

**PARLIAMENTARY ENVIRONMENTAL AUDIT COMMITTEE**  
**and**  
**MINISTERIAL CORRESPONDENCE**



The Environmental Audit Committee, an all-party 16 member House of Commons Select Committee chaired by Mary Creagh MP, has conducted an inquiry into the Government's 25-Year Environment Plan 'A Green Future: Our 25 Year Plan to Improve the Environment', and has published the many written submissions made to it.

For the written evidence submitted by Save Penwith Moors please see

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/25-year-environment-plan/written/78935.pdf>

For the Environmental Audit Committee web site go to

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/>

For all over 100 written evidence submissions on the Government 25-Year Environment Plan go to <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2017/25-year-environment-plan-17-19/publications/>

## MINISTERIAL CORRESPONDENCE

Prior to our submission to the Audit Committee, correspondence was sent on 3rd November 2017 to the Rt Hon Michael Gove MP, Secretary of State for Environment, Food and Rural Affairs. This included two files (now slightly re-designed in A5 horizontal):

- (1) [Individual land management agreements and lack of public consultation](#)
- (2) [Lack of any audits for completed environmental stewardship agreements](#)

Dear Secretary of State

### AGRI-ENVIRONMENT SCHEMES

I am writing to you as co-ordinator of the 900+ Facebook membership of the environmental action group, Save Penwith Moors. We were set up in July 2008 to oppose the enclosure – under Natural England led schemes – of a few areas of local open access heathland we selected on the basis of their being some of the most popular locations for local and tourist recreation. The sites chosen are all within an Area of Outstanding Natural Beauty and some are within a World Heritage Site and contain world famous archaeological sites.

There are two main issues we would like to bring to your attention in the hope that action will be taken to rectify the following problems and applied to future agreements.

(1) During the course of our campaign we – and many others within local communities and from outside the Duchy – have been extremely concerned about the lack of any public consultation by Natural England which, we consider, is in direct contravention of the Aarhus Convention. Please see Document 1 Individual land management agreements and lack of public consultation.

(2) Now that one of the West Penwith Higher Level Stewardship agreements ended on 31st July 2017, after a cost of about £250,000, we are astonished that there will be no audit to determine the success – or otherwise – of this expenditure of public money. Please see Document 2 Lack of any audits for completed Environmental Stewardship Agreements.

I hope that rectifying these two issues will go some way towards honouring the current mantra of “public goods for public money” at a time when significant cuts are being made to public services.

Thank you

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On 10th December 2017 a response was received by Derek Thomas MP (St Ives Constituency) from George Eustice MP, Minister of State for Agriculture, Fisheries and Food, in reply to my letter to Michael Gove.

He noted that Natural England had engaged with SPM “extensively” over a ten year period and that NE had previously answered enquiries about the application of the Aarhus Convention. In relation to public consultation for the proposed new scheme for Carnyorth Common, he correctly stated that SPM had been invited to comment and that the new scheme, once confirmed, would begin on 1st January 2018. [But note, the local community in general were not consulted.]

Further correspondence was sent by SPM to George Eustice on 20th January 2018 expressing disappointment at his reply “much of which appears to be a recycled version of Natural England’s previous dealings with myself as co-ordinator and spokesperson for the 900+ members of our Facebook group, as well as many others who are not subscribed to Facebook.” He was asked to request the Secretary of State to ensure that public consultation for all individual Countryside Stewardship agreements, as well as a final independent audit to ensure public money has been spent for public benefit, are included in all new Countryside Stewardship agreements.

Despite several attempts by our local MP to get a response, nothing was received until the 9th May 2018. This letter was from the Ministerial Contact Unit at DEFRA (see below).

Dear Mr Ian McNeil Cooke,

Thank you for your letters of 20 January to the Secretary of State and George Eustice about countryside stewardship schemes. I have been asked to reply and apologise for the delay.

Your suggestions on individual agreement audits and consultations will be considered as part of the consultation on future agri-environment schemes.

The government will also be providing a summary of responses, in due course, to the open consultation published by the Secretary of State on 27 February. This, following a ten week consultation period to seek the views of all interested stakeholders ahead of publishing plans for the Agriculture Bill.

It now remains to be seen if our submissions have any effect and be incorporated into new agri-schemes.

# INDIVIDUAL LAND MANAGEMENT AGREEMENTS AND LACK OF PUBLIC CONSULTATION



Notice placed on access points of Carnyorth Common (St Just) in 2009 but later removed as considered to be potentially intimidating to visitors.

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Carnyorth Common – new gates installed in 2008 across a public right of way to Tregeseal Stone Circle obstructed by a herd of cattle.



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## INTRODUCTION

01 The motivation for this document was the lack of any meaningful engagement or consultation by Natural England during their role as lead partner in the northwest European HEATH Project that ended in December 2008.<sup>1</sup> This Project planned and installed many kilometres of new barbed wire fencing, dozens of gates, and a number of cattle grids, on previously open access heathland – most of which is in an Area of Outstanding Natural Beauty [AONB] and/or a World Heritage Site [WHS] – and containing numerous scheduled ancient monuments.

02 This lack of any initial local consultation was then compounded by the setting up of agri-environmental agreements on the same stock proofed locations — many of which are prime recreational areas for both locals and tourists — that involved the introduction of grazing stock for the first time after many decades.

03 The expressed opinion of Natural England, the relevant public authority, is that it “does not consider individual land management agreements to be subject to the Aarhus Convention”.<sup>2</sup> It is this opinion that we now challenge and, although it obviously has

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<sup>1</sup> <http://3b.nweurope.eu/page/projet.php?p=&id=601>

<sup>2</sup> Email dated 29th August 2014 from [REDACTED] (NE) to Ian Cooke (SPM)

nationwide significance in view of new Countryside Stewardship agreements, in this submission I have concentrated on West Penwith (the Land's End Peninsula, Cornwall) — the area where I have lived for almost half a century.

## CONSULTATION

1.1 The UK government consultation on the implementation of Common Agricultural Policy reform in England after Brexit ran from 31 October 2013 to 28 November 2013<sup>3</sup> and consisted of about 47 questions.<sup>4</sup> There were approximately 390 organisational respondents<sup>5</sup>

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<sup>3</sup> [https://consult.defra.gov.uk/agricultural-policy/cap-consultation/consult\\_view/](https://consult.defra.gov.uk/agricultural-policy/cap-consultation/consult_view/)

<sup>4</sup> DEFRA Consultation: The Implementation Of Cap Reform In England, November 2013 Defra Consultation Questions <http://www.theheritagealliance.org.uk/tha-website/wp-content/uploads/2014/07/131126-DEFRA-Consultation-on-Implementation-of-the-CAP-Reform-in-England-THA-response.pdf>

<sup>5</sup> Consultation on the implementation of CAP reform in England - Summary of responses and government response, December 2013 Annex B page 88  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/267987/cap-reform-sum-resp-201312.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267987/cap-reform-sum-resp-201312.pdf)

and, apart from numerous nationwide organisations,<sup>6</sup> there were some 12 organisations specific to Cornwall.<sup>7</sup>

1.2 Altogether there was a total of 4928 responses of which 4498 were from individuals. About 60 participants, including 32 from Farming & Horticultural and 7 from Local Authority Government, but no ‘Individuals’, attended the regional workshop South West (Truro).<sup>8</sup>

1.3 This national consultation might be fine to determine the over-arching policy of the new Countryside Stewardship [CS] scheme — formerly known by the acronym of NELMS — but does not give local communities the opportunity for any input once specific CS

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<sup>6</sup> including the Campaign to Protect Rural England; National Association for Areas of Outstanding Natural Beauty; National Farmers' Union; Open Spaces Society; Royal Society for the Protection of Birds; Visit England; English Heritage; National Trust and the Country Land & Business Association

<sup>7</sup> Clay Country and West Cornwall Local Action Groups; Cornish Heritage Safaris (Ltd); Cornwall Ancient Tree Forum; Cornwall and Isles of Scilly Local Nature Partnership; Cornwall AONB Partnership; Cornwall Council; Cornwall and Isles of Scilly Local Enterprise Partnership; Cornwall Countryside Access Forum; Cornwall Ramblers; Cornwall Rural Community Council; Cornwall Wildlife Trust; Farm Cornwall CIC.

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/267987/cap-reform-sum-resp-201312.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267987/cap-reform-sum-resp-201312.pdf)

locations are decided upon. [NOTE: The planning and consultation process for NELMS falls well within the period for UK Aarhus compliance.]

1.4 Natural England maintain that it is not possible for themselves, or Defra, to directly address every group or interest party when undertaking this type of consultation.<sup>9</sup> This is understandable, yet both local and national Natural England officials – as well as successive ministers and others at Defra – had been made well aware since mid-2008 of the high degree of local concern and opposition to aspects of various agri-environment schemes in West Cornwall as communicated to them by the action group, Save Penwith Moors.

1.5 It should be noted that the many previous agri-schemes planned and carried out in West Penwith, as well as the large-scale stock proofing activities undertaken under the HEATH Project during 2008,<sup>10</sup> only carried out one public consultation when legally

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<sup>9</sup> Email dated 29th August 2014 from [REDACTED] (NE) to Ian Cooke (SPM)

<sup>10</sup> So far the [HEATH] project has installed over 40km of fencing, 2km of Cornish hedging and over 90 gates in order to make sites stock proof. In addition to this over 25Ha of scrub and 15Ha of bracken have been cleared and over 10km of firebreaks cut. Works have commenced, or are due to commence, on 33 sites, representing over 3000 Ha of lowland heath sites in West Cornwall, with the aim of introducing better management practices through the re-introduction of grazing and scrub/bracken management. [Natural England *The HEATH news*, issue 3 summer 2008]

required to do so – i.e. when registered common land was involved at Nine Maidens Common.

1.6 In the case of Carnyorth [at that time unregistered] Common, the local Town Council, after previous oral submissions by both Save Penwith Moors and Natural England, resolved that:

“Whilst acknowledging the need for some form of management of Kenidjack Common [aka Carnyorth Common], the Town Council feels that the proposals as put forward by the Heath Project, particularly regarding the erection of fencing, stiles and gates, will have an adverse effect on access and tourism.” There were 8 in favour, 2 against and 1 abstention.<sup>11</sup>

However, no notice was taken of this democratic decision by elected councillors and stock proofing began about a month later despite this area being almost entirely a Scheduled Ancient Monument<sup>12</sup> within an AONB and World Heritage Site.

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<sup>11</sup> <http://www.stjust.org/stjusttc/wp-content/uploads/2013/12/2008-sept-29-mins.pdf>

<sup>12</sup> Cornwall Council Interactive Map at <https://map.cornwall.gov.uk/website/ccmap/?zoomlevel=7&xcoord=138341&ycoord=32758&wsName=ccmap&layerName=Sites%20and%20monuments%20record%20-%20points:Sites%20and%20monuments%20record%20->

## THE AARHUS CONVENTION

2.1 The Aarhus Convention is named after the Danish city of Århus (or Aarhus), where it was adopted under the auspices of the United Nations Economic Commission for Europe. The Convention was signed in 1998 by 39 of UNECE's 55 member countries and the European Community. The UK ratified the Convention on 23rd February 2005.

2.2 Under Article 6 of the Aarhus Convention Pillar II - Public Participation in Decision-Making, Implementation Guide,<sup>13</sup> it specifically stipulates that:

- a) Paragraph 1: Parties [i.e. the UK Government in this case] are required to guarantee public participation in decision-making with a potentially significant environmental impact. This applies to activities listed in annex I but **also to non-listed activities which may have a significant effect on the environment** [my emphasis – I.McN.C]

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[%20lines:Access%20to%20monuments:National%20mapping%20programme%20-%20lines:Sites%20and%20monuments%20record%20-%20polygons:Scheduled%20Monuments](#)

<sup>13</sup> United Nations Economic Commission For Europe The Aarhus Convention an Implementation Guide [http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) pages 126-127

- b) Paragraph 2: Sets requirements for notifying the public concerned about the decision-making. Public concerned must first be identified then notified early in the process in an adequate, timely and effective manner.
- c) Paragraph 3: Sets time frames for public participation procedures within a decision-making process. Specific time frames must be established for the different phases and enough time provided for informing the public, and for the public to prepare and participate effectively.
- d) Paragraph 4: Requires that public participation take place early in decision-making when all options are still open.
- e) Paragraph 8: Parties must ensure that decision takes due account of public participation.

2.3 The Aarhus Convention implementation guide also states:

“While the term EIA [Environmental Impact Assessment<sup>14</sup>] is used in the Convention, the test as to whether the Convention applies to a particular decision-making procedure is not whether that procedure is required to include EIA, or is considered as

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<sup>14</sup> Environmental Impact Assessment is a term used to describe the total process of assessing the environmental effects of a development project. EIA is required for some types of development and not others, and is open to various interpretations.



“environmental decision-making” under national law, but whether the decision-making itself may have a potentially significant impact on the environment.”<sup>15</sup>

2.4 It is therefore unambiguous in that public consultation is not dependent on whether an EIA has been carried out but on whether there is a possible significant impact on the selected environmental location for, in this case, an agri-environmental agreement.

## SIGNIFICANT IMPACT

3.1 But what constitutes a “significant impact on the environment” is not defined in the Convention, although some guidance to interpretation may be found in the Espoo Convention<sup>16</sup> ratified by the UK on 10th October 1997. However, it must be borne in mind that these apply to environmental impact assessment within a transboundary context.

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[http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)  
page 127

<sup>16</sup> The Espoo (EIA) Convention sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult

3.2 Under Appendix III the Espoo Convention<sup>17</sup> stipulates that any ‘activity’ should be considered by the Parties for EIA if it is likely to have a significant adverse transboundary impact, in particular by virtue of one or more of the following criteria:

- (a) Size: proposed activities which are large for the type of the activity;
- (b) Location: proposed activities which are located in or close to an area of special environmental sensitivity or importance (such as wetlands designated under the Ramsar Convention, national parks, nature reserves, sites of special scientific interest, or sites of archaeological, cultural or historical importance); also, proposed activities in locations where the characteristics of proposed development would be likely to have significant effects on the population;
- (c) Effects: proposed activities with particularly complex and potentially adverse effects, including those giving rise to serious effects on humans or on valued species or organisms, those which threaten the existing or potential use of an affected area

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each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries

<sup>17</sup> [http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo\\_Convention\\_authentic\\_ENG.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf)

and those causing additional loading which cannot be sustained by the carrying capacity of the environment.

3.3 These opinions are confirmed by the Town and Country Planning Regulations 2011 (Environmental Impact Assessment) that came into force during August 2011.<sup>18</sup> Under ‘Interpretation’ this states that: “EIA development” means development which is either (a) Schedule 1 development; or (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

3.4 Schedule 2 Regulation 2(1) Descriptions of development and applicable thresholds and criteria for the purpose of classifying development as a Schedule 2 development, includes (a) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes provided the area of the development exceeds 0.5 hectare.

3.5 Schedule 3 Regulation 4(6) Selection criteria for screening Schedule 2 development states under location of development #2, that the environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to (a) the existing land use; (viii) landscapes of historical, cultural or archaeological significance.

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<sup>18</sup> [http://www.legislation.gov.uk/ukxi/2011/1824/pdfs/ukxi\\_20111824\\_en.pdf](http://www.legislation.gov.uk/ukxi/2011/1824/pdfs/ukxi_20111824_en.pdf)

## SENSITIVE AREAS

4.1 The Government web site<sup>19</sup> — Guidance - Environmental Impact Assessment — gives the following advice. The more environmentally sensitive the location, the more likely it is that the effects will be significant and will require an assessment [for EIA].

4.2 Certain designated sites are defined as sensitive areas. All developments in, or partly in, such areas should be screened. These are: Sites of Special Scientific Interest and European sites (Special Protection Areas classified under the Wild Birds Directive and Special Areas of Conservation under the Habitats Directive); National Parks; the Broads and Areas of Outstanding Natural Beauty; World Heritage Sites, and scheduled monuments.

4.3 A new 10 year Countryside Stewardship Agreement in West Cornwall,<sup>20</sup> consisting of a number of separate land parcels. Four of these<sup>21</sup> are Open Access land under the Countryside and Rights of Way Act 2000 within an Area of Outstanding Natural Beauty and containing several medieval and post medieval unscheduled archaeological sites and one prehistoric site. In addition, one land parcel lies within a World Heritage Site (St Just

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<sup>19</sup> <https://www.gov.uk/guidance/environmental-impact-assessment>

<sup>20</sup> Countryside Stewardship Agreement Document; Agreement Name: Little Sellan; Agreement Number: AG00706480; Agreement Start Date 01/01/2017; Agreement End Date 31/12/2026

<sup>21</sup> OS Map Sheet ref/National Grid SW39327539; SW39329956; SW39329978; SW40321042

Mining). I suggest this comes under the classification of a ‘sensitive’ site and should have been subject to public consultation – it was not.

## NATURAL ENGLAND, EIA AND AARHUS

5.1 Natural England describe two types of agricultural project that may be subject to EIA: restructuring projects and uncultivated land projects.<sup>22</sup>

5.2 The former physically restructures rural land holdings through the addition or removal of field boundaries; re-contouring of land through addition, removal or redistribution of earth or other material.

5.3 The latter are projects that increase the productivity for agriculture of land uncultivated for the previous 15 years, or will be a semi-natural area that includes lowland heathland.

5.4 In sensitive areas, a restructuring project will require a screening decision<sup>23</sup> from Natural England before work can start if changes are involved to 2km or more of field

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<sup>22</sup> A Natural England web document *Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006 Public Guidance* Revised November 2012

<sup>23</sup> To help ensure that an authority giving development consent for a project makes its decision knowing the likely effects on the environment.

boundaries, movement of 5,000 cubic metres of earth/rock or restructuring an area of 50 hectares or more. [NOTE: Screening: to help ensure that an authority giving development consent for a project makes its decision knowing the likely effects on the environment.<sup>24</sup>]

5.5 For EIA screening decisions Natural England appear, to date, to consider only whether there would be an increase in productivity of the land for agriculture. Where they consider consultation may be required, then there does not appear to be any provision for the public to be involved. [see Annex (A)]

5.6 An example where, we consider, public consultation should have been carried out is noted below.

A recent 10 year Countryside Stewardship Higher Tier agreement #117057 between Natural England and Cornwall Wildlife Trust started on 1st January 2016 and covered three separate parcels of land – two of which are in West Penwith. One of these, Bostraze Nature Reserve covering 23.89 hectares, is entirely within a World Heritage

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<sup>24</sup> <https://www.gov.uk/government/publications/environmental-impact-assessment-screening-checklist>

Site (St Just Mining District)<sup>25</sup> and an AONB<sup>26</sup> and is partially open access land,<sup>27</sup> as well as containing several scheduled ancient monuments.<sup>28</sup> 576 metres of new fencing was installed to stockproof the site for grazing cattle. The agreement ‘Indicators of Success’ demonstrate that significant changes to the environment over

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<sup>25</sup> <http://www.cornish-mining.org.uk/areas-places-activities/st-just-mining-district>

<sup>26</sup>

<https://map.cornwall.gov.uk/website/ccmap/?zoomlevel=8&xcoord=139360&ycoord=32193&wsName=ccmap&layerName=Sites%20and%20monuments%20record%20-%20points:Access%20to%20monuments:Sites%20and%20monuments%20record%20-%20lines:National%20mapping%20programme%20-%20lines:Sites%20and%20monuments%20record%20-%20polygons:Scheduled%20Monuments:Areas%20of%20Outstanding%20Natural%20Beauty>

<sup>27</sup>

[https://map.cornwall.gov.uk/website/ccmap/?zoomlevel=8&xcoord=139360&ycoord=32193&wsName=ccmap&layerName=Sites%20and%20monuments%20record%20-%20points:Access%20to%20monuments:Sites%20and%20monuments%20record%20-%20lines:National%20mapping%20programme%20-%20lines:Sites%20and%20monuments%20record%20-%20polygons:Scheduled%20Monuments:Access%20land%20\(right%20to%20Roam\)](https://map.cornwall.gov.uk/website/ccmap/?zoomlevel=8&xcoord=139360&ycoord=32193&wsName=ccmap&layerName=Sites%20and%20monuments%20record%20-%20points:Access%20to%20monuments:Sites%20and%20monuments%20record%20-%20lines:National%20mapping%20programme%20-%20lines:Sites%20and%20monuments%20record%20-%20polygons:Scheduled%20Monuments:Access%20land%20(right%20to%20Roam))

<sup>28</sup>

<https://map.cornwall.gov.uk/website/ccmap/?zoomlevel=8&xcoord=139562&ycoord=32432&wsName=ccmap&layerName=Sites%20and%20monuments%20record%20-%20points:Access%20to%20monuments:Sites%20and%20monuments%20record%20-%20lines:National%20mapping%20programme%20-%20lines:Sites%20and%20monuments%20record%20-%20polygons:Scheduled%20Monuments>

the period of the agreement are expected to be achieved through burning, cutting, application of herbicide and grazing by cattle.<sup>29</sup>

5.7 In a response dated 1st March 2011, as part of a Freedom of Information #1014 request to Natural England, it was stated that:

“Natural England does not have any strategy for implementation of the Aarhus Convention, as it has no law making powers”, and that “Natural England has not carried out any specific training on the Aarhus Convention for its staff.”

Perhaps this omission has by now been rectified?

## CONCLUSION

6.1 Virtually all areas of heathland in West Penwith are within an AONB,<sup>30</sup> with some being within a World Heritage Site,<sup>31</sup> and generally including above and below ground scheduled ancient monuments.<sup>32</sup> Most areas of heathland are Open Access land under the

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<sup>29</sup> Access to Information Request – Request no 3921 dated 18th July 2017 File pdf SB1\_107154194 ©Natural England

<sup>30</sup> <http://www.cornwall-aonb.gov.uk/westpenwith/>

<sup>31</sup> [http://www.cornish-mining.org.uk/sites/default/files/a1\\_st\\_just\\_mining\\_district\\_psites\\_2012.pdf](http://www.cornish-mining.org.uk/sites/default/files/a1_st_just_mining_district_psites_2012.pdf)

<sup>32</sup> See Cornwall Council interactive map <https://www.cornwall.gov.uk/community-and-living/mapping/>



Countryside and Rights of Way Act 2000 and some locations are registered common land. They are therefore ‘sensitive’ sites in the sense described above [#4.2] and may be eligible for EIA.

6.2 However, it is clear that the lack of an EIA does not automatically place an individual land management agreement outside the scope of Article 6 of the Aarhus Convention.

6.3 There is nothing in the guidance related to Article 6 to suggest that individual land management agreements, by their very nature, fall outside the remit of the Aarhus Convention. Article 6 refers to “activities” and there is nothing that narrows the definition so as to exclude, for example, an individual land management agreement. On the contrary, the Aarhus Implementation Guide notes:<sup>33</sup>

“... article 6 may potentially apply — in accordance with national law — to a variety of specific regulatory decisions regarding proposed activities which may have a significant effect on the environment, such as rate-setting or approvals for the introduction of new products into commerce or of alien species into the environment, or decisions to initiate a remedial action in case of environmental damage”.

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<sup>33</sup> Aarhus Convention Implementation Guide (second edition) notes at page 281  
[http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)

6.4 This last phrase is important in that the majority – if not all – of agri agreements are designed to initiate remedial management activities to restore alleged damaged landscapes after long periods of neglect.

6.5 The clear focus of Article 6 is on all proposed activities that may have a significant environmental impact. On this basis, we consider that the stance taken by Natural England in denying local affected communities and stakeholders the opportunity of consultation is at odds with the intended scope of Article 6.

## RECOMMENDATIONS

7.1 We allege that Natural England has failed to recognise the ‘sensitive’ nature of locations of open access heathland selected for agri-environmental agreements that will have a ‘significant impact’ on the environment and on local populations, and failed to consult affected communities and stakeholders. In other words, there has been a significant change of use – for example: from open unenclosed heathland to recently enclosed and grazed heathland – that has not had the benefit of discussion beyond those tasked with implementing agreements and those with a pecuniary advantage to be gained from their implementation.

7.2 Consequently, we also allege that Natural England has neglected to follow provisions of Article 6 of the Aarhus Convention and, to remedy this alleged failure, all future agri-

agreements that include additional stockproofing infrastructure to enclose a previously unenclosed area of ‘sensitive’ open access land should include provision for public consultation.

7.3 Taking into consideration #7.1, it is our submission that local town/parish councils should be informed by Natural England of any future agri-agreement within their area of jurisdiction, and for a public consultation meeting to be held in conjunction with Natural England whereby the impact of a particular agreement could be properly discussed.

7.4 The local authority, while taking account of the result of a public consultation, could then vote whether to support, oppose, or amend any such agreement in the interests of their electorate. This, we consider, would be in the public interest in line with local democracy and in accordance with Article 6 of the Aarhus Convention, and might also help prevent many of the expensive errors committed by Natural England – and others – during the HEATH Project when breaches of the Highways Act and Environmentally Sensitive Area prescriptions occurred.



Watch Croft (February 2009) – cattle grid, installed by the National Trust under the HEATH Project, that had to be removed after being declared by Cornwall Council to be an unlawful obstruction across a public right of way.

## ANNEX (A)

Email 18th July 2017 from [REDACTED], Senior Adviser – Access to Information © Natural England

- a) [*Question*] Was this agreement [Countryside Stewardship # 117057] the subject of an Environmental Impact Assessment screening opinion? [*NE Response*] An initial screening decision in relation to the Environmental Impact Assessment (Agricultural) Regulations was made by the Natural England Adviser who took into account the aims and objectives of the Countryside Stewardship Higher Tier Scheme and scheme targeting statements in knowledge of the type of operations likely to be undertaken. It was determined by the Natural England Adviser that the purpose of scrub and bracken management and the introduction of stock grazing was primarily for the management and restoration of a wildlife habitat and for protection and enhancement of the historic environment and would not result in an increase in the productivity of the land for agriculture and therefore considered that no further assessment was required. The determination took into account baseline information gathered during the application stage including environmental records provided by the applicant and obtained from Environmental Records Centre for Cornwall and the Isles of Scilly (ERCCIS) and historic environment records, provided by the Cornwall Archaeological Unit (CAU).

- b) [*Question*] Are there any current Higher Tier applications for which an EIA screening opinion will be required? [*NE Response*] We have four Higher Tier applications this year in Penwith that may need to be screened.
- c) [*Question*] If so, the proposed consultees? [*NE Response*] Consultations are intrinsic to the Higher Tier application process – Historic England, Cornwall Archaeological Unit (Cornwall County Council), Natural England’s Local Advisers, SSSI files, Natural England datasets held on our GIS system Web-map and occasionally ERCCIS.

Email dated 29 October 2014 from [REDACTED], Senior Specialist – Protected Sites  
Environmental Impact Assessment (EIA) Unit, Natural England

“The fact that there are marketable animals produced on the land does not mean that the level of grazing would be such as to increase the agricultural productivity of the land. In fact the aim of the HEATH Project and Environmental Stewardship in this case, is to avoid that and thereby maintain its semi-natural interest by grazing at a very low stocking density.

Therefore in conclusion, the project would not qualify as an uncultivated land project so the regulations would not apply and therefore an Environmental Impact Assessment would not be needed.”

With regards restructuring projects, the following types of work are not classed as restructuring projects by the EIA Regulations: maintenance work on existing structures such as repairing walls, replacing fences, or clearing blocked/clogged ditches. The work undertaken as part of the HEATH Project and Environmental Stewardship schemes either falls within the above works not covered by the EIA Regulations, or where boundaries are new, are sufficiently small-scale as to not exceed the EIA Regulation thresholds per landholding.

In conclusion, the projects would not qualify under the EIA Regulations and therefore there has been no need for screening applications to be made by landowners or consent decisions to be made by Natural England.”

Submitted and compiled on behalf of Save Penwith Moors by

Ian McNeil Cooke (co-ordinator Save Penwith Moors)

1st October 2017

# **LACK OF ANY AUDITS**

FOR COMPLETED ENVIRONMENTAL STEWARDSHIP AGREEMENTS





1.1 Although applicable to various types of agri-environmental schemes across the UK, this file specifically concerns an Entry Level and Higher Level Stewardship Agreement [#AG00260864] made between a local farmer and Natural England. It ran from 1st August 2007 until 31st July 2017 and covered Boswens and Carnyorth Commons in the Land's End Peninsula [West Penwith, Cornwall].

1.2 In July 2015 the local action group, Save Penwith Moors, asked Natural England whether an audit by Natural England or an independent body would be carried out for the Agreement after it ends “to assess whether the money spent (totalling at least £200,000) has been satisfactorily ‘invested’.”<sup>34</sup>

1.3 On 16th September 2016 we again asked Natural England if a ‘completion’ detailed independent survey or audit would be carried out once the Agreement finished, in summer 2017, to assess whether the ‘indicators of success’ had been met, and if this would be made available to the public? The response<sup>35</sup> was that:

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<sup>34</sup> 3rd July 2015 to Natural England Lead Adviser, Land Management and Conservation; Cornwall, Devon & Isles of Scilly Area Team

<sup>35</sup> 13th October 2016 from Natural England Senior Adviser – Access to Information

“Natural England has no plans to commission an independent survey in respect of the indicators of success for individual agreements.”

1.4 It was also stated that Natural England had made eleven agreement delivery site visits between October 2010 and April 2016, and that these indicated that management of lowland heath prescriptions for Carnyorth Common had been followed and satisfactory progress was being made towards achieving the Indicators of Success.

1.5 Once the Agreement ended, Save Penwith Moors made a Freedom of Information request to Natural England and received the following response [Request no 3954 dated 31st August 2017].

You asked for:

**1. Could you confirm whether an audit will shortly be carried out to determine whether the Indicators of Success have been met?**

Natural England does not have any plans to carry out an audit to determine whether the Indicators of Success have been met.

It was also confirmed that the amount paid to date under this Agreement was £257,698.70.

## ‘PUBLIC MONEY FOR PUBLIC GOODS’

2.1 We wholeheartedly agree with the contemporary mantra of ‘public money for public goods’ [i.e. A public good being an item consumed by society as a whole and not necessarily by an individual consumer].

2.2 In written evidence to the Environmental Audit Committee in 2016,<sup>36</sup> Natural England indicated that the common understanding of public goods includes our natural air, soil, water, ecological and landscape assets and the benefits that flow from them. Other evidence submitted by the Wildlife and Countryside Link, representing more than 8 million people through 45 voluntary organisations, specifically highlighted public goods as the products that the market cannot or will not pay for, such as sustainable water and soil management, natural flood management, enhancement and connectivity of wildlife habitat, **improving public access** (*my emphasis*), protecting and enhancing landscape character and heritage, and achieving high animal welfare standards.

2.3 With regard to improving public access, we consider that significant financial cut-backs of council funding has led to an inability for them to maintain public rights of way to a satisfactory condition. We therefore believe that all new agri-environmental agreements

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<sup>36</sup> <https://publications.parliament.uk/pa/cm201617/cmselect/cmenvaud/599/599.pdf>

should include a mandatory requirement for agreement holders to keep all public rights of way on their land (footpaths, bridleways and byways) clear of all obstructions and in a walkable/riding condition, with all stiles and gates maintained by them in a good and safe condition. This would allow local authorities to concentrate resources on those public rights of way that do not fall within the area of an agri-agreement.

## CONCLUSION

3.1 A new 10 year Countryside Stewardship Agreement in West Cornwall,<sup>37</sup> with an anticipated total cost of almost £90,000 and covering nearly 22 hectares, has a number of ‘aims’ and ‘indicators of success’ for the various management options but with a caveat that they are ‘not binding’. Presumably this means that the agreement holder does not actually have to achieve – or even attempt to achieve – these stipulations but will still receive payment. Since these agreements will be implemented throughout the country – at considerable cost – we suggest this is another reason why an audit at the end of agreements should be a mandatory requirement.

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<sup>37</sup> Countryside Stewardship Agreement Document; Agreement Name: Little Sellan; Agreement Number: AG00706480; Agreement Start Date 01/01/2017; Agreement End Date 31/12/2026

3.2 We find it astonishing that the expenditure on agri-environmental schemes costing many millions of pounds across the country should remain unaccountable and untested for successes and failures, particularly in this prolonged period of austerity and public service cuts. If individual agreements were **independently** audited when they came to an end then lessons could be learnt and applied to other ‘live’ or future agreements. This, we consider, would be in the public interest – after all, it is public money (UK and EU) that goes towards funding these schemes.

3.3 We hope that issues of audits and footpath maintenance will be seriously considered and made mandatory for all future agri-environmental agreements [Countryside Stewardship, etc].

Prepared and submitted on behalf of Save Penwith Moors by  
Ian McNeil Cooke (co-ordinator)  
October 2017