XXVIe Congrès et Colloque Européens de Droit Rural
Bucarest – 21-24 septembre 2011

XXVI European Congress and Colloquium of Agricultural Law
Bucharest – 21-24 September 2011

XXVI. Europäischer Agrarrechtskongress mit Kolloquium
Bukarest – 21.-24. September 2011

Organisé par le Comité Européen de Droit Rural en collaboration avec l'Université Ecologique de Bucarest

Organized by the European Council for Agricultural Law in collaboration with University of Ecology Bucharest

Organisiert durch das Europäisches Agrarrechtskomitee in Zusammenarbeit mit der Universität für Ôkologie Bukarest

Commission II – Kommission II

Rapport national – National report – Nationaler Bericht

Royaume-Uni – United Kingdom – Vereinigtes Königreich

L'AFFECTATION ET LA PROTECTION DU TERRITOIRE RURAL – USE AND PROTECTION OF LAND IN THE COUNTRYSIDE – NUTZUNG UND SCHUTZ DES BODENS IM LÄNDLICHEN RAUM

Christopher Price
Director of Law and Policy, Country Land and Business Association (CLA)

A. General Background Information

1. How is your country positioned within the framework of the European Union (EU) or the European Economic Area (EEA) policies and legislation specifically in terms of rural territory?

For the purposes of this paper, the "country" is England and Wales. Although England and Wales are part of the United Kingdom the legal systems and rural policies in the other parts of the UK, Scotland and Northern Ireland, are significantly different and it would require a separate paper or papers to do justice to their perspectives.

The UK is a member of the EU and the EEA.

2. Is your country participating in other modes in European regional cooperation – if not European, which other geographical entities?

The UK is also a member of the Council of Europe.

3. Constitutional conditions for rural businesses. Are there constitutional rights safeguarding freedom of rural activities – what are the suppositions for this (ownership of land, land resources)?

There are no constitutional rights protecting rural activities as such. Those carrying out rural activities are protected in the same way as anyone else by general public law principles; the prohibition on public authorities acting in ways that are illegal, irrational or unfair.

The Human Rights Act 1988 gave direct effect to the European Convention on Human Rights in UK law. However it has had no significant specific implications for rural activities or provided any greater protection for landowners than existed under national law.

4.Is there a planning or allocation system for agriculturally suitable areas?

There is no allocation system as such. However there is the Agricultural Land Classification (ALC) which provides a method for assessing the quality of farmland so as to enable informed choices to be made about development proposals.

In essence the ALC divides land into five grades, with Grade 3 being divided into two sub grades 3a and 3b. The best and most versatile land is defined as Grades 1, 2 and 3a. This is the land which is the most productive for both food and non food uses.

Current land use planning policy, as set out in Planning Policy Statement 7 "Sustainable Development in Rural Areas" states that the presence of best and most versatile land should always be taken into account in development decisions, but it is to be balanced against other sustainability considerations such as biodiversity, landscape character and resource protection.

It is likely that this policy will be weakened in the near future, with the coming into force of the National Planning Policy Framework. This is explained in more detail below.

5.Describe briefly the system of authorities and courts which are decisive for matters of rural territory issues.

There is little in the way specialist courts. Civil disputes are determined by the general civil courts and criminal matters by the general criminal courts.

Public law cases are considered by a limited number of senior courts. With certain issues, such as planning and compulsory purchase, recourse to the courts may only be had after a public inquiry conducted by a government appointed inspector.

There is a more specialist tribunal which resolves certain disputes concerning land, particularly the valuation of land, but also the modification or discharge of restrictions on its use.

The only specific forum relating to rural issues is the Agricultural Lands Tribunal. It exists to resolve various issues that arise between agricultural tenants and landlords arising from tenancy agreements held under the Agricultural Holdings Act 1986. There is no recourse to the ALT under the Agricultural Tenancies Act 1995. These two tenancies are discussed in more detail below.

B. Rural Territory and Land Use

6. Is there a legal definition of rural territory in the legislation? If not, is there a political content of this concept and in what connections is it used?

There is no legal definition of rural territory.

The Office for National Statistics has a definition which is used for a variety of purposes. Geographical areas with settlements of over 10,000 people are defined as urban. Settlements with fewer people are defined as rural. Rural settlements are further sub divided into “Town and fringe”, “Village” and “Hamlet and isolated dwellings”.

Local authority districts are also divided according to whether they are urban or rural.

These classifications are used for a variety of purposes, but most of them relate to the provision of public services such as housing, schools, healthcare and transport.

7. Do you feel that agricultural practices and forestry should have a safeguard against environmentally based intervention – or should these practices have the same environmental position as any other operation or activity?

It is difficult to see why either agricultural practices or forestry should have any particular safeguards that do not apply in respect of other sectors. If either agricultural or forestry activities are causing, say, pollution then they should be subject to the same penalties as anyone else causing equivalent harm. There is no basis for agricultural exceptionalism in this regard.

However there are two circumstances in which environmental policy does justify differential treatment. The first is when the EU imposes higher environmental standards on its farmers than are imposed on farmers elsewhere and therefore puts European farmers at a competitive disadvantage. The restrictions on the use of biotech are an example of this.

The second situation is when farmers are required to provide public goods that benefit society as a whole, but which cannot be paid for through the market. Farmers rightly see their primary role as being the production of a plentiful supply of wholesome and nutritious food. Moreover, in view of increasing populations with increasing expectations, outputs need to increase. In essence farming needs to meet the global food security challenge.

At the same time though, recent decades have seen sharp declines in environmental quality. This is not just limited to the natural environment, habitats, biodiversity and natural resources, it applies just as much to the cultural landscape; the aesthetic and cultural aspects of the countryside. It is not unreasonable to expect governments to want to take steps to address these situations.

In many instances it is only farmers and other rural land managers who can actually take the necessary actions to reverse this decline. They can bring about significant improvements to biodiversity, landscape, water and soil quality and renewable energy.

If farmers are to this they though, they will need to follow courses of action that they cannot expect to be rewarded for through the market, and so if governments expect farmers and land managers to act in ways that are contrary to their economic interests they are entitled to expect to be paid by those governments for doing so.

As will be apparent, much of what is said here reflects the ongoing discussion about the future role of the Common Agricultural Policy.

8. General structure of land use planning: does it cover all areas (cities, countryside) or is there a sectoral approach (agriculture, forestry, nature conservation etc.)?

Land use planning in the UK covers all areas. It does not adopt a sectoral approach as such, but it does make a degree of specific provision for agriculture and forestry.

In general terms, the land use planning system is the main way in which habitats and environmentally valuable sites are protected. It achieves this in two particular ways. The first is by development planning and the second is by development control. The bulk of the legislation is contained in the Town and Country Planning Act 1990.

Development planning involves the Local Planning Authority, generally the county council, producing a planning policy for its area against which applications for planning permission may be assessed. The plan is based on government policies set out in planning policy statements and less formal guidance. Planning Authorities are required to have regard to these when producing their plans. However, all this policy and guidance is soon to be replaced by a National Planning Policy Framework (NPPF), which is intended to be less prescriptive than the current approach.

This is what the NPPF says about supporting the rural economy:-

Support the rural economy

81. Planning policies should support sustainable economic growth in rural areas by taking a positive approach to new development. Planning strategies should maintain a prosperous rural economy including policies to:

- *support the sustainable growth of rural businesses*
- *promote the development and diversification of agricultural businesses; and*
- *support sustainable rural tourism and leisure developments that benefit rural businesses, communities and visitors and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.*

Development plans must also accord with the requirements of the EU Habitats Directive, which is considered further below.

Development control is concerned with the determination of applications for planning permission and the taking of enforcement action in cases where unauthorised development is suspected.

Planning permission is required for, in general terms, any building operations or the making of any material change in the use of any land or building.

However, some forms of development that potentially have a direct impact on the protection of habitats are specifically excluded from the planning system. Firstly the use of land for agriculture or forestry is expressly said to not be development and converting land to those uses does not require planning permission,

Secondly, certain development is exempted from the need to make an application for planning permission if it falls within one of the classes in the Town and Country (General Permitted Development) Order 1995. The classes include agriculture and forestry. In most cases the rules relating to the class state that certain conditions must be complied with.

If an application is required, it is determined by the planning authority in accordance with the requirements of the local plan, unless "material considerations" indicate otherwise: Planning and Compulsory Purchase Act 2004. The authority may grant permission, refuse it, or grant it subject to conditions. If permission is refused, or the conditions considered unacceptable, the developer can appeal to the Secretary of State.

The planning authority may also require the developer to enter into a planning obligation under s.106 of the Town and Country Planning Act 1990 to make some provision relating to the development.

C. Position of Agricultural Units

9. In terms of property law, what is the position of agricultural units?

In terms of property law, agricultural units have the same status as other land holdings. The planning and environmental controls referred to elsewhere in this paper will obviously have a significant impact on the use of agricultural land, but there are no specific references to agricultural land.

10. In terms of land use planning, how are agricultural areas identified?

When producing its local plan, a local planning authority may chose to make specific provision for agricultural areas which they will define themselves. They are likely to be based to a large extent on the Agricultural Land Classification mentioned in the response to question 4 above, and various conservation designations.

11. What law is regulating lease of agricultural land? Are there specific rules on rural lease?

There are two distinct types of agricultural tenancies in England and Wales. In general terms tenancies granted before 31 August 1995 will be Agricultural Holdings Act (AHA) tenancies. Tenancies granted on or after 1 September 1995 will be Farm Business Tenancies (FBTs) under the Agricultural Holdings Act 1995.

The rules relating to AHA tenancies are far more prescriptive in nature than those concerning FBTs, which are primarily based on the principle of freedom of contract in the same way as a conventional business tenancy.

The two tenancies reflect different policy objectives. The earlier, AHA, tenancies focus on the need to improve agricultural productivity and efficiency. For example, the tenant has the right to require his landlord to provide equipment to improve efficiency and has rights to freedom of cropping and disposal of produce. The landlord, on the other hand, has the right to enforce rules of good husbandry.

FBTs reflect the needs of a changed world. We now have surpluses in most agricultural sectors and as a result many farmers are keen to diversify into other activities and moreover society has increasing expectations that farmers should be providing an increasing range of environmental public goods.

What follows sets out some of the more significant differences and similarities between the two tenancies.

AHA tenancies may only be terminated on a limited number of grounds. The most common are Case B, the land is required for a non agricultural use for which planning permission has been given, Case D, the tenant has refused to comply with a notice to pay rent or a notice to remedy; Case E the landlords interest has been materially prejudiced by an irremediable breach of a term of the tenancy agreement by the tenant which is not inconsistent with the tenants duty to farm the land in accordance with the principles of good husbandry;

Case F, the tenant has become insolvent and Case G the tenant has died and three months have passed.

There is no security of tenure with FBTs. Tenancies for two or fewer years expire by passage of time. Longer tenancies terminate on the giving of 12 or more months notice ending on an anniversary of the term date.

The right of succession is another difference between AHA tenancies and FBTs. In general terms the right of succession only exists in respect of AHA tenancies granted before 12 July 1984. To succeed the prospective tenant must satisfy both eligibility and suitability criteria. To be eligible he must be a close relative of the deceased tenant, not be in occupation of a commercial unit of agriculture and the principal source of his livelihood must be from agricultural work on the holding. When deciding if the applicant is suitable, the prospective tenants training and experience, age, health and financial standing are taken into account as are the landlord's views on his suitability. There is no right of succession to a FBT.

Rents and rent reviews are also treated differently. With an AHA tenancy either the landlord or tenant can serve a notice on the other requiring the rent to be referred to arbitration. The arbitrator then determines what the rent should be on the basis of the rent at which the holding might reasonably be let by a prudent and willing landlord to a prudent and willing tenant" taking into account all the relevant factors including the terms of the tenancy, the character and situation of the holding, its productive capacity and the current levels of rent for comparable lettings.

The basic point here is that the arbitrator should take into account what the tenant could have done to improve the profitability of the holding, not what the tenant actually did. In any event certain factors are not taken into account including the value of any improvements made by the tenant.

With FBTs the intention was to give the parties greater freedom of contract to agree rents and rent reviews without statutory interference. They can agree the initial rent without restriction. There is provision for disputes to be arbitrated but this is intended very much as a fall back. The parties are entitled to contract out of this on certain limited grounds.

The position regarding FBTs was modified in 2006 so that the parties can now agree to avoid the statutory mechanism altogether save that they cannot agree to upwards only reviews.

12. Under the CAP subsidy regime, how is the relationship between land lord and tenant regulated?

As is the case across the EU, to claim Pillar 1 payments the person must be a farmer and must hold SPS entitlements. He must have an eligible hectare of land for each entitlement he claims payment on and the land must be at his disposal on the relevant day (usually 15 May) of the scheme year.

To qualify for payment the farmer must respect the specified Statutory Management Requirements and must keep the land in Good Agricultural and Environmental Condition.

A farmer is defined under Council Regulation (EC) No 73/2009 as person who carries out an agricultural activity 'agricultural activity' means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition.

The rules concerning Pillar 2 agri environment scheme payments are conceptually rather different to those concerning single payment.

Art 39 of Council Regulation 1689/2005 states.

Agri Environment payments shall be granted to farmers who make on a voluntary basis agri environment commitments. Where duly justified to achieve environmental objectives agri environment payments may be granted to other land managers

The word "farmer" is not defined in the Regulation; however there is a general obligation in art 2 to ensure consistency with measures implemented under direct and other support schemes of the CAP.

As such it is for the Member State which comes up with such schemes as it thinks appropriate and then seek approval from the Commission. Accordingly it is the Member State, not the EU legislators that set the rules.

In England and Wales it has been common practice for the landlord to claim the Pillar 2 agri environment payment and for tenant to claim the Pillar 1 Single Payment.

Over the years this practice has proved satisfactory for both parties. The tenant who actually produces the food is supported, and the landowner who

protects the environment is rewarded for his efforts. However in recent months this has been challenged by the EU Court of Auditors.

The Court of Auditors exists to ensure the proper allocation of EU funds, the disbursement of those funds and the propriety of accounting procedures. Each year it produces a report on these issues.

In its report for 2006, the Court stated, at paragraph 5.21, in its comments on the administration of the CAP that:-

The UK authorities consider that, depending on the terms of the letting agreement, landlords may qualify for SPS and/or rural development aid for land let to and farmed by the lessee. According to EU law however, only the farmer, i.e. the person disposing of the land and exercising an agricultural activity on the land is entitled to SPS payments and rural development aid

In its response the Commission said, at paragraph 5.21:-

The Commission shares the Courts interpretation of the relevant EU law.

One eligibility condition is to exercise an agricultural activity.

The Member States have to identify who is considered as active farmers (having the right for entitlements). If the landlord bears the economic risk of the farming activity, it is not excluded to consider him exercising an agricultural activity'.

As a result the practice of "dual claiming" is under threat. It will probably result only the tenant, as the actual farmer, being able to claim the payments. The likely result is less protection for the environment and agreements having to be modified so that the changes are reflected in changes to the rent.

PART II

A. Rural Business Law

13. Are there political instruments for the development of rural areas?

No.

14. Is rural development part of your country´s regional development programmes?

Not specifically so. The current government is hostile to the concept of regions, and many regional administrative structures have been abolished in the last year.

In England there is the Regional Growth Fund (RGF). This is a £1.4bn fund operating from 2011 to 2014. Its stated aim is to support projects and programmes that lever in private sector investment so as to create economic growth and sustainable employment. It has a particular aim of helping those areas and communities currently dependent on the public sector to make the transition to sustainable private sector-led growth. .

Decisions regarding support and prioritisation are made by a ministerial group chaired by the Deputy Prime Minister and which includes the Secretary of State for the Environment Food and Rural Affairs, which should ensure that rural development is given some consideration.

15. In scarcely settled regions, are there specific models for supporting viability of villages and population?

There are no specific models.

16. Is sustainability an objective for land use planning in rural areas?

Sustainable development is a general objective of the land use planning system. S. 39 of the Planning and Compulsory Purchase Act 2004 requires Local Planning Authorities to "have regard to the objective of contributing to the achievement of sustainable development" when preparing their development plans.

As noted above the National Planning Policy Framework requires that planning policies should support sustainable economic growth in rural areas by taking a positive approach to new development

B. Nature Conservation and Rural Business

17. Nature conservation areas are often created on state-owned land. In your country, can agricultural land or other land in economic rural use be taken for conservation purposes?

There is very little land owned by the state for conservation purposes. There are laws that permit the state to compulsorily acquire land when the owner has failed to conserve it, but they are very rarely used.

There are, however, a number of ways in which areas of land can be designated for conservation purposes and within the area concerned, a variety of restrictions on the activities which may be carried out apply.

SSSIs

Sites of Special Scientific Interest (SSSIs) are the designation having the biggest impact.

There are over 5,000 SSSIs in England and Wales, between them covering well over 1 million hectares. Although they were first introduced in 1949, their purposes have changed significantly over the years. Having begun as little more than a material consideration when determining planning applications, they now serve to protect areas which are deemed to be particularly important in conservation terms by ensuring the landowners are made aware of the important features and preventing operations which are likely to damage those features going ahead unless the consent of the relevant conservation body, Natural England or the Countryside Council for Wales, has given its consent.

The law concerning SSSIs is now found in sections 28 – 28R of the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000.

The relevant conservation body is obliged to notify as SSSIs those areas which are, in the body's opinion, of special interest by reason of their flora, fauna or geological or physiographical features. The notification must be given to the local planning authority, every owner and occupier of the land and the Secretary of State. In addition the notification must be published in at least one local newspaper circulating in the area in which the land is situated.

The notification must specify a time (being not less than 3 months from the date of the giving of notification) within which any representations or objections concerning notification must be made.

The notification must also include 3 specific pieces of information:-

1. the flora, fauna or geological or physiographical features by which the land is of special interest;
2. any operations appearing to the conservation body to be likely to damage the flora or fauna or those features ("OLDs");
3. a statement of the conservation body's views about the management of the land (the "VAM" statement)

Once a notification has been given the conservation body has 9 months within which to either withdraw or confirm it.

A notification is a local land charge, meaning that anyone acquiring the land will be made aware of the designation.

This period is to allow the conservation body time within which to consider the representations received. The notification may be confirmed with modifications but these may not extend the area of the SSSI nor add to the list of OLDs.

The Act does not provide a right of appeal. As such any challenge to a designation must be by way of Judicial Review. However, the courts have always taken the view that it is the conservation bodies which are charged with discerning whether the features on a particular site are sufficiently "special" and so have refused to substitute their own views on the conservation needs for those of the bodies. R. (Aggregate Industries UK Ltd) v English Nature (2002)

The decision whether or not to designate a particular site is made in accordance with the "guidelines for the selection of biological SSSIs" produced by the Joint Nature Conservation Council. However the status is significant. As guidelines, they can be departed from in appropriate circumstances: R. (Boyd) v English Nature (2003)

Challenges may be possible on procedural grounds particularly if there has been inadequate consultation or consideration between notification and confirmation.

However, the statutory procedure has been held to be compliant with the requirements of the Human Rights Act 1998 and the European Convention on Human Rights: R. (Aggregate Industries UK Ltd) v English Nature.
The control of operations likely to damage ("OLDSs") is the principal way in which SSSIs are protected. Under section 28E the owner or occupier of any land included in a SSSI must not "carry out, or cause or permit to be carried out," any OLD unless notification of a proposal to carry out the operation has been given to the conservation body and the body has given its consent.

This consent may either be express, in response to a specific application, or the operation may be authorised under a management agreement entered into with the relevant conservation body.

It is increasingly the case that management agreements cover a whole range of issues concerning the management of the land, not just the giving of consents to OLDs.

So as to ensure more positive management of the SSSI, the conservation body can, under s.28J, make a management scheme for conserving or restoring the site. The owners and occupiers must be consulted before it is confirmed.

If it appears to the conservation body the owner or occupier is not giving effect to the requirements of the management scheme and that as a result the special features of the site are not being satisfactorily restored or conserved it may serve a management notice under s. 28K.

A management notice requires the person on who it is served to do such things as it requires before the dates specified.

However, no notice may be served unless it is satisfied that it cannot conclude an agreement on reasonable terms with the owner or occupier as to the management of the land in accordance with the scheme.

Any person served with a management notice may appeal to the Secretary of State under s. 28L.

Statutory Undertakers, referred to as "s.28G authorities" have a number of specific duties and obligations in respect of SSSIs that differ from those of conventional owners and occupiers. Reference should be made to the Act for further details.

NATIONAL PARKS

National Parks were introduced by the National Parks and Access to the Countryside Act 1949. Nevertheless, much of the law concerning their functions and administration is found in other legislation, primarily the Wildlife and Countryside Act 1981 and the Environment Act 1995.

The purposes of a national park are as follows. "Conserving and enhancing the natural beauty, wildlife and cultural heritage" of the area concerned and "promoting opportunities for the understanding and enjoyment" of their special qualities.

As may be assumed, these twin objectives can come into conflict. Recreation is not always compatible with conservation. Walkers let alone horse riders and trail bikers can cause immense harm to biodiversity. In the event of a direct conflict between amenity and conservation, greater weight is to be given

to conservation under what is known as “the Sandford principle”; named after Lord Sandford’s report of the National Park Policies Review Committee.

National parks are designated by the same conservation bodies as are responsible for designating SSSIs. An area may be designated a national park if it appears to the conservation body that by reason of

(a) their natural beauty;

(b) the opportunities they afford for open-air recreation, having regard both to their character and to their position in relation to centres of population,

it is especially desirable that the necessary measures shall be taken for the purposes mentioned.

Following Meyrick Estate Management Limited v Secretary of State for the Environment, Food and Rural Affairs (2005). The definition of “natural beauty” was elaborated upon. The concern was that the phrase did not allow areas such as managed parklands to be included.

Accordingly, the following new section was added.

Natural England may –

(a) when applying sub-section (2)(a) in relation to an area, take into account its wildlife and cultural heritage,

(b) when applying sub-section (2) (b) in relation to that area, take into account the extent to which it is possible to promote opportunities for the understanding and enjoyment of its special qualities by the public.

National Parks are administered by National Park Authorities. The rules governing their administration are contained in the Environment Act 1995.

The members of a national park board are made up of a combination of local authority and ministerial appointments. Each board has between 15 – 30 members.

The main impact of national park status for those living and working in a relevant area is the differences with the planning system. The national park is the local planning authority for its area.

As such, the authority is entitled to prepare its own planning policies which will inevitably be much more restrictive than those which exist in respect of other rural areas.

Moreover, the permitted development rules do not apply in the same way in a national park.

Each national park has its own national park management plan the purpose of which is to "formulate its policy for the management of the relevant park and the carrying out of its functions in relation to that park. The plan must be reviewed every 5 years.

Further controls apply in respect of agricultural activities. Under the Wildlife and Countryside Act 1981 it is an offence to plough the land, convert it into agricultural land or carry out on it other agricultural or forestry operations which have been specified as likely to affect its character or appearance.

These restrictions do not apply if the park authority has given its consent or if the land in question has been agricultural land within the last 20 years.

A National Park Authority also has the power to make byelaws. These can be for: the preservation of order, the prevention of damage to the land or waterways or anything thereon or therein and for securing that the persons resorting thereto will so behave themselves as to avoid undue interference with the enjoyment of the land or waterway by other persons.

The byelaws must be confirmed by the Minister in the same way as with other byelaw-making powers.

AREAS OF OUTSTANDING NATURAL BEAUTY "AONBs"

An AONB is an area which is outside a National Parks but which is of such outstanding natural beauty that it is desirable that special protective measures should apply to it.

The relevant law is set out in Part IV of the Countryside and Rights of Way Act 2000.

AONBs are, as a result of the 2000 Act very similar to national parks. The principle difference is that in an AONB, the local authorities retain the bulk of their powers rather than them being transferred to some separate authority.

AONBs are designated by the two national conservation bodies. When doing so they are obliged to consult with all the local authorities in the areas concerned. The designation only comes in effect once it has been confirmed by the Secretary of State or National Assembly as the case may be.

The significance of an AONB is the impact it has on a number of public authorities.

The national conservation bodies have similar duties to those which apply in national parks. They give advice on development matters, and are to be consulted on the development plan, access agreements and access orders.

More generally, a number of public bodies including Government ministers, statutory undertakers, and local authorities are obliged when exercising or performing any public function in relation to, or so as to affect land in an AONB to have regard to the purpose of conserving and enhancing the AONB. This clearly means that controls may be imposed on land outside an AONB if there will be an effect on the land inside.

The Secretary of State or the Welsh Assembly Government may establish a Conservation Board to carry out certain functions within an AONB. The relevant national conservation body must be consulted as must all the local authorities in the area. The Board can only be created if the majority of local authorities agree.

At least 40% of the board members must come from authorities within the AONB.

A board may be given various functions carried out by local authorities, or those functions may become exercisable concurrently by the local authority and the board. These functions may not include the majority of powers under the Planning Acts.

The general purpose of a board is to have regard to

(a) the purpose of conserving and enhancing the natural beauty of the AONB, and

(b) the purpose of increasing the understanding of and enjoyment of the special qualities of the AONB,

but if it appears to the board that there is a conflict between those purposes, they are to attach greater weight to the purposes mentioned in paragraph (a).

A board has the power to do anything which in its opinion is calculated to facilitate or is conducive or incidental to the accomplishment of these purposes mentioned above. However it cannot do anything which contravene

any restriction or raise money whether by borrowing or otherwise except as specifically authorised.

Every board is required to prepare a management plan which formulates their policy for the management of their AONB and for the carrying out of their functions in relation to it.

If there is no board, the plan is produced by the relevant local authority. The relevant local authority is either the authority which covers the whole area or, if a number of authorities cover it, all those authorities acting jointly.

An AONB management plan does not have any statutory force, but it will be a material consideration for planning purposes, and public bodies will be required to have regard to it when discharging their duty to have regard to conserving and enhancing the natural beauty of an area.

18. Old villages often have a cultural value which may invite for tourism and other business, Has this approach relevance for your regional policies or land use planning?

The cultural and economic value of old villages would be relevant material considerations for land use planning purposes, but the weight given to those factors would depend on the circumstances.

19. Tourism in natural areas may affect and harm natural values but bring improvement for local economies. What kind of balancing instruments does your system provide for?

As discussed above in a National Park what is known as “the Sandford principle” applies. This holds that in the event of a direct conflict between amenity and conservation, greater weight is to be given to conservation. The full principle is as follows:-

"National Park Authorities can do much to reconcile public enjoyment with the preservation of natural beauty by good planning and management and the main emphasis must continue to be on this approach wherever possible. But even so, there will be situations where the two purposes are irreconcilable. Where this happens, priority must be given to the conservation of natural beauty."

20. Are there any restraining factors available? Is there a distinction between natural forests (involving values of biodiversity) and economic forests*?*

There is no distinction; until very recently forests had almost no economic use and so there was no policy issue to consider. Nowadays the emphasis is put on the multi functionality of forests. In general a forest which is managed so

as generate a financial return for its owner will provide a variety of environmental benefits too.

21. Is it possible for rural land owners to enter agreements with nature conservation authorities in order to limit damage caused by their land use (land use restrictions involving temporary compensation)?

Yes. They are as follows:-

Environmental Stewardship

Environmental Stewardship is co-financed by the CAP and Member State. There are three forms of Environmental Stewardship:-

- Entry Level Stewardship (ELS)
- Organic Entry Level Stewardship (OELS)
- Higher Level Stewardship (HLS)

ELS is the basic scheme open to all farmers and land managers in England. ELS agreements are for five years. Around 60% of England's agricultural land is now covered by the scheme. .

ELS operates on a simple points system. In general the farmer must achieve 30 points per ha The points are based on a number of different environmental management options, suitable for most farm types such as hedgerow management, providing wild bird cover and creating buffer strips.

In return for the farmer receives £30 per hectare, per year, for the whole farm (a lower rate applies to larger parcels of land above the Moorland Line).

So long as the points target is met, the scheme conditions satisfied and the agreed options delivered funding is automatic.

OELS is the organic strand of ELS. It is geared to organic and organic/conventional mixed farming systems, and is open to all farmers registered with an organic inspections body that are not in an existing organic aid scheme.

There are specific uplands variations of both ELS and OELS.

HLS involves more complex types of management. Applications are assessed against specific local targets and agreements will be offered where they meet these targets for wildlife, landscape, the historic environment and resource protection and represent good value for money. Outside these areas, we will consider all other applications depending upon the current national priorities and features present on the particular holding.

The scheme is currently being targeted in 110 areas across England.

C. Land Use and Development

22. The EU and also other international organisations support regional development. The EU has several development programmes with financial support (e.g. Life).– Please give a short report about the importance and content of these instruments for your country and its regions.

LIFE is probably the most significant programme outside the CAP. Its achievements under the various heads are as follows:-

Environment policy and governance – since 2009 eight projects have started in the UK representing a total commitment of E 16.4 million of which the EU contributed E8.1 million. The projects are focussing on sustainable building, coastal management, pollution control, and clean technologies. The beneficiaries are two NGOs two regional authorities one research institution and one professional organisation.

Nature and Biodiversity - Nine projects have been co-financed since 2009. These represent a total investment of €26.0 million, of which the European Union will contribute €14.9 million. They are focussing predominantly on habitat conservation (active blanket bogs, “machair” coastline, alkaline and calcareous fens, etc.), but also of species (great bustard, lesser horseshoe bat, freshwater pearl mussel). These projects will be implemented by NGOs and one regional authority.

Information and Communication Since 2009 the European Commission has approved four projects under the Information and Communication component in the United Kingdom. These projects represent a total budget of €6.0 million, of which the European Union will contribute 50%. They have a foreseen duration of 27 to 37 months and will be implemented by two NGOs, one SME and one public enterprise.

The projects include: testing a 'one-stop-shop' approach for giving consumers advice about sustainable consumption of water and energy resources and improving stakeholder participation in farmland bird conservation via a variety of awareness raising initiatives.

23. The EU Natura 2000 network supports and sets mechanisms especially for the protection of biotopes and sites. In what manner has this regulation been transposed and administrated in your country (especially art. 3 and 6 of the Habitat Directive 1992)?
Further protections apply if the site is designated a Special Protection Area (SPA) under the EU Birds Directive, or a Special Area of Conservation (SAC) under the EU Habitats Directive. Together these sites make up what is known as the Natura 2000 network.

Although SPAs and SACs are designated under very different procedures, once designated the way in which they are protected is very similar.

Designation does not, in itself, impose any direct restrictions or obligation on the owner or occupier. Rather the member state is required to implement measures to achieve certain objectives. In the UK this is done primarily through the use of SSSIs as explained above, subject to certain additional requirements under the Conservation (Natural Habitats) Regulations 2010, (the "Habitats Regs.")

The main difference between a Natura 2000 site and a conventional SSSI is in the way an application for consent to carry out certain OLDs are determined. The requirements are set out in Art 6 of the Habitats Directive.

If a person wants to carry out what is called a "plan or project" that is likely to have a significant effect on a Natura 2000 site, and which is not directly concerned with the management of the site, the conservation body must carry out an "appropriate assessment" of the impact on that site. Consent can only be given the body is satisfied that there will be no adverse impact on the integrity of the site.

What constitutes a "plan or project" has been held by the European Court to be capable of having a very wide definition. It is certainly the case that the UK conservation bodies interpret it very widely.

The requirements of an "appropriate assessment" were considered in the Waddenzee case (C-127/02) [2004]. This held that a site will not be adversely affected only if it can be shown that there is no serious scientific doubt that there will be no adverse effect. This effectively means that the person wanting to carry out a plan or project is obliged to prove a negative.

Of course there will be times when it will be necessary to allow a plan or project to go ahead even if doing so would have an adverse effect. Accordingly, the Secretary of State (not the conservation body) has the power to give consent in circumstances in which there are" imperative reasons of overriding public interest" ("IROPI"). In most cases these reasons can be

social or economic, but in cases where there priority species or habitats present, the grounds are far more limited.

If IROPI does exist, the member state is required to create some additional habitat for what has been lost.

24. To what extent does your Natura 2000 list of designated areas cover land in agricultural use (including olive oil and wine areas)?

This information is not available. The UK is approximately 24 m ha in size. Of which approximately 18m ha are agricultural land. 2. 8 m ha of the UK are designated SACs and 2.5m ha are designated SPAs.

It is not known how much of the agricultural land is covered by either a SAC or a SPA. Moreover in many cases a particular area of land will be covered by both designations.

25. Are there measures for the protection or reconstruction of natural sites damaged by forest fires?

No

26. What instruments does your system provide for, in order to protect rural waters and natural areas against diffuse (non-spot) emissions caused by local activities?

The controls on diffuse pollution can be divided into two classes: preventative measures and nitrate vulnerable zones

The main preventative measures are set out in The Water Resources (Control of Pollution) (Silage, slurry and Agricultural Fuel Oil) (England) Regulations 2010. These make it a criminal offence to posses or store slurry and silage other than in facilities that comply with the terms of the Regulations. Most of the requirements concern the design and location of the facilities.

A person who proposes to have custody or control of silage slurry or fuel storage area constructed or enlarged after the Regulations came into force is required to notify the Environment Agency 14 days before doing so.

All this applies whether or not any pollution incident actually occurs.

As elsewhere in EU, the eutrophication of surface and ground water is regulated by the terms of the Nitrates Directive. All member states were required to designate those zones in which nitrate levels are in danger of exceeding 50 mg/litre and those areas in which natural waters are showing signs of nitrate enrichment.

The UKs implementation of the Directive has been challenged twice before the European Court of Justice.

Firstly in R V Secretary of State for the Environment ex p Standley (1999) it was argued that that the UK Regulations transposing the Directive failed to

take account of nitrate levels attributable to sources other than agriculture. This was disproportionate and discriminatory. The Court held otherwise; agriculture made a sufficient contribution to excess nitrate levels to justify the controls proposed.

In European Commission v UK (2000) the initial NVZ designations were held to be in breach because the UK had only considered the quality of drinking water that exceeded the limit, not all surface and groundwater.

Within the designated NVZs farmers are prohibited from applying manure other than in accordance to specific criteria and are required to limit the application of inorganic fertilisers as required by the Directive. The precise obligations are set out in an action programme drawn up for each site.

27. What planning instruments do you have for villages and other populated rural areas?

There is nothing specific. The general position is explained elsewhere in this paper.

28. How are rural actors (local or their organisations) involved in the development of programmes and land use plans?

Most of the public authorities at both national and local level having responsible for rural policy regularly consult with relevant stakeholders, giving such weight to the views put forward as they think fit. The major lobbying organisations do not experience any great difficulty in find the opportunity to put their views forward to the decision makers.

Final Remarks

You may here give your thoughts about the situation in your country, the ongoing discussion and future aspects. Has traditional countryside a future?

The countryside is increasingly about more than farming, and a considerable amount of what farming there is depends on CAP support for its survival. As a result traditional countryside is not sustainable in the long term.

The important point is that we have a prosperous countryside providing what society wants from it.

It needs to be made easier for farmers to diversify into other activities. Here the biggest obstacle is the land use planning system. It is too slow, too bureaucratic and too expensive. Farmers do not want to see the countryside covered in concrete, but they do want the system to be made a little easier. Reforms with this aim in mind are currently being proposed and debated and it remains to be seen how successful they are.

The reform of the CAP is likely to have a significant impact on the state of the countryside. Whilst it seems at the time of writing that the budget is secure,

there are a number of other factors that cause concern. The reformed policy needs to credible in the eyes of both farmers and tax payers.

European civil society is demanding ever increasing environmental standards. The impact of mandatory greening should help with this, but there must be concerns about “green wash”, the possibility that more environmental benefits will be claimed than are delivered.

Payment capping may discourage farms from amalgamating and taking advantage of economies of scale. The possibility of large farms being able avoid capping by offsetting an amount against labour costs may increase employment in rural areas, but it will not encourage a modern, efficient approach.

The suggestion that the definition of an “active farmer”, the person entitled to claim support under the CAP, should be narrowed appears to be in conflict with the objective of encouraging farmers to deliver non agricultural public benefits and in any event will be administratively difficult.

The successful resolution of these issues may not provide a traditional countryside, but it should produce one we can take pride in.