

Open Spaces Society response to *Environmental Land Management: policy discussion*



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Introduction

0.1 This is the response of the Open Spaces Society to the consultation by Defra on *Environmental Land Management: policy discussion*.

0.2 In relation to some questions in the consultation, we have no comments. However, we observe that some issues overlap the discrete questions posed in the consultation paper, and we have addressed them where we think it convenient to do so.

1 Do you want your responses to be confidential? If yes, please give your reason

1.1 No — this response may be published in full if desired.

2 What is your name?

2.1 Open Spaces Society.

3 What is your email address?

3.1 hugh@oss.org.uk

4 Where are you located?

4.1 Our office is located in southeast England, but we are a charity which works in England and Wales at national and, through its network of local correspondents, local, level.

5 Who are you?

5.1 The Open Spaces Society 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 rights to enjoy them.

5.2 In responding to this consultation, we have a particular interest in promoting public access to the countryside through England's network of public rights of way and public rights of access, and in providing for the better management of common land to reflect the many public goods which it can sustain.



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6 Do you have any comments on the design principles on page 14? Are they the right ones? Are there any missing?

6.1 The design principles are set out below, with our comments.

- *a. Focus on achieving environmental outcomes, helping to deliver our 25 Year Environment Plan and net zero target. In doing so, it will help farmers, foresters and other land managers optimise the potential of their land to deliver public goods, as part of a thriving food or other land-based business.*

6.2 We are concerned that a Government commitment to focus on delivering public goods has been adapted to focus only on environmental outcomes. The design principle (a) is in any case confused, because it continues by referring to enabling land managers to 'deliver public goods' — but not all public goods are a product of superior environmental outcomes.

6.3 The position is uncertain, because question 11 in this consultation implies that 'public access' can be a 'local environmental priority'. But the discussion paper does little to reinforce our belief that better access is a legitimate environmental outcome.

6.4 In particular, we wish to see the focus extended to public access to, and enjoyment of, environmental outcomes. We support the delivery of environmental outcomes — but the public must be able to see, enjoy and learn from what is achieved with spending raised from their taxes. That means more and enhanced access for the public, in extent, character and equality.

6.5 There is much opportunity to integrate better access provision with wider environmental benefits. For example, access routes can also be corridors for hedgerow planting, flood defences can also double as walking, horse riding and cycling facilities and provide excellent level access for those with impaired mobility. The practice under previous agri-environment agreements, by which land managers were either expressly or impliedly actively to exclude public access from, for example, set-aside land or environmental margins, must not be revived in ELMs. No land manager should be penalised for permitting public enjoyment of environmental outcomes, and no land manager should be able to rely on any funding agreement as justification for doing so.

6.6 The net zero target can be contributed to through decarbonisation of transport, which can in turn be supported by access improvements that enable local day-to-day journeys (e.g. walking to school or local facilities, cycling to work) to be made more quickly, safely and enjoyably.

- *b. Ensure national and local environmental priorities are supported and balanced effectively.*

6.7 We agree. But there must be sufficiently open and accessible mechanisms for consultation at the local level to ensure that local priorities — including priorities for better access — truly reflect the needs of local communities, and not merely the aspirations (whether positive or negative) of land managers.

- *c. Ensure that the scheme and its underpinning systems and processes work effectively and represent maximum value for money to the taxpayer.*

6.8 We agree. But ‘maximum value for money to the taxpayer’ is achieved only through strong support, rigorous monitoring, and effective enforcement, so that the public can see that their funding is delivering the outputs and outcomes which they have paid for. A low ratio of administrative expenditure to scheme funding is not in itself a satisfactory measure of scheme efficiency and value for money. Indeed, value for money is likely to require a substantial component of overall funding directed to monitoring and enforcement.

- *d. Ensure that ELM includes actions that most farmers, foresters and other land managers could deliver and encourage delivery of outcomes at all spatial scales through collaboration as well as individual participation.*

6.9 We agree. Just as with environmental enhancements, the promotion of new (as opposed to enhanced) access at a single holding level is seldom as effective as when addressed at a multi-holding scale. But in relation to access enhancement, we think that all land managers should be able to, and required to, deliver benefits (see para.9.6 below).

- *e. Enable farmers, foresters and other land managers to have greater flexibility over how they deliver environmental outcomes.*

6.10 We agree. However, the corollary of greater flexibility in approach should be clarity and certainty about how the outcomes are measured and whether they have been delivered. We are concerned that a focus on outcomes (as opposed to outputs) will blur the relationship between what the land manager does and what the land manager is rewarded for. Delivering outcomes is susceptible to external influences (whether favourable or unfavourable). Either the land manager will take responsibility for such influences (in which case, the land manager may, without fault, be denied reimbursement for expenditure incurred), or the land manager will not be held responsible (in which case, it is not a focus on outcomes at all). We expect clarity about what really is intended, rather than reassuring words about ‘focus on outcomes’.

- *f. Ensure minimal complexity and administrative burden for participants and administrators, considering lessons learned from similar past initiatives.*

6.11 We doubt that these objectives are compatible with overall ambition. Public goods do not have a uniform value irrespective of place — for example, there may be a negative value in delivering measures which reduce flooding of a wetland landscape downstream which relies on seasonal inundation. New access is useless if it is in a location where people cannot easily reach and enjoy it. But ensuring that land managers tailor their delivery to the needs of place is not consistent with minimal complexity.

6.12 And strong support, rigorous monitoring, and effective enforcement (to which we refer above, see para.6.8) are not consistent with a minimal administrative burden. A high level of spend demands a thorough appraisal of delivery and value for money, and land managers must be required to demonstrate that they have delivered what they have been paid for. They should also be required to show that they have complied with wider legal requirements in relation to their holding — what is known, in relation to CAP funding, as cross compliance. No land manager should be entitled to payments unabated if the recipient holding is in breach of wider agricultural or environmental laws.

- *g. Seek to harness new technology and digital solutions where they are shown to add value and improve the scheme design and operation.*

6.13 We agree. But new technology and digital solutions should not be imposed unless they have been fully developed, tested, and shown to work effectively.

- *h. Seek to continuously improve all elements of the scheme and its administration, through monitoring, evaluating, learning and innovating, while providing sufficient certainty and clarity to applicants.*

6.14 We agree. But feedback on the scheme and its administration should also be invited from the public. For example, the public should be invited to report breaches of scheme or legal requirements — which they might identify in enjoying access provided under the scheme, or on existing rights of way — through a website or app. In a scheme in which Defra seeks a ‘minimal...administrative burden for participants and administrators’, it should be prepared to harness crowd-sourcing as a means of monitoring, much as local authorities now rely on public reporting systems to identify breaches of planning control or highway defects.

- *i. Consider re-using / improving existing systems and data before building new.*

6.15 We agree.

7 Do you think the ELM scheme as currently proposed will deliver each of the objectives on page 8?

- *To secure a range of positive environmental benefits, prioritising between environmental outcomes where necessary.*

7.1 We agree with strategic objective 1, but with the same comment voiced at para.6.2 above — that ELM should secure delivery of a range of public goods, including not only environmental benefits, but facility for public access to and enjoyment of them.

- *To help tackle some of the environmental challenges associated with agriculture, focusing on how to address these in the shorter term.*

7.2 We are concerned that strategic objective 2 risks breaching the principle of ‘polluter pays’. Where farming practices cause environmental degradation, the primary recourse

should be through regulation. Where the land manager then seeks how best to use the land in the light of that regulation, the land manager should be encouraged to enter into an ELMs agreement. But public funding should not be used as the primary tool to incentivise a move away from harmful practices.

8 What is the best way to encourage participation in ELM? What are the key barriers to participation, and how do we tackle them?

8.1 We support the shift of agricultural support from area-based payments to ELMs — provided that the promotion and enhancement of access forms a substantial part of the overall package.

8.2 Defra must provide sufficient guidance and active support to land managers to promote both take up of agreements, and tailoring of agreements to the requirements of place. That support must be sufficiently informed and trained to understand and help reconcile the needs of both the land manager and the public (*i.e.* the public interest in delivery of public goods). A low level of high quality support will impair the delivery of worthwhile public goods.

8.3 We particularly wish to ensure that those who advise land managers are competently trained in the delivery of better public access. Such training and understanding is not necessarily present in advisers whose provenance lies in land management or conservation.

9 For each tier we have given a broad indication of what types of activities could be paid for. Are we focussing on the right types of activity in each tier?

9.1 We respond below in respect of each of tiers one to three. But the short answer is 'no' — the discussion paper pays minimal attention to the promotion and enhancement of access.

Tier 1

9.2 As we have already observed, the discussion paper does little to foster support for better public access. This omission is most notable in relation to tier 1.

9.3 Tier 1 calls for 'actions that are deliverable on most farms so that it is broadly accessible to all farmers'. However, none has been proposed embracing access.

9.4 We acknowledge that the ambition for access at tier 1 must fit within the scope of the tier. We therefore commend measures for enhancing existing access — *i.e.* existing public rights of way. For example options might include:

- in an arable field—
 - regularly mowing a headland path and preventing encroachment by vegetation
 - leaving a cross-field path uncultivated as a grass strip
- mowing and marking a path across grass leys
- mowing, ditching and rolling green lanes (*i.e.* timely rolling can iron out ruts and help improve drainage)
- waymarking paths so that they are very easy to follow.

9.5 Enhancements of existing access could be optional extras which farmers could elect to adopt. They would be applied 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 context (*e.g.* arable land would attract a higher rate per unit length than grazed pasture). Because the enhancements would be applied to existing public rights of way, farmers could opt into the scheme without prior assessment, and the measures would have low administration costs.

9.6 However, these features suggest that access enhancements could and should be made a mandatory element of every tier 1 agreement. If a land manager enters into a tier 1 agreement, rights of way within the agreement holding should be enhanced as we have described — and the land manager should receive additional payment according to the qualifying lengths of rights of way and context on the holding.

9.7 In addition, capital payments could be offered for small structural changes which might attract 'automatic' support. For example, to provide:

- a nearer, safer point of crossing between two staggered rights of way joining a busy road;
- small (say two vehicles or a horsebox) parking spaces next to rights of way where they leave a public road;
- links from the rights of way network to a railway station or a frequently served bus stop;
- improving the accessibility of stiles with gates or gaps to enable access by the mobility-impaired, dogs or families with small children;
- alternative permissive diversions for dog walkers to avoid fields with cattle.

Tier 2

9.8 In tier 2, there is greater scope to tailor access enhancements to the particular circumstances of the farm holding. The consultation document refers to payments for: 'Rights of way, navigation and recreation infrastructure'. However, agreements should not provide funding for meeting existing commitments to access (for example, maintaining stiles on rights of way).

9.9 Agreements should reward new access, either along defined paths or as area access ('freedom to roam'), or both. Provision in the scheme for new access should promote the embrace of all recreational users — for example, new paths for horse riders and cyclists; easy-access paths for those with limited mobility; wide, easy-to-use paths for family visits; educational access; access to high land for hang- and para-gliders; access to riverside for families, swimmers and unpowered craft. Access should be well publicised, targeted and selective, with bids from farmers and land managers assessed against criteria, such as public demand, achievement of the objectives of the rights of way improvement plan¹, and improvement of safety (for example, enabling walkers, cyclists and riders to avoid using busy roads, and enabling families to enjoy safe, entirely off-road journeys). 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, or a currently inaccessible piece of access land could be made accessible with the creation of paths and access points.

9.10 We would commend the provision of permanent new access, consisting of new public 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.

9.11 We agree (p.23) that new access provision will be greatly enhanced if it is delivered on a joined-up basis.

9.12 And just as the scheme is looking to reward land managers for results-based payments, consideration should be given to mechanisms to reward new access provision on the basis of use, both in terms of numbers and breadth of use (so that, for example, actual use by people of limited mobility, or families, cyclists or horse riders) is better rewarded than mere numbers of passers-by would allow. Measurement of use is not straightforward, and subject to deception. But a scheme which best rewards those land managers who deliver the access which is most enjoyed by the public would be a remarkable achievement. If a scheme delivers the greatest rewards under an access option to those who manage land near urban areas or in popular recreational areas, then that would be a sound outcome.

Tier 3

9.13 We wish to see similar measures to those advocated in tier 2, but underpinning the landscape scale change envisaged in tier 3. But, whereas in tier 2, access would be an option for land managers, we believe that no landscape scale change should be funded unless provision for new and better access is a convincing and fundamental part of a proposal. Every tier 3 project should consider how best to ensure that the changes it is

¹ Rights of way improvement plans are published by local highway authorities, under s.60 of the Countryside and Rights of Way Act 2000.

intended to effect can be enjoyed by the public, and the public given an opportunity to learn what is being done, and why, at first hand.

9.14 Moreover, the landscape scale of tier 3 demands that more ambitious access opportunities should form part of every bid. For example, the designation of a long-distance multi-user trail, combining the best of existing rights of way and new paths, to show off the project to local people and visitors and promote healthy recreation. Similarly, one might expect to see greatly enhanced access to a river which might form the spine of a landscape-scale project area, including greater opportunities for access along the river bank, access for unpowered craft along the river, launching points, and sites where wild swimming is actively facilitated.

10 Delivering environmental outcomes across multiple land holdings will in some cases be critical. For example, for establishing wildlife corridors or improving water quality in a catchment. What support do land managers need to work together within ELM, especially in tiers 2 and 3?

10.1 Land managers will need the support of advisers who are trained and informed about every aspect of the ELM portfolio. That means that an adviser should offer expertise not just in conservation, but environmentally-friendly agricultural production, natural flood management, and of course access. Where advisers do not have a sufficient breadth of expertise, they should be expected to be able to call on colleagues who can, working together, ensure the client land manager is properly advised. No adviser should promote only particular outcomes within the range of public goods.

11 While contributing to national environmental targets (such as climate change mitigation) is important, ELM should also help to deliver local environmental priorities, such as in relation to flooding or public access. How should local priorities be determined?

11.1 Improved public access is no more a 'local priority' than any other environmental outcome. The existing public rights of way network is a remarkable national asset, but there is much room for improvement. Targets for access provision should not be determined at the local level, with the implication that land managers might press collectively for access to be

side-lined at that level. There should be national targets for enhanced and improved access, and funding to assist in delivering those targets. Local interests can then assist in how best such targets are attained at the local level.

11.2 In advising land managers about access options, advisers must liaise with local interests (such as the local access forum, local authorities — including rights of way officers in the local highway authority, parish councils, Area of Outstanding Natural Beauty boards and National Park authorities — and local representatives of access users), keep informed of local needs (such as in the rights of way improvement plan published by the local highway authority), and be aware of the structure of access in their area (such as where new access is most needed), in order that they can advise on and promote beneficial access in their support role.

12 What is the best method for calculating payments rates for each tier, taking into account the need to balance delivering value for money, providing a fair payment to land managers, and maximising environmental benefit?

12.1 We commend flexibility in funding access improvements. A land manager who wishes to participate in tier 1, but can deliver access improvements (for example by participating with neighbouring holdings) should not be excluded from participation merely by virtue of not wishing to sign up to a comprehensive tier 2 or tier 3 agreement.

13 To what extent might there be opportunities to blend public with private finance for each of the 3 tiers?

13.1 The enjoyment of enhanced access under ELMs should not itself require payment by the public. But enhanced access may well provide new opportunities for providing services to promote its enjoyment — for example, car parking (where not itself funded by ELMs), horse-box parking, kiosks or cafés, lavatory and shower facilities, overnight accommodation.

14 As we talk to land managers, and look back on what has worked from previous schemes, it is clear that access to an adviser is highly important to successful environmental schemes. Is advice always needed? When

is advice most likely to be needed by a scheme participant?

14.1 Advice will always be needed in delivering tier 2 and tier 3 agreements, not least to ensure that the commitments deliver public goods which are valuable in that place. Experience gained of access elements in agreements under Countryside Stewardship, Environmentally Sensitive Areas and Environmental Stewardship Schemes is that too many agreements offered access where it was not valued and lightly used. And advisers must liaise with local access interests (see para.11.2 above) to ensure that the advisers themselves are sufficiently well-informed about what makes a good, valuable access component in an agreement, to avoid the resources ill-spent on past agreements.

14.2 In relation to tier 1, the extent to which advice will be needed will depend on the extent to which the outputs are likely to be valuable whatever the context. For example, if the output from an option available in tier 1 is likely to have little or no value in a particular context — but the land manager nevertheless is free to select it and to be rewarded for it at a standard rate — then that calls for an advisory and approval process which is capable of excluding low value offers.

14.3 We therefore propose that access options in tier 1 are universally acceptable: enhancements of access on existing rights of way which will be available to everyone.

15 We do not want the monitoring of ELM agreements to feel burdensome to land managers, but we will need some information that shows what's being done in fulfilling the ELM agreement. This would build on any remote sensing, satellite imagery and site visits we deploy. How might self-assessment work? What methods or tools, for example photographs, might be used to enable an agreement holder to be able to demonstrate that they're doing what they signed up to do?

15.1 We have no comment on this question.

16 Do you agree with the proposed approach to the National Pilot? What are the key elements of ELM that you think we should test during the Pilot?

16.1 We agree with the proposed approach to the national pilot. But the national pilot must include a full range of access options (and as we have made clear above, tier 3 schemes must include access elements).

16.2 However, we are concerned that the advisory and subject matter bodies — Environment Agency, Forestry Commission, Natural England — have, at present, insufficient expertise in promoting access to be able to support even a pilot implementation. Further capacity must be obtained, most obviously from staff in Natural England being released from coastal access implementation to advise on access within the national pilot — and subsequently, on full implementation.

17 Do you have any other comments on the proposals set out in this document?

17.1 No.

Hugh Craddock for
Open Spaces Society
28 July 2020