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# Areas of outstanding natural beauty (AONBs) Conservation Boards

## Departmental Guidance

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*This document is now out of date and has been withdrawn.*

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## Introduction

1. This guidance deals with the establishment and operation of English AONB Conservation Boards and on the responsibilities of their members. It also defines the boundaries of their remit. The guidance is designed to be read in addition to the relevant sections of the Countryside and Rights of Way Act 2000, and a Board's Establishment Order. This guide is intended for all AONB management committees of local authorities considering establishment as a Board and newly established Boards. It is not exhaustive, but should be regarded as a first point of reference for Boards, AONB management committees, local authorities, and any other bodies or individuals with an interest in AONBs. The guidance may be revised as circumstances demand.
2. Defra has no specific objective to establish Conservation Boards – Boards are simply an option for managing AONBs which local authorities may wish to consider. It is not Defra's intention to create a two-tier system of those AONBs with a Board and those without. A decision to proceed to establishment must be a local one, taken in consideration of the best form of management for the AONB and its particular circumstances. However, where there is full support from local authorities for a Board, Defra will provide all possible assistance toward its establishment.

## Background

3. Section 86 of the Countryside and Rights of Way Act 2000 (the 2000 Act) allows the Secretary of State to create a Conservation Board for an AONB by means of a Statutory Instrument called an Establishment Order. This details, amongst other matters, what functions an AONB's constituent local authorities wish the Board to have and the membership of that Board. The first Conservation Boards in England were established for the Chilterns and Cotswolds AONBs in December 2004.
4. A Conservation Board is considered to be of most potential benefit to the larger AONBs whose area crosses a number of administrative boundaries. In such cases the unified, independent corporate management of a Board could bring benefits in the decision making process compared to a joint advisory committee of the constituent local authorities. For example, because of the need to consult all its constituent local authorities, a joint advisory committee may be able to act less quickly than a Board, which can take and implement its own decisions. However, there is no "one size fits all" solution and especially for the smaller, less administratively complicated AONBs, a joint advisory committee or partnership might remain the best option.

## Establishing a Board

5. The Government would not normally seek to begin the process to establish a Board unless a significant majority of constituent local authorities asked for this in writing. Ideally, there should be unanimous support. Exceptionally, the Secretary of State may be prepared to begin the establishment process where support is less than unanimous, provided that dissenting authorities were prepared to keep an open mind on the eventual outcome and/or were in such a minority that dissent would not affect the smooth running of any future Board.
6. The provisions for establishing a Board are in section 86 of the 2000 Act. The Statutory Instrument which forms the Establishment Order gives the Board its functions as requested by the constituent local authorities. The Order effectively puts the flesh on the bones of what is permitted in the 2000 Act. Natural England can advise any constituent local authorities of an AONB which are considering the establishment of a Conservation Board. If the local authorities consider that a Board would be beneficial, they should write to ask the Secretary

of State (through the existing AONB management body if they wish) to establish a Board. The Secretary of State would consider the case and ask Natural England for their advice before proceeding with a draft Establishment Order. Before laying the draft Order before Parliament, the Secretary of State would consult Natural England and constituent local authorities and must be satisfied that a significant majority of the authorities consent to that Order. Again, unanimous support would be looked for. The Secretary of State would be reluctant to confirm an order where there are dissenting authorities, but exceptionally, might decide to proceed depending upon the reasons for dissent and the likelihood of such dissent detrimentally affecting the management and operation of a Board.

7. A Board will have an 'Establishment Day' when it is formally created. It can also have an 'Operative Day' when any shared or transferred local authority powers become available to the Board. A Board will need to consider the benefits of having the establishment and/or operative date coincide with the start of a financial year. Where a Board wants separate establishment and operative dates, a 6 month gap between them is recommended to allow sufficient time for the Board to set up management processes and mechanisms to support their new powers.
8. Because orders are individually tailored to the particular needs of each AONB, and because of the procedures necessary to establish a Board, stakeholders should be aware that the establishment process is likely to take at least 12 -18 months from the request to the Secretary of State until the signing of the Establishment Order, and it could be considerably longer, perhaps 2-3 years, depending on the requirements of the local authorities and the complexity of the Order. The Establishment Day is likely to be some time after the signing of the Order – in the case of the Chilterns and the Cotswolds Boards, it was 5 months later to allow adequate time for the appointment of members.
9. AONB committees considering a Board will need to carefully consider its desired operating systems (e.g. whether to manage these in-house or contract them out) as early as possible in the establishment process. The employment of a special advisor/consultant for this purpose may be one possible consideration.
10. The establishment process will include one formal consultation, in which only the constituent local authorities and Natural England are consulted, and prior to that, one informal consultation to ensure the Establishment Order is acceptable. The informal consultation should be much wider than the formal one and should include Natural England, the constituent local authorities, parishes, and any interested parties such as the National Farmers Union, the Country Land and Business Association, local wildlife trusts and relevant community groups, depending on circumstances. An AONB committee may well have liaised or consulted with local partners throughout the establishment process, but this would be no substitute for the informal consultation on the statutory instrument undertaken by Defra.

### **Dissolving a Board**

11. Section 86(8) of the 2000 Act enables an Establishment Order to be revoked by the Secretary of State. It is not anticipated that this power will be exercised often. If a Board considers that a Conservation Board is no longer the best way of managing that AONB and Natural England and a majority of constituent local authorities agree that ending the Board would be in the best interests of the AONB, the Secretary of State would consider revoking the Order. Dissolution of a Board would be subject to similar parliamentary processes as establishment and could therefore take a similar time.

## Amending the Establishment Order for a Board

12. Section 86(8) of the 2000 Act also enables the Secretary of State to amend an Establishment Order. However, constituent local authorities and Natural England should ensure so far as possible that the original Order contains all of the local authority powers and additional functions required and not seek to rely on subsequent Orders to remedy oversights. Partners need to consider what the Board wishes to be able to do in the future, not just consider its requirements at the outset. Normally, the Secretary of State would not expect to amend an Establishment Order unless to make provisions for unforeseen or new issues that the Board otherwise had no means of addressing.

## Board Purposes

13. Section 87(1) provides that a Board must have regard to two purposes in exercising their functions. One purpose is the conservation and enhancement of the natural beauty of the AONB. The other is to increase the understanding and enjoyment by the public of the AONB's special qualities. However, if it appears to the Board that there is a conflict between these two purposes, it is to attach greater weight to conserving and enhancing the AONB.
14. In pursuing its purposes, section 87(2) requires a Board to seek to foster the economic and social well being of the AONB's local communities. In so doing, a Board should co-operate with constituent local authorities and public bodies whose functions include the promotion of economic or social development within the AONB. Such public bodies with which a Board should co-operate should include the relevant Regional Development Agency and Government Office.
15. In addition, the general duties of a local authority regarding the protection of the interests of the countryside and the avoidance of water pollution apply to Conservation Boards.

## Sustainable Development

16. The Government is committed to the principles of sustainable development. With a statutory requirement to seek to foster the economic and social well being of communities within the AONB when pursuing their statutory purposes, Conservation Boards are well placed to play a part in promoting sustainable development. The Boards should work towards matching the principles of sustainable development with their purposes. Boards will thus have to consider the potential impact of their activities in terms of what is best for the AONB not only in terms of landscape and recreation but also for the welfare and prosperity of its communities. Community interests should not divert a Board from its two purposes, but, with care, a Board should be able to integrate them successfully in carrying out its functions.
17. Government departments, agencies and local authorities have extensive responsibilities to protect and promote the social and economic welfare of communities. Conservation Boards are not intended to assume their roles. Nevertheless, Boards should (where possible and practical) seek to support the work of others promoting social and economic activity in the AONB. They should work to establish good links with the relevant Regional Development Agencies and where possible support socio-economic schemes relating to the well-being and sustainability of their local communities. But a Board should always focus its spending on the specific purposes for which it was established.

## Board Funds

18. It is not Defra's policy to include funding arrangements in AONB Conservation Board Establishment Orders. Flexibility is required to better reflect the changing priorities of AONBs, and this would be more difficult to achieve if funding agreements were set out in the Order because of the rigidity this would impose. The arrangements could be changed only if the Order were amended by new legislation
19. Boards may receive grants either directly from the Secretary of State or via Natural England but it is Defra's policy that normally grants will continue to come from Natural England with Defra ensuring that Natural England has sufficient funds to provide the Boards with an appropriate level of funding.
20. The local authorities within the AONB managed by a Board are also expected to contribute to the Board's funding, especially in regard to those functions transferred to or shared with, the Board. Since Boards do not have levying powers, any local authority funding is voluntary. However, for an authority to fulfil its general duty of care to its constituents, it is expected that authorities would wish to contribute appropriate levels of funds after discussions with the Board and Natural England. This currently takes the form of a Memorandum of Agreement between the parties.
21. Further, the establishment of a Board may help when negotiating for supporting funds from other bodies such as the European Union, the Heritage Lottery Fund, or businesses.
22. Establishment of a Board is not intended to provide financial advantage over those AONBs opting to retain a Joint Advisory Committee. However, there are 'one-off' set up costs incurred in the establishment of a Conservation Board. The Countryside Agency met these in full, where appropriate, on a case by case basis for the Cotswolds and the Chilterns.

## Borrowing

23. An Establishment Order can provide for a Board to borrow money without the permission of the Secretary of State in anticipation of funds being received. The Board must seek the Secretary of State's approval for all other borrowing. In general terms, the Secretary of State would consider each application to borrow money on its merits but she would expect the Board to follow the guidelines below.
24. A Board should only borrow money if it supports works and projects that can be directly linked to its statutory purposes and its functions. The Secretary of State would normally expect that any single loan should not exceed 10% of a Board's total budget for that year, and the total amount owed (including interest) should not exceed 15% of the total budget in that year. When considering an application to borrow funds, the Secretary of State will consider, among other things, whether the Board has sought the best conditions and most competitive interest rates for the loan; and satisfy herself that repayments will not be so large that meeting them would have a significant impact on the Board's activities or projects.

## VAT

25. Since Boards have no levying powers, they will not be able to recover VAT. Giving a Board levy powers would require amending primary legislation and a significant change to current financial arrangements whereby local authorities provide their share by agreement. Defra has no plans to change the present funding system. Instead, Natural England has increased their share of core funding of the Cotswolds and Chilterns AONB to help offset the VAT charges.

## Consultations with Other Bodies

26. Although Conservation Boards are not statutory consultees on planning matters, AONB Conservation Boards have as much right to make representations on such matters as any other body. Moreover, a Board could hold non-statutory protocols for consultation arrangements with local planning authorities and regional assemblies on planning matters if all parties agree.
27. When making decisions that might have a significant impact on the land, communities and economic well-being of an AONB, a Conservation Board should consult with groups and individuals most likely to be affected by the resulting decision. Any consultation process should be open, fair, and provide equal opportunity for all interested parties to participate. The Board should then carefully consider all responses to a consultation before making a final decision. Where a consultation has taken place, a Board should make known its decision (with reasons) to all consultees and those whom it will affect.

## Functions

28. Section 89 of the 2000 Act requires Conservation Boards to assume responsibility for the preparation and publication of the AONB Management Plan setting out their policies for the management of the area. Although the constituent local authorities will no longer have overall responsibility for the AONB Management Plan, it is expected that the Conservation Board will involve them fully in the preparation of the Plan so that they will retain a sense of ownership of the aims and objectives of the Plan and will give them full weight in their decision making. Local authorities may consider adopting a Board's Management Plan or elements of it as Supplementary Planning Documents to their Local Development Documents and may also treat the Plan as a material consideration in deciding planning applications, where appropriate.
29. Further specific functions of a Board will be included in the Establishment Order bearing in mind the wishes of the local authorities and what is appropriate to include in the Order. The 2000 Act specifically excludes the Boards from having any planning (i.e. - development plan or development control) powers. Section 86(3) allows local authority powers to be transferred to the Board or operated concurrently

## Share or Transferred Local Authority Powers

30. The functions to be transferred from, or operated concurrently with, the constituent local authorities are entirely to be agreed between the AONB and its constituent authorities. The only constraints are those applied within the 2000 Act, other legal provisions and where it would be detrimental to Defra policy. Within the constraints mentioned, the functions will depend on the scope the Board wishes to operate within.
31. Where a Conservation Board shares local authority powers (rather than having local authority powers transferred to it), the Department advises that the Board and constituent local authorities agree a protocol that describes when, where and how the Board and local authorities will use each power; it should also contain provisions for keeping the local authorities informed of the Board's plans to use powers for a specific project or scheme and confirmation when that project or scheme is complete. Local authorities will need to consider whether reciprocal arrangements are appropriate.

32. Constituent local authorities should keep in mind the financial burden that may be placed on a Board which is assuming duties from local authorities and where the authority's duties have been reduced as a consequence. In these circumstances, the local authorities should consider whether they should make an additional financial contribution to the Board in recognition of this.
33. Where local authorities consider transferring certain powers to a Board, they must be aware that, once transferred they will not be able to recover those powers or use them again without amending the Establishment Order itself (which in turn would require the consent of the majority of local authorities). Note that "nested" legislation will move with any transferred functions. Local authorities should bear in mind that the Secretary of State must be thoroughly convinced of the case for amending an Order before embarking on the process.

### Local Access Forums

34. The constituent authorities should consider how the Conservation Board will relate to the Local Access Forum(s) covering the AONB. If considered appropriate, the local highway powers to create and run Forums (under section 94 of the 2000 Act) can be transferred or shared with a Conservation Board (within the boundary of the AONB). This could be advantageous for both the Board and the Forum as it would enable the Forum to advise the Board on open-air recreation issues and help develop close links between the two bodies, without affecting the Forum's ability to advise the highway authority and other local authorities. Further information on Local Access Forums is available at <http://www.defra.gov.uk/>

### Membership of a Board

35. Membership of an AONB Conservation Board is constructed so that both local and national interests are reflected in its make up. There are three types of appointment, as described in Schedule 13 to the 2000 Act, which provides for local authorities with land in the AONB to appoint at least 40% of the members of the Board and for parishes to appoint at least 20%. The remaining membership (i.e. no more than 40%) would be appointed by the Secretary of State. It is hoped that the final membership of a Board will possess a range of skills and experience needed to tackle the full spectrum of issues likely to confront a Board. However, ultimately, it is for the local authorities, parishes and Secretary of State to decide who is best fitted for membership bearing in mind the personal qualities of the candidates.
36. All Board members are appointees, not representatives of their appointing body whether it be a local authority, a parish council or the Secretary of State. An appointee is expected to participate in Board activities, take part in debates, contribute to decisions and support decisions once made. Whilst considering both local and national interests throughout their appointment, members should bear in mind the functions and purposes of a Board, and champion these in debates. Members are also required to follow a code of conduct.
37. In considering the responsibilities required of, and the skills possessed by, its members, a Board may consider implementation of suitable training.
38. A local authority or parish appointee, whilst taking into account their local government or parish perspective, must nonetheless give primacy to the interests of the AONB and its status as a national designation. Similarly, although Secretary of State appointees are chosen primarily for their ability to represent the national interest (rather than the Secretary of

State), when making decisions as a member of the Board they must bear in mind the interests of local communities.

### **Local Authority Membership**

39. All constituent local authorities may have an appointee on a Conservation Board. The simplest approach is for every local authority with land in the AONB to have one seat on a Board. However, in situations where the number of local authorities would lead to a particularly large and cumbersome Board, or a number of local authorities have only a marginal amount of land in the AONB, authorities may consider an arrangement whereby two or more authorities 'share' one seat, appointing a member on behalf of all the authorities concerned. How this is done must be described in the Board's Establishment Order. In situations where shared appointments exist, the local authorities concerned would be expected to brief their shared member on any issues of concern to that authority. Similarly, the appointed member must keep all of their appointing authorities informed of Board activities. If agreed arrangements result in a large Board (in excess of, say, 20 seats), then Defra will expect the Board to operate an executive committee.
40. Since an AONB Conservation Board has to cover all the area of its AONB, then every local authority in that AONB (and listed in the Establishment Order) would be expected to appoint a member or shared member to the Board, in accordance with the criteria in schedule 13 to the 2000 Act. As democratically appointed bodies, local authorities have an obligation to their constituents to ensure they have a member, or shared member, on the Board and to fully participate in Board business. Any appointment process used by an authority to choose a Board member should be such that it does not cause unnecessary delays resulting in the local authority not being represented on the Board for any significant time. The process for local authorities to appoint members to the Board is entirely for them to decide and cannot be part of a Board's Establishment Order. The duration of local authority appointments are to be fixed by the appointing authorities, providing their appointments comply with Schedule 13 to the 2000 Act.

### **Parish Membership**

41. In drafting an Establishment Order, the Department will consult constituent parishes (i.e. parish councils, parish meetings and town councils) to seek comments on the draft Order, in particular on the parish appointment process which must be contained in the Order. This should enable the process for appointing parish members to a Board to reflect so far as possible the wishes of the parishes involved in the process.
42. Parish and town councils and parish meetings listed in an Establishment Order are expected to participate in the appointment scheme described in the Order. The scheme could be based on administrative units or geographical areas within the AONB.
43. The first round for Parish appointments is run (in the absence of a Board) by Natural England. All subsequent appointment rounds are the responsibility of the Board.

### **Secretary of State Membership**

44. The Secretary of State will appoint members to a Conservation Board to ensure that the wider national interest is reflected in its membership. The Secretary of State encourages all

those with an interest in the AONB and issues affecting the broader countryside to apply for appointments. In consultation with Natural England the Secretary of State will seek to appoint individuals with a capacity to reflect the wider viewpoint on a range of issues, including (but not exclusively) land management & farming; conservation; recreation; and community & cultural heritage. Wherever possible the Secretary of State will give preference to candidates who display a depth of knowledge or experience in one or a combination of these areas. However, candidates who might not have fully developed expertise in these fields but who show a willingness to learn and participate will be carefully considered, especially when they could bring a wider perspective to issues than would otherwise be the case.

45. The Secretary of State does not propose to appoint individuals who are serving councillors of a local authority which appoint members to the same Conservation Board. Similarly, the Secretary of State does not propose to appoint individuals who are also members of parish or town councils or chairs of parish meetings within the same AONB.
46. The term of a Secretary of State appointment to a Conservation Board will be for a minimum of a year and up to three years as may be specified in the terms of appointment. The Secretary of State can, at her discretion, re-appoint members at the end of a term of appointment but the duration of an uninterrupted appointment is not expected to exceed 10 years.

#### **Allowances and Time Off For Members**

47. The determination of allowances and other benefits for Board members is governed by the Local Authorities (Members' Allowances) (England) Regulations 2003 (S.I. 2003/1021). It is ultimately for the Board to decide the types and levels of financial allowances provided. Nevertheless the Department expects any allowance schemes to be sufficient to enable Board members to participate fully in Board activities while being sufficiently economical to avoid damaging the Board's activities or becoming a financial reward for members.

#### **First Meeting of a Conservation Board**

48. The first item at the first meeting of a Conservation Board, presided over by the Chief Officer, should be the election of the Chairman and Deputy Chairman. The Chief Officer should propose the method for election: the process should be democratic but not lengthy. Board members must make every effort to elect a Chairman and Deputy at their first meeting. If neither position is filled, the Chief Officer should continue to officiate until they are elected. Until that time, their election should be first on the order of business at every Board meeting. These appointments are for one year only.
49. Chairmen and Deputy Chairmen of Conservation Boards must be elected using a majority vote system based on the votes of the appointed Board members present at a General Meeting. A Chairman or Deputy can be a parish, local authority or Secretary of State appointed Board member.

#### **Chief Officer**

50. A Conservation Board will have a Chief Officer. The first appointment of a Board's Chief Officer will be made by the Secretary of State, in consultation with Natural England.
51. A new Board will not have a Chairman or deputy until after the Board is established and the Board has met to hold its first elections. Until the Board has elected its Chair, the Chief Officer will act on behalf of the Board to make such arrangements as necessary to enable the

Board to begin their work from the establishment day. In all dealings during this time the Chief Officer must make clear to all parties with whom he/she deals that he/she is acting on behalf of the Conservation Board. During the period leading up to the establishment of the Board, the Chief Officer would not be expected to make agreements or sign undertakings committing the Board to significant expenditure or work.

52. At the first meeting of the Board, the Chief Officer should present a summary to the Chairman of the decisions he/she has made and agreements he/she has entered into on the Board's behalf. If requested the Chief officer will need to produce all papers relating to any decision or agreement for the inspection of the Chairman or Board.
53. A Board's Establishment day is the day that the Board receives its duties and functions contained in the 2000 Act. The appointment processes for all members need to have been completed for the Board to be established.
54. The Operative day is the day that the Board receives its powers as provided for by the Establishment Order i.e. the powers held concurrently with/transferred from the local authorities.

#### **Staff**

55. It is for the Conservation Board to decide upon its staffing arrangements. However, it is possible for staff currently employed by a local authority but working to support the AONB, to transfer to the Board. This could be done under TUPE regulations – depending on local circumstances and the nature of the existing and proposed posts.
56. Staff can transfer to the Board anytime on or after its establishment day. The first two Boards chose to transfer staff on the operative date.

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