5. Encouragement should be given for creating bridleways or restricted byways so that maximum public benefit is provided. The provision of circular off-road routes is of particular benefit for equestrians as they reduce the need to ride on roads. The difference in payments for creating bridleways or restricted byways compared to footpaths should be substantial to encourage provision of equestrian rights.
6. In the case of access land, there could be an increased number of access points, or additional access points provided across boundaries within the access area, and the provision of higher rights access on access land.
7. It should be possible to upgrade existing footpaths or bridleways to create bridleways or restricted byways where it is appropriate for all users.
8. Ideally the new access will be permanent, consisting of definitive rights of way, or land dedicated for access under section 16 of the Countryside and Rights of Way Act 2000 or as a village green under section 15(8) of the Commons Act 2006.

Additional spreading room adjacent to the coastal path in England could be rewarded. However, long-term permissive access is often better than no access at all.

Proposal 3. Enhancing existing access

9. There should be rewards for enhancing existing access along existing rights of way. For example, this could include:

- improvement in path width,
- leaving a path across arable fields undisturbed and uncultivated, and regularly mowing and preventing encroachment by vegetation,
- regularly mowing a headland path and preventing encroachment by vegetation,
- mowing and marking a path across grass leys,
- mowing, regrading, rolling or scraping green lanes,
- improving ease of use of stiles and gate furniture to comply with the Equality Act 2010,
- additional or improved waymarking and signposting,

10. Enhancements of existing access would be optional extras which farmers and land managers could elect to adopt. They would be applied only to existing public rights of way and access land, and the farmer would receive standard annual payments per length of path adopted, depending on the commitments entered into. Because the enhancements would be applied to existing public rights of way and access land, farmers could opt into the scheme without prior negotiation, and the scheme would have low administration costs.

Proposal 4. Cross compliance

11. It is important that those who receive grants and have existing rights of way on their land should ensure that all legislation is complied with, keeping paths clear of obstruction, reinstating them after ploughing *etc.*

12. It will be necessary to work out a cross-compliance regime that is fair to both land managers and the public, once the future is clearer.