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Consultation on *Health and Harmony: the future for food, farming and the environment in a Green Brexit*

1 Introduction

1.1 This is the response of the Open Spaces Society to Defra's consultation on its proposals for future agricultural policy.

1.2 The Open Spaces Society (OSS) was founded in 1865 and is Britain's oldest national conservation body. It campaigns to protect common land, village greens, open spaces and public paths, and people's right to enjoy them.

1.3 The society welcomes the opportunity to respond to the consultation. However, it believes that the online, *Citizen Space*, tool, is an inflexible tool for that purpose, and considers that the questions posed in the consultation paper are sometimes an unhelpful distraction from the key issues.

1.4 We have responded under the same chapter headings as the consultation paper.

2 Reform within the CAP

2.1 We have no observations on the proposals for simplification of the current CAP nor on the questions asked in this chapter.

3 An 'agricultural transition'

3.1 The society supports proposals to fund additional agri-environment schemes through reductions in direct payments, as soon as this can be legally achieved. This is because the transfer of subsidy to agri-environment schemes will promote the use of public money to buy public goods, where direct payments do not achieve that purpose.

3.2 The society has no views on the precise mechanism used to implement reductions.

3.3 However, the society is deeply concerned at proposals to 'broadly retain and simplify the current scheme requirements' if this is done by 'simplifying cross compli-



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ance' (p.22).

3.4 Cross compliance is demanded of all farmers in receipt of CAP subsidy. If the value of the subsidy remains broadly consistent, the cross compliance requirements should remain the same, whether the subsidy is paid through direct payments or agri-environment schemes. There is no justification for reducing those requirements only because of reduced direct payments: if farmers do not wish to subscribe to cross compliance, they may, as now, opt out of claiming subsidies.

3.5 We regret that the consultation does not explain how Defra proposes to 'broadly retain' the current scheme requirements, yet 'simplify' cross compliance, or what simplification might mean. We have no objection to genuine simplification which makes it easier to understand the scheme requirements without reducing what farmers must deliver, but we think that 'simplification' is a stalking horse for reducing scheme requirements. For example, eliminating scheme requirements (such as obligations in relation to public rights of way), or diminishing the requirements (such as shortening the period during which hedges may not be cut in order to protect nesting birds), misleadingly might be presented as 'simplification' while 'broadly retain[ing]...the current scheme requirements'. It would be a raw deal for taxpayers to continue funding subsidy at the present level, while getting even less in return (particularly if 'greening' requirements were also diminished or abolished).

Consultation questions

3.6 We have no view on the best way of applying reductions to Direct Payments.

3.7 On the conditions which should be attached to Direct Payments during the 'agricultural transition', we believe that the current cross compliance requirements should be retained unchanged, other than modifications necessary to keep up with changes to the statutory management requirements.

3.8 We have no views on whether the current 'greening' requirements should be retained, but any relaxation in environmental requirements in one respect should be at least balanced by other new environmental requirements — 'public money for public goods'.

4 A successful future for farming

4.1 We have no observations on the proposals to promote farming excellence and profitability nor on the questions asked in this section.

4.2 We have no observations on the proposals to promote improved productivity and resource efficiency in agriculture nor on the questions asked in this section.

4.3 We have no observations on the proposals to promote skills and the supply of labour nor on the questions asked in this section.

5 Public money for public goods

5.1 We support the 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’.

Environmental public goods

5.2 We note, under the heading ‘Enhanced beauty, heritage and engagement with the natural environment’, the statement that: ‘Agriculture and farming practices shape our rural historic environment, our distinctive landscape features and our historical monuments.’ We agree, and suggest that this is particularly apposite to common land, both in upland and lowland England (the consultation paper elsewhere focuses on upland commons), where the unique and distinctive qualities of commons have been established through centuries of farming in common, and an absence of modern agricultural techniques. Commons are habitually important for biodiversity, landscape, recreation and archaeology as well as, in some areas, the viability or profitability of farming enterprises. Commons are particularly important to our cultural heritage, and should be recognised as a special element of the historic rural environment.

Preserving rural resilience and traditional farming and landscapes in the uplands

5.3 We support the analysis in this section.

5.4 But rural resilience, traditional farming and landscapes do not need special protection only in the uplands: they are important qualities throughout England (and the UK generally). For example, commoning in the New Forest has endured for at least a millennium, and quite possibly far longer, and is the key element in delivering the landscape and biodiversity which is so attractive to visitors, residents and businesses alike, as well as the commoning animals which are indelibly associated with the New Forest. And the patchwork of small, heavily hedged, irregularly shaped fields found, for example, in the Weald of Kent or mid-Devon, is also the product of a millennium or more of farming practices. These and other landscapes, and the traditional farming practices which nurture and sustain them, need protecting, whether they are found in the uplands or elsewhere. It is too simplistic to assume that only upland hill farms are worthy of special assistance to meet special challenges.

Public access to the countryside

5.5 We support the analysis in this section.

5.6 We note the comment that, ‘farmers and land managers can have a vital part to play...through the maintenance of public rights of way’. At present, the maintenance of public rights of way is the responsibility of under-funded highway authorities

(i.e. local authorities), and farmers and land managers are generally responsible for maintaining only stiles and gates across such rights of way. We would be glad to explore with Defra how farmers and land managers could assume greater responsibility for maintenance, but such additional responsibilities must be subject to effective mechanisms to ensure that responsibilities assigned from local authorities to farmers are properly discharged, monitored and enforced.

5.7 However, we are disappointed that this section does not expressly recognise the creation of new or better access as a public good which merits the payment of public money, whereas the executive summary recognises that ‘improved public access’ is an area ‘where government could play a role in supporting farmers and land managers in the future.’ This is entirely consistent with the evidence, referred to in this section, which demonstrates the public benefits through increased access to the countryside, including healthier lives, as well as benefits to businesses in tourism, recreation and hospitality, and forging a ‘deeper connection with the countryside’.

5.8 We commend the development of options in future agreements with farmers and land managers which would offer a choice of providing additional access (but only where it is wanted by the public) and enhancing existing access.

5.9 The first option, to provide additional access, should be selective, so that new access, as a public good, is delivered only where there is a demand for it. This could be achieved in part through scoring applications, but there must be an opportunity for independent assessment involving stakeholders, having regard to local authority rights of way improvement plans, so that applications are not approved where the public benefit would be low. This option would be higher cost, but, because it is targeted and selective, lower take up.

5.10 A second option, to provide enhanced access, should be available to all farmers and land managers with existing access along public rights of way. They could elect to enhance that access for better public enjoyment, in return for relatively small payments. There would be no need for selectivity, because such enhancements could be offered only in relation to existing rights of way. This option would be low cost, and require no prior engagement or approval, but the take up would be more widespread.

5.11 We have set out our proposals in the attached annexe and would be happy to discuss them in more detail.

Consultation questions

5.12 We believe that ‘f) Enhanced beauty, heritage and engagement with the natural environment’ should be among the most important environmental outcomes that the Government should support, but this should be extended so that heritage includes the traditional landscape, and the outcome should be sought generally, and not only in the uplands.

5.13 And among the other options, we believe that ‘f) Public access to the countryside’ should be key among other public goods.

6 Enhancing our environment

6.1 If ‘The principal public good we want to support in future is environmental protection and enhancement’, do we want to procure those outcomes only where they are volunteered? That is the assumption implicit in this consultation: that the Government will offer attractive agri-environmental schemes, but take up, and therefore delivery of public goods, will occur only where farmers and land managers subscribe. The consultation paper does not address the question of whether the delivery of public goods should remain voluntary. Sometimes, the greatest public benefit may be obtained where a number of contiguous farmed holdings are managed to the same end, but not all farmers may want to participate. For example, in managing land to promote flood alleviation, the participation of one or more farmers may be pivotal to the success of a proposal, but the withdrawal of support by those farmers may make the project unachievable — and impose a requirement for more costly methods of flood control downstream resorting to compulsory powers. Is it appropriate, in such a case, for compulsory powers to be used only in the latter context?

6.2 We note (p.37) that ‘New Environmental Land Management schemes’ might be straightforward, streamlined and unbureaucratic. We suspect that these promises are easier to make than deliver. Moreover, we are concerned that, if farmers and land managers are to deliver a range of public goods, through schemes which may promise outcomes rather than inputs, they must be held to account, and that a simplistic approach to agreements will render them unenforceable.

6.3 For example, we are informed that ‘a “user friendly” design’ will explore monthly payments. Presumably, these payments would be in advance of what would otherwise be annual payments, because few farmers would wish to be paid later than necessary. But if payments are made monthly in advance, what relevant certification, assurances and data will have been supplied by the farmer when the payments are made?

Agreements on common land

6.4 We are concerned about the administrative and legal structure for schemes delivering environmental protection and enhancement on common land. This is not addressed in the consultation paper. Existing mechanisms for such purposes, involving agreements with individuals who purport to represent the majority, or all, of the commoners on a common, have sometimes proved unsatisfactory, particularly where individual commoners do not wish to be bound by the decisions of a majority, or where the owner of the common does not agree with the commoners.

6.5 For example, the climate change mitigation case study (pp.39–40) refers to blocking moorland grips. But it might be argued that such measures cannot be

implemented on common land without the universal assent of all commoners and the landowner.

6.6 We therefore propose that Defra take powers in the Agriculture Bill to provide for agreements to be made in respect of common land, including:

- who may enter into an agreement,
- what may be included in an agreement,
- who (including commoners, landowners and others with an interest in the land) may be bound by the terms of agreement and in what circumstances,
- how payments under an agreement may be apportioned and distributed (including to those bound by an agreement, but not consenting to it),
- from whom payments may be recovered where the terms of an agreement are breached,
- arrangements for resolution of disputes.

6.7 The terms of such powers should be consulted upon, and may need to vary according to circumstances (for example, what works for upland fell commons may not be appropriate to the New Forest). We therefore propose that the provision for agreements on common land should be conferred in a regulation-making power in the Bill.

Consultation questions

6.8 We have no view on ‘which outcomes would be best achieved by incentivising action across a number of farms or other land parcels in a future environmental land management system’, save to observe that there is no reason why recreational outcomes should be specially reserved to multi-farm initiatives, and it will depend on the circumstances. For example, there is no reason why an estate close to a built-up area should not deliver valuable new or improved access on its own. Equally, where a number of land managers co-ordinate the provision of new access across several holdings, to provide new integrated access opportunities of benefit to local people, that should be supported too. But it would be unwise to espouse a rule which provides that multi-farm access schemes are always better, or indeed inferior.

6.9 We see a role for exploring ‘what role...outcome based payments have in a new environmental land management system?’ In the past, new access delivered under agri-environment schemes has been rewarded per unit length or unit area of access. We would like to see the piloting of innovative new access measures where the land manager is rewarded by measures of use, so that, for example, new access along field margins which is well used by local people for picking blackberries or walking the dog is more remunerative than access which is little desired or used. Such measures might use, among other things, electronic measuring equipment which is now employed elsewhere to count visitors.

6.10 We have no view on ‘How can an approach to a new environmental land management system be developed that balances national and local priorities for environmental outcomes?’

6.11 In responding to the question, ‘How can farmers and land managers work together or with third parties to deliver environmental outcomes?’, we refer to our comments above on the need for legislation to facilitate agreements on common land.

7 Fulfilling our responsibility to animals

7.1 We have no observations on the proposals for health and welfare standards nor on the questions asked in this chapter.

8 Supporting rural communities and remote farming

8.1 We comment (paras.5.3–5.4 above) on the section headed, ‘Preserving rural resilience and traditional farming and landscapes in the uplands’, that these attributes are not exclusive to the uplands.

8.2 The same assumption is explicit in this chapter, which is illustrated by the example of the Lake District, which refers to ‘Upland farmers and land managers play[ing] a key role’, and which goes on to explore ‘The uplands and other remote areas’.

8.3 But many of our most valued and popular landscapes are not in the uplands — for example, the New Forest and South Downs national parks, or the many areas of outstanding natural beauty in the lowlands, such as Dedham Vale or the Surrey Hills. And indeed, many areas of traditional countryside which are not designated at all, but valued for their traditional landscape character.

8.4 Accordingly, we call on Defra to adopt a clear vision, not only for the uplands, but for traditional landscapes across the country — one which sets out not only to protect them, but to restore them through sympathetic farming practices.

Consultation questions

8.5 We challenge the terms of the question, ‘How should farming, land management and rural communities continue to be supported to deliver environmental, social and cultural benefits in the uplands?’ We do not think the implied challenges are unique to the uplands, and we do not think the public benefits of landscape and cultural heritage are uniquely threatened in the uplands. But we do agree that the threat is most obvious in the uplands.

9 Changing regulatory culture

9.1 We do not agree with some of the principles of this chapter. For example (p.49), ‘Poorly-designed regulation costs time and money.’ But so too does a great deal of well-designed regulation — what matters is whether the benefit of the outcomes justifies the costs and other impacts. Good regulation can be costly to farmers, but may be justified, for example, on the basis that ‘the polluter pays’.

9.2 Our primary concern lies with the present inspection regime for cross compliance. In line with mandatory EU standards, the Rural Payments Agency inspects less than one per cent of all claimant holdings per annum to identify cross compliance breaches. Given that some of these inspections are targeted to address, for example, breaches in the previous year, or a pattern of historical breaches, the actual rate of unexpected inspection is probably around one half of one per cent, which implies an assessment once in every two hundred years. This is not a level of inspection and enforcement which is a credible starting point to see ‘how inspections can be removed, [or] reduced’.

9.3 The consultation paper commits (p.50) to ‘replace cross compliance with a new, better targeted and proportionate mechanism to enforce the regulatory baseline’. But it does not explain how it will be ‘better targeted’ or more ‘proportionate’, and we fear that Defra plans to jettison some components of cross compliance, such as obligations in relation to rights of way and the duration of the hedge-cutting prohibition. Such changes would not deliver better targeting nor proportionality, but simply reduce the public goods delivered in return for the same amount of public money.

9.4 Moreover, the capability of public agencies, such as Natural England, the Environment Agency and local authorities, to enforce subsisting agricultural and environmental legislation outside the cross compliance regime has been so severely weakened by successive budgetary cuts and political interference that the removal of any element of existing statutory requirements from cross compliance will leave that element virtually without any capability for enforcement.

9.5 Finally, but most importantly, the ethos of the consultation paper is claimed to be a redirection of public subsidy to deliver public goods. In effect, the taxpayer will be paying farmers to deliver those goods. The agreements which will be made between farmers or land managers and the Secretary of State (or his agencies) will require supervision and enforcement. The public are entitled to expect that, if for example, a farmer is paid £20,000 per annum to deliver increased numbers of farmland birds, those increased numbers are indeed delivered. An inspection regime (and we are agnostic as to whether inspections involve boots on farms or other mechanisms such as remote sensing) which follows up only a tiny fraction of such agreements to see whether they have delivered allows for the widespread abuse of public funds. We cannot conceive of any other field of contractual relationships, public or private, where such large amounts of money could change hands with so little effort taken to ensure that the contractual outputs are delivered.

Consultation questions

9.6 Our response to the question, ‘How can we improve inspections for environmental, animal health and welfare standards?’ is that we have no objections to the appropriate and effective use of any of the mechanisms identified, but that these should not be used to diminish the inspection regime, but to support it and make it more effective.

9.7 We have no observations on ‘Which parts of the regulatory baseline could be improved, and how?’, as insufficient information is given. This question appears to be little more than an invitation to farmers to identify the regulation which most interferes in their operations, regardless of benefits.

9.8 We do not agree with the implication behind the question, ‘How can we deliver a more targeted and proportionate enforcement system?’, which implies that the present system is ill-targeted and disproportionate. We disagree: we believe that a strong random, high probability, component to inspection is necessary to identify a broad range of potential breaches, and that, far from being disproportionate, the present system is insufficiently effective.

10 Risk management and resilience

10.1 We have no observations on the proposals for improving resilience in the farming sector nor on the questions asked in this chapter.

11 Protecting crop, tree, plant and bee health

11.1 We have no observations on the role for Government in managing pests and disease nor on the questions asked in this chapter.

12 Ensuring fairness in the supply chain

12.1 We have no observations on ensuring a transparent and properly functioning food supply chain nor on the questions asked in this chapter.

13 Devolution: maintaining cohesion and flexibility

13.1 We have no observations on devolution nor on the questions asked in this chapter.

14 International trade

14.1 We have no observations on international trade nor on the questions asked in this chapter.

15 Legislation: the Agriculture Bill

15.1 We agree with the proposed powers in the Bill, although we doubt that legislative powers are needed ‘to strip out unnecessary bureaucracy’, nor does the consultation paper explain what this means.

15.2 We refer to our comments in paras.6.6–6.7 above as regards powers to provide for agreements to be made in respect of common land.

Open Spaces Society
2 May 2018

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.