

Annex 4 - Scheme of Delegation approvals

1. NERC ACT 2006, PART 8 AGREEMENT - AMENDING AGREEMENT (NO. 3)

Introduction

On 4 September 2009, the Acting Chair signed Amending Agreement No 3 of a Part 8 Agreement with Defra on behalf of Natural England.

Natural England originally entered into a Part 8 Agreement with Defra on 29 September 2006. This Agreement authorised Natural England to carry out various Defra functions. Since this Agreement there have been two further Amending Agreements authorising Natural England to carry out additional functions on Defra's behalf. It was subsequently proposed that Defra authorise Natural England to carry out a further Defra function in relation to the Commons Act 2006. To affect this change a further Amending Agreement - No.3, was prepared.

This Amending Agreement authorises Natural England to utilise the powers in section 46 of the Commons Act 2006 to serve a stop notice on any person appearing to be carrying out unauthorised agricultural activities which are detrimental either to the public interest or to those with rights in relation to, or occupying common land.

Background:

Commencement of section 46 of the Commons Act was brought forward to October 2008, at the behest of Natural England, to address long standing difficulties on certain key sites (where its application is currently being explored). Section 46 states that a stop notice may be served on anyone carrying out unauthorised agricultural activities on common land, where those actions cannot be regulated under other provisions.

Consequences of the transfer:

Section 46 does not impose a duty, it provides a discretionary power of last resort (as described during Parliamentary debate), to tackle unauthorised activities in rare cases where other remedial action is unavailable or ineffective. It is likely to be cost neutral in its application and threat of usage, rather than formal proceedings, is predicted to drive compliance. There appears to be no significant impact on other resources by the addition of these powers, they simply provide Natural England with an additional enforcement tool which may be used in certain situations.

Current position:

Guidance concerning the application of the section 46 powers has been agreed between Natural England and Defra officers and this has been endorsed by the members of the Common Land Stakeholder Group.

The Minister approved the transfer of powers to Natural England on 22 July 2009 and John Robbs signed the Amending Agreement on behalf of Defra.

Natural England's operational teams wished to be in a position to use these powers (or at least threaten the use of the powers) as soon as possible having already identified 3 situations where these powers could be helpful.

As we were keen to start using the Amendment, and the Board was not due to meet until November, Acting Chair signed the Amending Agreement, under delegated powers, on behalf of the Natural England Board.

Board action

The Board is asked to note the Acting Chair's approval of the Part 8 Agreement - Amending Agreement no 3.

2. AUTHORISATION OF THE DECLARATIONS FOR KINDER SCOUT AND SKIPWITH COMMON NNRS

Introduction

The declaration of a new NNR is a Board Retained Authority. Using delegated powers, the Acting Chair has approved the declaration of Kinder Scout and Skipwith Common NNRS on behalf of the Board.

Kinder Scout

Kinder Scout NNR was formally declared on 11 October 2009 under Sec. 35 1(c) of the Wildlife and Countryside Act 1981. The declaration of a new NNR will be managed by the National Trust as an Approved Body.

Kinder Scout will be a highly visible NNR with huge potential to act as a beacon for nature conservation in England's uplands, in particular habitat restoration and the integration of recreation and wildlife. It has been a complicated case which required much negotiation with the National Trust. As a result the Natural England approval decision could only be taken in the last few days prior to the long planned memorial event to commemorate the life of Martin Doughty.

Skipwith Common

Skipwith Common will be a Natural England NNR. It is one of the finest heathlands in northern England, and will be managed as an NNR through a Nature Reserve Agreement with the landowner. The majority of the Reserve's management costs will be met through the owner's new HLS agreement which will enable us to realise the full educational and interpretation potential of the site.

This has been a complicated negotiation over a long period of time and sub delegation approval was agreed by Chair on 5 October so that the HLS agreement could be put in place otherwise there was a real risk that the landowner would withdraw. The declaration is expected to be made in December 2009 in December to coincide with 60th anniversary of the National Parks and Access to the Countryside Act, 1949.

Board action

The Board is asked to note the Acting Chair's approval of Kinder Scout & Skipwith Common NNRS.

3. RECOMMENDATION BY NATURAL ENGLAND TO MINISTERS OF CANDIDATES FOR NATIONAL PARK AUTHORITIES

Introduction

The Non- Financial Schedule of Delegation (NFSoD) currently does not accurately reflect the actual process of Natural England's involvement in the National Park Authority appointments in pursuance of its role as formally described in Schedule 7, paragraph 4 (1) of The Environment Act 1995.

Background

Paragraph 4.1 of Schedule 7 of the Environment Act 1995 requires that before appointing any person as a member of a National Park Authority the Secretary of State shall consult, according to whether the relevant Park is in England or in Wales, either the Countryside Commission or the Countryside Council for Wales.

The requirement to consult has been achieved in recent years by a Natural England Board Member being involved in the selection process as Chair of the sift and interview panels. This arrangement has worked well and fully complies with the Office of the Commissioner for Public Appointments (OCPA) regulations which apply to public appointments of this nature. Defra have confirmed they are content with these arrangements and wish to see them continue.

According to the current NFSoD this duty is retained by the full Natural England Board and the full function is "recommendation to Ministers of candidates for specific National Park Authorities". This can be read as overruling the actual recruiting process as described above.

Although any changes to this delegation are formally an alteration to a Board Retained Authority as stated in the NFSoD, in reality there will be no change to current procedures. It is therefore proposed to change the current delegation of the Board to relevant Board member

Board Action

To approve change to Board retained authority for recommending National Park Authority appointments from the current delegation of the Board to relevant Board member.