

Principles to inform delivery models for public benefit associated with public sector land



Over the decades, public bodies have acquired land for many purposes. In some instances, land of high wildlife and/or landscape value has been acquired specifically to protect these qualities – such as by Natural England as National Nature Reserves, and by National Parks. The Environment Agency has acquired land for habitat restoration, to compensate for the loss of habitats due to sea level rise and coastal squeeze. The Forestry Commission holds much land of high and potential conservation value in England, both woodland and land capable of restoration to open ground habitats of high natural environment value. In other instances, land acquired for purposes such as military training has, as an unintended by-product, protected its natural environment and heritage interest, or the land concerned is capable of being restored to that of high value. Local authorities are also significant owners of land of high environmental value.



Government has stated that it seeks efficiencies in the management of land through outsourcing, including to civil society bodies. If the delivery of public benefit is to be sustained, we believe models for outsourcing need to be developed which address the principles below.



This paper focuses on public land of high natural environment value, whether held by national or local government or their agencies. However, we believe that much is applicable to consideration of the future of built heritage assets too, not least since many built heritage assets are also important for nature conservation.



Key tests

1. No net loss for nature/heritage conservation and public access

There should not be a loss of biodiversity, heritage significance or public access, or vital natural resources, either directly due to the transfer of management to other parties, or due to net financial impacts on civil society partners which reduce their ability to deliver other charitable or public benefits.



2. Capacity of civil society is enhanced

An approach that builds on the roles and contribution civil society bodies can provide and that avoids (1) unnecessarily damaging the prospects of effective partnerships between civil society bodies by increasing competition for membership, funding and other scarce resources, and (2) increasing net liabilities of charities which leads to the diversion of charitable assets from other activities which provide public benefit.



3. Protection of natural and public value

Clear identification and description of the outcomes to be delivered to capture the public benefits that the land provides, to be confirmed in service level agreements. Without, there is a clear risk that a delivery body may economise by reducing the standard of outcome, leading to erosion of value.



Practice

1. Government should screen all proposed land sales to identify those which hold high public heritage value.

A formal assessment of the nature and heritage value of land being considered for disposal should be undertaken prior to any transfer or sale to facilitate understanding of its current and potential value, to inform decisions about its future ownership and management. Natural England and English Heritage are well placed to provide advice to support such assessments. The best current example is in respect of water companies, as provided for under the Water Industry Act 1991 and associated OFWAT guidance, and this could be built upon to embrace all public bodies.

2. The freehold of public land of high conservation value should be retained by the State, or vested in a third-sector body with objectives matched to the conservation of its natural environment value.

We have no in-principle objection to government seeking efficiencies in the management of land through outsourcing, including to third-sector bodies.

Agreements for outsourcing management should have appropriate safeguards to ensure the land is maintained in a condition to fulfil the purpose of the designation. Tenure should be of sufficient length and of a nature to provide civil society with security to enable investment in enhancement for the future. Government will need to retain a responsibility to review and the power to ensure failure to maintain the public value of land is redressed.

3. Sponsored sale of non-designated land with recognised public benefit

In the event that the Government decides to sell land which is not statutorily designated but is recognised under conservation policies then sponsored sale arrangements should be applied. These arrangements should also apply to land not only of current conservation value, but also of value for its potential for restoration to quality habitat or the protection and wise use of natural resources. We believe land of this nature should be offered in a closed sale at DV valuation to an approved third sector body. The approval process would require such bodies to agree a management plan for land transferred and to meet UKWAS standards where applicable. Reasonable time should be allowed for civil society bodies to assess the asset and the potential liabilities that it could bring, as well as to raise the necessary funds.

This arrangement should apply for example to designated Local Wildlife Sites, Ancient Woodlands, Plantations on Ancient Woodlands and plantations on land with potential that meets the Government's Open Habitat Restoration policy. It should also include semi-natural land recognised as having biodiversity and ecosystem service value, especially where it would contribute to the delivery of ecological networks as envisaged by the Lawton Review.

4. Open market sale of public land of low heritage value

This would include any sale of non-native timber production plantations (freehold or long leasehold). Where not already secured, land with existing public access should be dedicated before sale. It would include any 'joint ventures' such as renewables and leisure infrastructure.

5. Disposal conditions should provide for enhanced engagement with local people and communities.

The transfer or sale of land should not, as a minimum, result in a diminution in the level of public access to it, or involvement of local people with it. Ideally, conditions on sale or transfer should be sought to promote engagement with local people, both in the planning and delivery of future management of the site.

6. Funding is provided by the State appropriate to the delivery of outcomes identified.

Many of the public benefits delivered by public land are not capable of being marketed, or can no longer be delivered by the market (for example, it is no longer economic for farmers to deliver grazing of heathland sites). In most instances, it is likely that civil society bodies can deliver outcomes more cost-effectively than the public sector. In many cases (probably the majority) the improvement in overhead margins achieved by such bodies will be grossly insufficient to meet the revenue costs (and in some cases the additional capital investment needed).

Government must ensure sustainable funding packages are in place to support delivery throughout the length of service delivery agreements. It should be noticed that in recent years access to the Higher Level Environmental Stewardship Scheme has been a critical part of the business model in outsourcing agreements transferring management of state land to NGOs. If HLS was to be used in this instance, an increase in the overall budget would be necessary if a perverse outcome was to be avoided, under which the delivery of conservation management on non-disposal land by private land owners/occupiers and VCOs was impaired by resources being targeted to disposal land.

Governance framework for transfer arrangements

Government must ensure compliance with legislation governing procurement and transfer arrangements, and retains responsibility for any liabilities arising, in particular, the **Transfer of Undertakings (Protection of Employment) Regulations 2006**. Staffing is the most significant cost in land management. Greatest economies are likely to be made by transferring staff from the public to the charitable sector. Staff transfers are subject to the TUPE Regulations, that are designed to ensure that staff are transferred without detriment to their terms and conditions of employment (this includes their final salary pension schemes). Thus, although designed to protect staff, TUPE may act as a barrier to outsourcing and thus accelerate job losses, as well as being unfair to existing staff of third sector bodies. Experience suggests that it is highly unlikely that the contingent liabilities linked to pension benefits would be acceptable to responsible governing bodies of charities without robust risk transfer guarantees..

These principles are supported by:

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