

**REPORT OF THE HEAD OF PARK DIRECTION**

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**SUBJECT: WELSH GOVERNMENT CONSULTATION: TAKING FORWARD WALES' SUSTAINABLE MANAGEMENT OF NATURAL RESOURCES**

**Purpose of Report**

1. The purpose of the report is to seek delegated authority for the Chief Executive and the Chair of the Authority to contribute to and submit a 3 Parks' response to the above consultation. The closing date is the 13<sup>th</sup> of September 2017.
2. Members are also invited to provide comment by the 16<sup>th</sup> August 2017 to the Officers below or to provide any initial thoughts they may have today.
3. The two Chapters that have most relevance to the work of the Authority are Chapters 3 – Designated Landscapes and Chapter 4 – Access to the Outdoors. A copy of these along with the introduction is attached at Appendix 1. The full consultation document can be accessed from the Welsh Government Web site - <https://consultations.gov.wales/consultations/taking-forward-wales-sustainable-management-natural-resources>.
4. The intention is provide a 3 National Parks response with lead Officers identified by each Park. Officers to provide comment to are listed below:

Chapter	Pembrokeshire
1	Tegryn Jones
2	Sarah Mellor
3	Tegryn Jones
4	Anthony Richards
5	Michel Regelous
6	Michel
7	Richard James
8	Michel
9	Geraint Jones
10	Sarah Mellor

**Risk considerations**

5. Issues of concern for the National Park Authorities will be included in the response.

### **Financial considerations**

6. The potential financial implications for the National Park Authorities will be included in the response.

### **Equality considerations**

7. Issues of concern for the 3 National Park Authorities will be included in the response.

### **Welsh Language considerations**

8. Issues of concern will be included in the 3 National Park Authorities' response.

### **Human Rights considerations**

9. Issues of concern will be included in the 3 National Park Authorities' response.

### **Recommendation**

- 10. Members to provide delegated power to the Authority's Chairman in consultation with the Chief Executive to submit a response to the Welsh Government Consultation Document 'Taking Forward Wales' Sustainable Management of Natural Resources.**

#### *Background Documents*

[Taking Forward Wales' Sustainable Management of Natural Resources](#)

*(For further information, please contact Martina Dunne on ext 4820)*

## Introduction

Wales' natural resources and ecosystems are essential for our wellbeing. We depend on them for our food, clean water and air. They are fundamental to our lives and our livelihoods; supplying vital benefits such as raw materials, water, clean air and energy. They underpin society and they are the backbone of our economy. How we manage our resources is a decisive factor in achieving our long-term wellbeing and our wellbeing goals.

We are consulting on a number of proposals, which seek to further deliver our commitment to manage our natural resources more sustainably to deliver lasting economic, social and cultural, as well as environmental benefits, to ensure the continued prosperity of Wales.

The proposals outlined in this Consultation will contribute to the delivery of the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 by identifying opportunities to improve our legislative framework and unlock the added value better management of our natural resources can contribute to prosperity across the whole of Wales.

This Consultation seeks views about these proposals and about whether the current regulatory frameworks are effective in delivering a coherent, modern and efficient mechanism to continue to improve the sustainable management of our natural resources.

This consultation will help inform whether we require new legislation to take forward these proposals.

The proposals under consideration in this consultation are presented in two themes, which provide different mechanisms for unlocking the added value better management of our natural resources can provide. The two themes are:

1. Optimising the economic, social and environmental benefits from natural resources by aligning forestry, designated landscapes and access to outdoors legislation to the sustainable management of natural resources. These proposals can contribute to the development of green infrastructure and deliver local benefits such as space for recreation and its connected health benefits.
2. Achieving better and smarter regulation by presenting a package of reforms aimed at providing mechanisms, which contribute to ensuring our natural resources are managed in a way which contributes to economic growth, social equality and maintains and enhances ecosystem resilience. These proposals help to deliver a smarter, more effective, modern regulatory framework, which helps to improve the prosperity and competitiveness of our economy whilst also delivering social and environmental outcomes. Proposals relate to :
  - Management of marine and fisheries;
  - Drainage and water infrastructure;
  - Waste and local environmental quality;
  - Introduction of smarter regulation.

The consultation briefly discusses each subject and asks relevant questions for your consideration.

As this consultation covers a range of matters relating to the sustainable management of natural resources, some of the questions may fall outside your interest or experience. Therefore, please feel free to answer as many or as few of the questions as you like.

The Welsh Government has launched a separate consultation about detailed proposals on water sustainable urban drainage systems (SUDs) – the consultation was issued on 18 May 2017<sup>1</sup>.

## Background

This Consultation follows on from the five years of policy development for the introduction of the Environment (Wales) Act 2016, which was built on the *Sustaining a Living Wales Green*<sup>2</sup> Paper and *Towards the Sustainable Management of Natural Resources White*<sup>3</sup> Paper.

The Environment (Wales) Act 2016, which came into force in May 2016, put in place legislation which enables Wales' resources to be managed in a more proactive, sustainable and joined-up manner. Part 1 of the Act introduced the sustainable management of natural resources, which draws on the ecosystem approach adopted by the United Nations Convention on Biological Diversity. A key objective of the Act is managing our natural resources in a joined up way that delivers real and lasting benefits for people, the environment, the economy, our culture and our communities.

The sustainable management of natural resources (see Annex 3) aims to ensure the management and use of our natural resources is undertaken in such a way that does not diminish the ability of those resources or of ecosystems to be able to deliver multiple social, economic and environmental benefits over the long-term.

Part 2 of the Act, which contributes to our international climate change obligations, sets the statutory framework for addressing emissions in Wales, establishing a target to reduce emissions in Wales by 80% in 2050 against a 1990 baseline. It also sets out how a series of interim targets and five-year carbon budgets will be used to set the pathway to decarbonisation.

The 2016 Act followed on from the introduction of the Well-being of Future Generations Act and the Planning (Wales) Act 2015. These three Acts put in place a new legislative framework for Wales, which supports the Welsh Government's commitment to help secure Wales' long-term wellbeing so it benefits from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities.

The Well-being of Future Generations Act ensures Wales makes a contribution to the achievement of the United Nations Sustainable Development Goals, through the introduction of seven well-being goals. The goals encompass the need to act on the causes and adapt to the consequences of climate change, as well as ensuring that Wales is globally responsible in its actions.

The first Natural Resources Policy, to be published shortly, is a key part of the new delivery framework for the sustainable management of natural resources. It will set out the Welsh

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<sup>1</sup> <https://consultations.gov.wales/consultations/implementation-sustainable-drainage-systems-new-developments>

<sup>2</sup> Sustaining A Living Wales, Green Paper, 2012

<sup>3</sup> Towards the Sustainable Management of Natural Resources, Consultation , October 2013

Ministers' priorities for the sustainable management of natural resources, and ensure that across the Welsh Government we have a joined up approach to the delivery of the sustainable management of natural resources.

## Case for Change

Wales' natural resources are a valuable asset and provide essential benefits. From the air we breathe to the food we eat; from the farm and woodland landscapes we enjoy to the places we live in and use for our work and travel; from the seas we fish to water for drinking or to enable our industries to succeed; Wales' natural resources are fundamental. The long-term success of the economy depends on these resources as does the quality of our natural environment and the wellbeing of our communities.

With increasing demands being placed by society on the services that our natural resources provide, one of the key challenges we face in the 21<sup>st</sup> century is to find ways of securing a healthy, resilient and productive environment to ensure we can be confident our natural resources will keep on delivering for society as a whole, supporting employment and wellbeing.

The Environment (Wales) Act 2016 introduced our framework for the sustainable management of natural resources. During scrutiny by the National Assembly, the then Minister for Natural Resources said there would be a need for future legislation to ensure our whole legislative framework enables natural resources to contribute to Wales' wellbeing objectives.

For more than 60 years, governments have sought to protect, regulate and manage the environment through a series of approaches – and for a variety of reasons – by legislating on different aspects of the natural environment. These have evolved separately to address changing pressures.

National Parks and Areas of Outstanding Natural Beauty (AONB) have been designated since 1949 to preserve their special qualities. Pollution controls were progressively introduced to improve air and water quality in the face of heavy industrialisation and urbanisation. Each of these regimes has had its own legal basis, delivery bodies and systems. Some of this legislation is out-of-date and is not in line with our new integrated approach to managing our natural resources.

This array of legislation, which has helped to provide an improved environment, was largely developed to address changing pressures and specific environmental problems and has often had a narrow focus. This approach to regulation – reactive and often viewed in isolation from economic and social policy – has led to a complex mix of regulation, which does not always work together towards the common aim of improving Wales' long-term future.

There is a need to refresh the systems that have developed over time and put in place a more unified, purposely-designed approach. We believe our aim should be to harmonise existing environmental legislation with a simplified approach to the management of natural resources, based on the central principle of delivering sustainable development.

The creation of Natural Resources Wales (NRW) and the introduction of the Environment (Wales) Act were the first steps in this process. The new approach and the emphasis it puts

on the resilience of ecosystems and the services they provide is not currently enshrined in the rest of our legislative framework. Therefore, there are still important steps to take to ensure our current legislation works in harmony with Wales' new approach.

In addition to re-aligning the purpose of existing legislation, we need to ensure it is consistent, proportionate and targeted to enable delivery of the sustainable management of our natural resources and, therefore, contributes to economic growth, social equality and ecosystem resilience.

A coherent and effective legislative framework can provide greater clarity and certainty and avoid the risk of:

- Inhibiting investment and innovation or reuse of materials because there a disproportionately high regulatory cost;
- Failing to address environmental challenges, such as pollution or climate change, which need systematic approaches that enable positive changes to management of natural resources;
- Adding costs to businesses in seeking expert or legal advice, and in litigating points for resolution by court;
- Causing confusion and making it difficult for regulators, businesses, public and practitioners to understand and interpret the legislation consistently;
- Non-compliance or inconsistent enforcement, if law is hard to explain and enforce;
- Reducing our ability to limit the impacts on our natural resources, ecosystems and, therefore, impacts on economic growth and social equality<sup>4</sup>.

This requires our legislative framework to be:

- More effective, efficient, simpler and integrated;
- A more predictable and consistent framework for decision-making;
- Fit for purpose.

An improved regulatory framework can help to maintain and enhance ecosystem resilience; better serve the people it affects and achieve its objectives in the most efficient and effective way possible.

## Summary of key proposals

Overall, the proposals set out in this Consultation are expected to help deliver our commitment to sustainably manage our natural resources and deliver lasting economic, social cultural benefits.

Chapter 1 of the Consultation seeks general views on whether there are potential opportunities for new regulatory approaches to deliver on the sustainable management of natural resources. Chapters 2 to 10 seek views on specific proposals.

Chapters 2 to 4 of this Consultation set out three proposals relating to updating our approaches to:

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<sup>4</sup> UKELA. State of Environmental Law, 2012

## **Forestry (Chapter 2)**

- Repurposing general duties to align with sustainable management of natural resources,
- Requirements relating to felling licences,
- Improved governance arrangements,
- New delegation powers for NRW, and
- Seek views on the statutory frameworks for the protection of valued trees

## **Designated Landscapes (Chapter 3)**

- Alignment of the general purpose of National Parks and Areas of Outstanding Natural Beauty with the sustainable management of natural resources; and
- Improved governance arrangements

## **Access to Outdoors (Chapter 4)**

- Develop a coherent system for outdoor recreation, which allows for a broad range of non-motorised recreation on paths, open country and inland water.

Chapters 5 to 8 set out our proposals relating to achieving better regulation:

## **Marine and Fisheries (Chapter 5)**

- New powers to identify Welsh Regional marine plan regions and to produce marine plans for these regions
- Enabling more administrative flexibility for fisheries management;
- Introducing a fit for purpose aquaculture licensing regime; and
- Improving the buyers and sellers regime to include shellfish gathered from intertidal areas

## **Water (chapter 6)**

- Abstraction reform,
- Drainage,
- A separate consultation has been launched by the Welsh Government on detailed proposals for sustainable urban drainage systems on 17 May 2017. See Chapter 6 for further information.

## **Waste and Local Environment Quality (Chapter 7)**

- Amendment to s46 of Environment Protection Act 1990 for sanctions relating to notices for domestic recycling waste – the proposal is to provide Local Authorities with a power to enforce notices issued to domestic premises, where the household has breached a notice prohibiting specific recycling materials.

- Amendment s108 Environment Act 1995 – the proposal is to reform the powers of NRW for entry and the ability to seize and retain documents and computers at premises used for residential purposes. The proposal would require the amendment of section 108 of the Environment Act 1995.
- Littering from cars – the proposal is to provide Welsh Ministers with powers to amend the Environment Protection Act 1990 to allow for enforcement authorities to issue Fixed Penalty Notices where a littering offence has been committed in respect of the vehicle.

### **Smarter regulation (Chapter 8)**

- Introduction of smarter regulatory approaches to address cumulative impacts of low risk activities. The Welsh Government is considering the viability of new powers, via secondary legislation to make provision for basic measures in relation to the sustainable management of natural resources.

### **Agriculture (Chapter 9)**

- Seek views on a proposal to extend the jurisdiction of the Agricultural Land Tribunal Wales (ALTW) so that matters currently compulsorily referable to arbitration (under the Agricultural Holdings Act 1986) can instead be determined by the Tribunal.

### **Wildlife (Chapter 10)**

- Proposals to allow the Welsh Ministers to regulate the type of snares used. This will provide the ability to regulate the type of snare that can be used and flexibility to incorporate into legislation any development or improvement to snare design.

### **Assessment of Policy Proposals (Chapter 11)**

- This chapter sets out further details, including initial consideration of potential impacts on key areas such as sustainable development, equality and human rights and the United Nations Convention on the Rights of the Child (UNCRC). Each set of proposals includes a section setting out an overview of the potential benefits and impacts of implementation.



## Chapter 3: Designated Landscapes

### Summary

This chapter sets out the following proposals relating to designated landscapes (National Parks and Areas of Outstanding Natural Beauty):

- Aligning the statutory functions of the designations more clearly with the sustainable management of natural resources;
- Providing greater weight in decision making to the identified special qualities of the areas, which need to reflect a broad understanding of the importance of these areas;
- Enabling governance arrangements to evolve to reflect local circumstances; and
- Refreshing the way new areas can be recognised for their special qualities and their sustainable management.

### What issues are we considering?

The landscapes designated as National Parks and Areas of Outstanding Natural Beauty (AONBs) in Wales represent some of our finest and most iconic natural heritage. The legislation, which established the process of recognising the value of these landscapes through formal designation was first introduced almost seventy years ago.

The purpose of designation is to protect and enhance the landscape of the areas covered, and in the case of National Parks to promote enjoyment of its special qualities. Since the introduction of the original legislation it has been amended periodically to refresh both purpose and administration.

The Welsh Government intends to ensure these designations can evolve and continue to be relevant mechanisms which deliver on society's aspirations for the landscapes they cover.

The following vision for the designated landscapes was developed and agreed in partnership by all the designated landscape leaders and a wide range of stakeholders as part of the Future Landscapes Wales programme:

*“Wales as a nation values its landscapes for what they provide for the people of Wales and elsewhere. The designated landscapes of Wales deliver both within and beyond their boundaries to enhance their social, economic, environmental and cultural resources; delivering the maximum well-being benefits for present and future generations whilst enhancing the very qualities that make them both distinctive and cherished<sup>32</sup>.”*

<sup>32</sup> Future Landscapes: Delivering for Wales <http://gov.wales/docs/desh/publications/170508-future-landscapes-delivering-for-wales-en.pdf>

There may be opportunities for improvements to the legislative framework around designations, which can help to fulfil the potential of those areas already designated and provide a refreshed approach for areas currently outside the designated areas to be recognised or rewarded. It can also help to inform public perception by demonstrating these areas are dynamic, productive, and support a clearly contemporary narrative.

## **Current Position**

The independent review into the purpose and governance of Areas of Outstanding Natural Beauty and National Parks in Wales, Chaired by Professor Terry Marsden, Director of the Sustainable Places Research Institute at Cardiff University, started its work in the autumn of 2014. The purpose of the review was to consider how the devolved area of designated landscapes fits and delivers within emerging Welsh priorities, including green growth and natural resource management. The Marsden Report<sup>33</sup> called for a fresh approach to the purposes and governance and sought to position the designated landscapes in a role which can help to address increasingly complex environmental challenges, inequalities in well-being and health, and to deliver more vibrant rural communities.

Rather than responding to the report, the then Minister for Natural Resources, Carl Sargeant, convened the Future Landscape Wales programme, chaired by Lord Dafydd Elis-Thomas AM to explore these recommendations and the case for reform in a collaborative process and in the light of the new legal framework provided by the WFG Act and the Environment (Wales) Act 2016.

## **What changes are we proposing?**

The proposition for the way forward has emerged from the Future Landscape Wales programme's collaborative process, involving representatives of the National Parks, AONBs, NRW, third sector organisations and other public and private interests. This consultation provides the opportunity to explore in more detail the specific aspects of the Future Landscapes Wales proposition which suggest changes to legislation as part of furthering its work and informing the Welsh Government's legislative programme.

This consultation offers the Welsh Government the opportunity to gather views on the Future Landscapes Wales proposals which may require changes to legislation.

There are four key interconnected areas to consider:

1. Aligning the statutory functions of the designations more clearly with the sustainable management of natural resources;
2. Giving greater weight in decision making to the identified special qualities of the areas, which need to reflect a broad understanding of the importance of these areas;
3. Enabling governance arrangements to evolve to reflect local circumstances; and

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<sup>33</sup> [National Landscapes: Realising their Potential The Review of Designated Landscapes in Wales](#), Professor Terry Marsden et al, July 2015,

4. Refreshing the way new areas can be recognised for their special qualities and their sustainable management.

### **Aligning the statutory functions of the designations more clearly with the sustainable management of natural resources**

The core of the reform advocated by the Marsden Report can be summarised as ‘promoting’ the current National Park duty<sup>34</sup> to have regard for the socio-economic well-being of the area into one of its purposes, and to apply these same purposes to AONBs. In the current legislative framework the contemporary interpretation of this proposed broader function of National Parks and AONBs is in the delivery of the sustainable management of natural resources, within the context of the sustainable development principle<sup>35</sup>, with a formal relationship to the special qualities of the area.

Future Landscapes Wales suggests the need to explore further aligning the aim of designation with the sustainable management of natural resources as provided in the Environment (Wales) Act 2016. This would make ecosystem resilience and the multiple social, economic, cultural and environmental benefits they provide for our well-being the central aim.

The ‘Sandford Principle’ relates to the existing two duties of the National Parks to i) conserve and enhance natural beauty, and ii) promote the enjoyment of the area.

When Lord Sandford undertook a review of the National Parks in 1974 the perceived threat to National Parks was from visitors and that this could lead to erosion, visual impact, crowding and congestion, and disturbance of nature. In this context the two purposes were seen as a set of potentially competing duties. Lord Sandford stated that should there be irreconcilable conflict, the conservation purpose takes primacy over promoting the enjoyment. This Principle became enshrined in legislation in the Environment Act 1995.

This Principle is often misunderstood as meaning National Parks have a *primary* purpose for conservation and the Principle is a consideration in all decisions. This is not the case. The Principle and its form in statute are limited to only a very narrow set of circumstances which rarely arise.

The central purpose of Part 1 of the Environment (Wales) Act 2016 ensures how we use and manage our natural resources is undertaken in such a way as to maintain and enhance the ability of our ecosystems to continue to be able to deliver over the long term their multiple benefits for the well-being for the people of Wales. Supported by the principles of sustainable management of natural resources, this provides an integrated approach. The view of the Welsh Government is that aligning the purpose of designation with sustainable management of natural resources (as defined in section 3 of the Environment (Wales) Act 2016), would remove any competing duties and so there would be no need for the Sandford Principle. Inherent in this approach is a continued commitment to the value of these areas, where the proposal, below, to strengthen the status of special qualities in decision making extends any necessary safeguards beyond the limited scope of the current Sandford Principle.

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<sup>34</sup> As provided in the National Parks and Access to Countryside Act 1949

<sup>35</sup> Well-being of Future Generations (Wales) Act 2015 section 3.

We are, therefore, seeking your consideration on developing purposes which better reflect those responsibilities and the sustainable management of natural resources and its supporting principles established in the Environment (Wales) Act 2016.

### **Proposal 6**

We are considering aligning the statutory functions of designation landscapes more clearly with the sustainable management of natural resources.

### **Giving greater weight in decision making to the identified special qualities of the areas, which need to reflect a broad understanding of the importance of these areas**

Areas were originally designated as National Parks and AONBs because of the quality of the landscape and, in the case of National Parks, the recreational opportunities they provided. The benefits of the designated landscapes go wider than their visual and amenity value and embrace their vital role as a provider of wider public and private benefit both within and beyond their areas. Whilst a contemporary interpretation of the qualities of landscape extends beyond its visual amenity, to include biodiversity, cultural heritage and so forth, this isn't explicit in their designation or widely understood. They are areas with a wide range of valuable characteristics and services, such as nature, water supply, food and carbon storage.

We are, therefore, seeking your consideration on the proposal for establishing a clear formal relationship between the identified special qualities of a designated area and the partnerships, powers and policies that drive its sustainable management.

### **Proposal 7**

We are considering establishing a clear formal relationship between special qualities of a designated area and the partnerships, powers and policies that drive its sustainable management.

### **Enabling governance arrangements to evolve to reflect local circumstances**

The Future Landscapes Wales programme has set out an agreed suite of new governance principles in order to provide a framework within which the governance arrangements for the current designated landscape can be reviewed and for considering approaches to governance for new areas.

The principles are based on the IUCN<sup>36</sup> Principles for Good Governance and reflect the sustainable management of natural resources principles from the Environment (Wales) Act 2016 and the well-being goals and ways of working established by the WFG Act. They are developed around five key areas:

- Legitimacy, participation and voice
- Developing and implementing a strategic vision for the area
- Effective performance management
- Accountability and transparency
- Fairness and rights

In order to assess and appropriately implement changes to bodies responsible for existing and future landscape designations these principles should be observed when considering any legislative reform on governance.

A number of areas were identified for reform relating to governance which may require changes to legislation in order to be taken forward fully.

There have been suggestions for some time that a proportion of National Park Authority boards be filled via direct elections. The Welsh Government believes it is better at this time to focus efforts on ensuring the existing boards are providing effective leadership for the National Parks rather than increasing the cost and complexity of the administration of the Park Authority itself.

In this regard, oversight of performance management should be strengthened by introducing an approach to measuring performance which is tailored to the designated landscapes and offers consistency across all the designations. It should be flexible enough to be tailored to the scale and status of a managing organisation or partnership and adopted by new areas.

In line with the Welsh Government's commitment to develop a framework for local leadership the Cabinet Secretary for Finance and Local Government recently consulted on proposals on changing performance management arrangements for 'Improvement Authorities',<sup>37</sup> including removing the National Park Authorities from the improvement regime of the Local Government (Wales) Measure 2009.<sup>38</sup> The closing date for this consultation was 11 April 2017. A summary of the responses will be made available in due course and will be considered alongside responses to this consultation. Should a decision be made to repeal Part 1 of the measure there may be a need to develop a statutory basis for any revised approach in order to ensure transparency and accountability.

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<sup>36</sup> International Union for the Conservation of Nature

<sup>37</sup> Improvement Authorities are: Local Authorities, the National Parks and the Fire and Rescue Authorities. See - Consultation [Reforming Local Government: Resilient and Renewed](#), 31 January 2017, The Welsh Government website

<sup>38</sup> Part 1 of the [Local Government \(Wales\) Measure 2009](#), Legislation.gov.uk, April 2017.

Within the safeguards of the governance principles and the development of a robust performance and accountability model, we are seeking your consideration to introduce a wider range of local delivery models, including partnerships and shared or delegated responsibilities. The range of tools and powers a lead body has should also reflect local priorities and need.

### **Proposal 8**

We are considering enabling governance arrangements to evolve to reflect local circumstances including a wider range of delivery models such as partnerships and shared or delegated responsibilities.

### **Refreshing the way new areas can be recognised for their special qualities and their sustainable management**

There are ongoing calls for areas beyond the current designated landscapes to be recognised by some form of designation. The work of Future Landscapes Wales acknowledges the value of all landscapes and its conclusions set a challenge to consider how this should be formally recognised, with an appetite for building on the value of a lead body or partnership as a driver of the sustainable management of natural resources for an area.

Currently only NRW can make an order to designate a National Park or Area of Outstanding Natural Beauty. Included in the statutory tests for designation is that NRW are the authority which deems the protection afforded by designation is necessary. The existing legislation sets a broad framework which NRW must follow in order to make these orders.

A community and regional based model for designation exists in the French approach to Regional Nature Parks (PNR). Here 'designation' is by way of a charter; a contract which defines protection and development objectives for the region. The signatories are drawn from community and town councils, local authorities, and other bodies, and signatory is a commitment for 10 years. The charter does not in itself impose legal obligations rather it directs and guides the actions of local authorities and private landowners. The recognition of an area as a PNR is the culmination of locally driven initiatives to ensure the protection and economic and social development of an area.

Outside of the statutory realm are other approaches to recognising particular values of areas and regions based on an accreditation model. Here, communities can apply to an accrediting body for recognition for an area and must provide evidence against defined standards or tests in order to succeed. The UNESCO<sup>39</sup> programmes for World Heritage Site, Geopark and Biosphere Reserves are examples of such an approach, which already exist in Wales.

Both approaches are consistent with the aspiration of introducing formal review points for governance to ensure that approaches are fit for purpose and that performance is satisfactory.

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<sup>39</sup> United Nations Education, Science & Cultural Organisation

Within these approaches consideration needs to be given for the definition of “community” and whether there would be an agreed standard for the level of community consultation and representation. Consideration should also be given to who should function as an ‘accreditor’ or what other safeguards and mechanisms should exist in the event of failing to reach consensus on issues locally.

We are, therefore, seeking your consideration on developing a community led approach to the designation of areas for the sustainable management of natural resources, to complement the existing AONBs and National Parks.

### **Proposal 9**

We are considering refreshing the way new areas can be recognised for their special qualities and their sustainable management, including whether there should be an agreed standard for the level of community consultation and representation.

## **Questions**

### **Question 11**

Should the statutory purposes of AONB and National Parks be aligned with the sustainable management of natural resources?

### **Question 12**

Where the special qualities of each designated area are identified, should this be given greater weight in decision making? In considering this, how should it be done in order to most effectively add value to the governance of those areas and the connection to local communities and businesses?

### **Question 13**

Should legislation be introduced to recognise a wider range of areas and partnerships involved in driving the sustainable management of natural resources? What approach should be considered?

### **Question 14**

Are there any other aspects of the Future Landscapes: Delivering for Wales report where you believe a legislative provision is necessary? If so, please explain which and why.

## Chapter 4: Access to Outdoors

### Summary

This chapter sets out the following proposals relating to access to the countryside:

- Achieving consistency in the opportunities available for participation in different activities and how activities are restricted and regulated;
- Simplifying and harmonising procedures for designating and recording public access;
- Improving existing advisory forums and how access rights and responsibilities are communicated to all interests.

### What issues are we considering?

The current system underpinning access to countryside is too complex and burdensome. As such, Wales needs a better and fairer approach to public access for outdoor recreation, which is less burdensome to administer, provides for the wide range of activities people want to participate in and has sensible safeguards for land management activities. The Welsh Government intends to develop a coherent system for outdoor recreation, which allows for a broad range of non-motorised recreation on paths, open country and inland water.

At present the legislative framework lacks coherency, for example paths and areas of access land have different rules and regulations on who can go there and what activities are allowed. Often these rules have no relationship to the actual conditions on the ground.

The issue is further compounded as there is unnecessary inconsistency in the way paths and places open to the public are currently recorded, changed, and restricted.

We believe the law needs to reflect current recreational needs and be more flexible to changes in demand and participation. It is currently too difficult to make changes to public access, either to increase it or restrict it.

We have an opportunity to make Wales more attractive as an activity tourism destination, both home and abroad. In addition, we seek to develop opportunities for access to the outdoors for recreation near to where people live in order to increase levels of physical activity and promote the wider benefits to physical and mental health of being outdoors.

Improvements to the opportunities for public access to the outdoors for recreation will contribute to the goals set out in the WFG Act 2015 and complement the provisions of the Active Travel (Wales) Act and the Environment (Wales) Act. The success of the Wales Coast Path has already demonstrated how outdoor recreation can help to support the economy, improve health and instil a sense of national pride.



Making changes to legislation could reduce impediments which currently frustrate progress by making it difficult to provide improved access opportunities that allow for healthy exercise, or limiting the potential of activity tourism.

## Current Position

Following a broad based review of the legislative framework for access and outdoor recreation, including the consultation in 2015 on improving opportunities to access the outdoors for responsible recreation<sup>40</sup>, the Welsh Government has identified a number of areas to be improved in order to deliver a better and fairer approach to public access for outdoor recreation. The aim is to develop an approach which is less burdensome to administer, provides for the wide range of activities that people can take part in, with sensible safeguards for land management activities and the cultural and natural environments.

It is not our aim to take away or reduce access rights for existing users. It is about increasing access for all non-motorised activities whilst allowing for sensible flexibility for land management and safety.

There are a large number of statutes that make up the legislative framework for access and rights of way. The key pieces of legislation include:

- The **National Parks and Access to the Countryside Act 1949** was the first significant legislation to establish rights for visiting the countryside;
- The **Countryside Act 1968** includes provisions in relation to stiles, gates and signage on public rights of way, including signposting footpaths and bridleways, and the riding of pedal cycles on bridleways;
- The **Highways Act 1980** includes the main powers and processes for creating, diverting, and extinguishing public rights of way;
- The **Wildlife and Countryside Act 1981** includes a duty to keep the definitive map and statement under continuous review and provides the associated mechanisms for updating these records;
- The **Cycle Tracks Act 1984** gives power to highway authorities to convert footpaths into cycle tracks, either for cycling only or for both cycling and walking;
- The **Countryside and Rights of Way Act 2000** [“the CRoW Act”] created access on foot to open country, defined as mountain, moor, heath, and down. This Act places a duty on Natural Resources Wales to prepare, consult and issue maps of all registered common land and open country; a power on access authorities (local authorities and national park authorities) to ensure a means of access to the CRoW access land; makes various provisions in relation to public rights of way, including a duty on local authorities to produce Rights of Way Improvement Plans and new procedures relating to the removal of obstructions; and provisions for the creation of local access forums.

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<sup>40</sup> [Improving opportunities to access the outdoors for responsible recreation](#), The Welsh Government, July 2015.

## What changes are we proposing?

The Welsh Outdoor Recreation Survey<sup>41</sup>, commissioned by NRW is the largest survey of participation in outdoor recreation by people living in Wales. Key challenges highlighted in the recently published 2014/15 survey summary compliment responses to the 2015 Welsh Government consultation about the need for a more fit for purpose legislative framework.

*“Change in activity preferences is often relatively unpredictable, and can shift rapidly. This highlights the need for recreation provision to be flexible, and where possible to accommodate a diversity of activities on the doorstep.”<sup>42</sup>*

Most of the almost 5,800 responses to the consultation were in favour of increasing opportunities for a wider range of users, notably cyclists but also, among others, horse riders and paragliders.

Flexible provision for different activities, and to allow sensible safeguards for land management and wildlife, would be supported by a consistent approach to access across land and water.

*“Outdoor recreation provides benefits for both health and the economy. Health benefits are particularly associated with frequent participation in doorstep activities, whilst economic benefits are derived more from days out to the best of Wales’ iconic coast and mountains. A key challenge is to find the right balance of support for both of these different types of recreation.”<sup>43</sup>*

Balancing the desire to improve the excellent tourism offer provided by Wales with the need to enhance doorstep opportunities can be achieved in part by broadening the type of areas available for access and in establishing a fairer approach to the types of recreation in which people can participate.

The survey identifies beaches (28%), mountains (16%) and the coast (14%) as the areas people would most like to go to in the future. These aspirations reflect the appeal of Wales’ more iconic locations, which also draw visitors to Wales.

### **Achieving consistency in the opportunities available for participation in different activities and how activities are restricted and regulated**

To help improve the opportunities for activity tourism and the options available for people to participate in outdoor recreation near to where they live, changes are needed to the rights associated with existing path networks and access land, in addition to establishing rights in areas where the public would most benefit.

Associated to this is the need to ensure appropriate regulation of activities to safeguard the interests of existing users, the natural and cultural environments and land management, including liability and responsibility.

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<sup>41</sup> Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report, Natural Resources Wales, December 2016.

<sup>42</sup> Challenge 4, p.21 of the Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report, Natural Resources Wales, December 2016.

<sup>43</sup> Challenge 5, p.21 of the Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report, Natural Resources Wales, December 2016.

## Increasing range of activities on access land and public rights of way

Wales has the greatest length of rights of way per square km (1.59km/sqkm) in the UK followed by England (1.46km/sqkm), Scotland (0.19km/sqkm) and Northern Ireland (0.01km/sqkm).<sup>44</sup> However, around 79% of the network in Wales is made up of footpaths, with the other 21% made up of bridleways and byways. In addition, access land designated under Part 1 of the Countryside and Rights of Way Act 2000 [(the CRoW Act) is subject to rights for the public to enter and remain on specified types land “for the purposes of outdoor recreation”. Restrictions included in the CRoW Act effectively restrict rights to those on foot (or a mobility carriage).

In order to increase the value of these routes and areas as assets to promote participation and tourism we seek your views on introducing changes to the rights and restrictions associated with them.

### Proposal 10

To enable cycling and horse riding on footpaths to occur under the same conditions as those provided for cycling on bridleways under section 30 of the Countryside Act 1968. These provisions allow for cycling without placing additional burdens of maintenance and liability on the local authority; and they prioritise the ordinary users of those paths. Whilst it would not place additional liabilities or maintenance burdens on local authorities, it would enable them to plan and implement surface and furniture improvements to routes that would add most value to the rights of way network. It would place the onus of checking the suitability of individual paths on users.

### Proposal 11

To amend or revoke the following list of restrictions on access, provided in Schedule 2 (1) of the CRoW Act 2000:

- (b) uses a vessel or sailboard on any non-tidal water;
- (c) has with him any animal other than a dog;
- (i) bathes in any non-tidal water; and
- (s) engages in any organised games, or in camping , hang-gliding or para-gliding.

### Proposal 12

To allow, with appropriate authority, organised cycle racing on bridleways in order to bring rules relating to bridleways into line with footpaths.

We would welcome any further suggestions for change in relation to anomalous or unreasonable restriction on public rights of way.

<sup>44</sup> National Assembly for Wales Research paper, *Countryside access in the UK: a review of associated legislation and policy*, April 2014.

## **Extend access land to the coast and cliffs**

Under section 3 of the CRoW Act there is provision to extend access land to the coast. We are seeking views on implementing this provision to enable improved access for users; reduced liability on land managers and better protection for marine wildlife, including cliff nesting birds and seals with pups

### **Proposal 13**

To extend CRoW Act access land to the coast and cliffs.

## **Establish access on inland water**

There is an enduring dispute over the rights of those participating in water recreation on rivers and lakes. Implementing proportionate and fair legislation to establish clarity over rights of access as well as ensuring greater consistency with other access areas and activities we believe will help to reduce incidents of unfettered access currently causing confrontation between recreational users and will enhance recreational opportunities on water for locals and visitors.

In order to ensure that the interests of other users, land managers and the natural and cultural environments are enhanced and protected with the establishment of access rights to inland water, we are seeking your views on our proposals to extend Part 1 of CRoW Act provisions to all rivers and other inland waters.

There would not be a universal right to access water from land adjacent to the water. Access and egress points would need to be identified by a statutory authority and mapped. Access or egress at any other point along the water would only be permissible where needed in an emergency or where permission is granted by the landowner. A level of reduced liability, similar to that already in place on access land under sections 12 and 13 of the CRoW Act could apply to land managers with access and egress points on their land and to the responsible authority for water access.

### **Proposal 14**

To extend Part 1 of CRoW Act access land provisions to rivers and other inland waters

### **Proposal 15**

To establish NRW as the authority responsible for:

- identifying appropriate access and egress points;
- implementing measures to promote responsible use, including the use of river level indicators; and
- mediating between the different user interests to facilitate user access agreements.

## **Introducing a statutory requirement for responsible recreation covering access land, public rights of way and water**

We are of the view that Wales can learn from the approach taken by Scotland in relation to placing the onus on users to respect and protect the areas to which they have access. This would match the statutory duties already placed on land managers to ensure access areas are open and easy to use.

In order to protect the natural and built environments, access rights across CRoW access land and public rights of way will be dependent on the user behaving responsibly whilst undertaking recreation, with a failure to do so resulting in the rights being annulled. We are also seeking your views on guidance on responsible behaviour as part of the proposal for a statutory access code (see page 44 below under Statutory Code for Access in Wales).

### **Proposal 16**

To establish a statutory caveat on all users to behave responsibly whilst exercising their right to participate in recreation on access land, inland water and on public rights of way.

## **Establish mechanisms for restricting access**

There are circumstances where relying on responsible behaviour by users will not be sufficient to ensure land management, user and wildlife interests are protected. Under Part 1 of the CRoW Act restrictions to access can be imposed in special circumstances, namely, for reasons of land management; for nature conservation or heritage preservation purposes; to avoid the risk of fire; and to avoid danger to the public.<sup>45</sup> The duration of restrictions vary from a few days to longer. They can apply various limitations, including where people can enter and leave access land and restricting access with dogs during lambing season. They can also be used to prohibit any visits to an area. We believe these restrictions could usefully be extended and modified to apply to public rights of way and water.

Responses to the 2015 consultation demonstrated the need to tighten up restrictions on dogs in the countryside. Walking dogs is a key reason why many of us participate in physical activity. Evidence gathered by the Wales Outdoor Recreation Survey shows that around 39% of visits to the outdoors are made by people with dogs; and dog walkers are almost twice as likely to participate in frequent visits as those without.<sup>46</sup> However, without adequate control, dogs can pose a considerable threat to livestock, in particular, pregnant ewes and those with lambs. Therefore, we believe it is sensible to require dog walkers to place their animals on leads in the vicinity of livestock. Careful guidance and meaningful education is also required to encourage responsible behaviour, including bagging and binning dog waste.

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<sup>45</sup> Natural Resources Wales website, "Restrictions on Access Land" April 2017.

<sup>46</sup> Pages 4 and 3 respectively of the Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report, Natural Resources Wales, December 2016.

**Proposal 17**

To enable temporary diversions and exclusions to be applied across all accessible land and water where circumstances require them and after the safety and convenience of the public have been considered.

**Proposal 18**

Dogs to be on a short fixed length lead in the vicinity of livestock at all times of the year. In all other circumstances they will be subject to “effective control”, a legally defined term already used in England under Schedule 2 paragraph 6A of the CRoW Act. Exceptional circumstances relating to safety and the protection of nature conservation will be identified and guidance provided by the access code.

**Simplifying and harmonising procedures for designating and recording public access.****All Wales digital map of access**

There are currently a number of statutory maps covering access areas. These are often hard copy maps as required by legislation to be available to the public at reasonable times at the relevant authority offices (e.g. Local Authority or NRW offices).

In keeping with the commitment included in Taking Wales Forward to “go digital-first in our delivery of government services” we are of the view that information on accessible areas should be made more widely available to the public. This would benefit local people by demonstrating what is available on their doorstep and tourists when considering where to go and what to do.

One electronic map with information on all accessible areas, including public rights of way and access land, should replace existing statutory maps. This will increase clarity over where people can go and what they can do. In the medium to long term it will also reduce burdens on local authorities and other responsible bodies (e.g. National Park Authorities and NRW) in their duties to record public access.

**Proposal 19**

To enable the development of one statutory map of accessible areas and green infrastructure. Layers of mapping would initially include CRoW access land (including water), public rights of way and designations, including, National Trails. Legislation would need to allow further layers to be identified and added.

## Reducing procedural burdens associated with public rights of way and access land

One of the key areas of access legislation in need of improvement relates to the recording and changing the rights of way network. The scope for change is broad but key findings from previous work, including the 2015 consultation, have identified the following:

- Enabling local authorities to create or divert routes by agreement across public land, and on private land where practicable and with the consent of land managers
- Amending the requirements around notification of orders, for example, updating the requisites for press notices to include electronic notifications;
- Amending the provisions around compensating landowners to reduce uncertainty and inequity; and
- Making it easier for Local Authorities and land managers to remove unnecessary stock control measures, including, stiles and gates.

The De-Regulation Act 2015 makes a number of changes to legislation in England to reduce the burden placed on local authorities and land managers in relation to rights of way. We believe some of those provisions relating to Definitive Map Modification Orders and Public Path Orders could usefully be applied in Wales.

Section 10 of the CRoW Act currently requires statutory maps of access land in Wales to be reviewed by NRW every ten years. The first of these was undertaken in 2015. In its evaluation report on the process and outcomes of the initial review, NRW advised the Welsh Government that a system of continual review would be more efficient and less resource intensive. We agree with this view and believe that people would be best served having up to date information on where they can access land legally. The proposal to digitise the mapping would further reduce the burden on NRW and facilitate better communication of any amendments.

<b>Proposal 20</b>
To amend technical provisions relating to procedures for creating, diverting and extinguishing public rights of way; and the recording of amendments to the definitive map and statement.
<b>Proposal 21</b>
To introduce provisions to allow flexibility in relation to stock control measures on public rights of way.
<b>Proposal 22</b>
To amend the requirement for a decadal review of access maps to a process of continual review.

## **Extending Rights of Way Improvement Plans (ROWIPs) to include access land and water and integrating with Active Travel provisions**

Responses to the 2015 consultation on access highlighted the value of ROWIPs as a means by which Local Authorities identify, plan and prioritise their rights of way network. Evaluations of the development, content and delivery of the first ROWIPs (2007 – 2017) have highlighted their strengths and the benefits that have resulted.

Section 60 of the CRoW Act places a statutory duty on local authorities to develop ROWIPs and to review them every ten years. Local authorities are currently in the process of undertaking the first review.

With existing financial pressures there is now an even greater need to have clear evidence-based plans to target limited resources, providing the greatest public benefit by delivering across multiple policy areas and integrating with other services.

Under existing provisions Authorities may choose to extend the scope of their plans to include access land and other access provision that is important in their area. We believe there is scope for developing more integrated plans that require a more robust overview of access opportunities across local authorities, for example, the management of parks and gardens and green corridors for wildlife and active travel.

### **Proposal 23**

To create a requirement on local authorities and National Park Authorities to develop integrated access plans to take effect anytime up to the date of the next review in 2027.

## **Repeals**

During the review of access legislation a number of statutory provisions were identified as unsuitable or disadvantageous to outdoor recreation opportunities in Wales.

Under the Cycle Tracks Act 1984, local authorities can make an order to convert a footpath into a cycle track. The process means that the relevant paths are no longer recorded on the definitive map. They remain maintainable at public expense but anecdotal evidence suggests that they are sometimes overlooked when they cease to be on the definitive map and under the responsibility of public rights of way teams.

Since 2001 the Welsh Government has been implementing provisions under the CRoW Act. There are a number of provisions yet to be implemented, which are no longer pertinent or considered in keeping with the Welsh Government's priorities for access. These include provisions that are no longer necessary or are resource intensive for local authorities.

Examples of these include allowing the Welsh Ministers to designate areas within which paths can be closed for crime prevention or reduction measures; and provisions which set a cut-off date (1 January 2026) by which any unrecorded historical rights of way must be legally recorded or be lost. Implementation of these provisions would place an expensive burden on local authorities and risks losing a number of routes currently used by the public, which help promote economic, health and community well-being.



**Proposal 24**

To repeal the Cycle Tracks Act 1984. In doing this create a new type of public right of way, 'cycle paths', prioritising cycling and walking (and subject to proposal 10 above) to be recorded on the definitive map and statement. All existing cycle tracks designated under the 1984 Act would be recorded as cycle paths.

**Proposal 25**

To repeal unwanted provisions in the CRoW Act. In particular those relating to the 2026 cut-off date for historical routes under sections 53 – 56 of the CRoW Act.

**Improving existing advisory forums and how access rights and responsibilities are communicated to all interests.****Statutory Code for Access in Wales**

There was a general consensus amongst many key stakeholder organisations of the potential benefits of a comprehensive statutory code for access and outdoor recreation. We believe that a statutory code along with a sustained programme of education and promotion by the Welsh Government and its partners will help promote fairer, better and more responsible access to the outdoors by users and fairer, better and more responsible management of provision by local authorities and land managers.

In order to ensure the code is equitable and practical we are of the view that it should be developed through a partnership approach with key stakeholders and a public consultation process before being submitted to the National Assembly for Wales for consideration.

**Proposal 26**

To develop a statutory code for access to the outdoors for recreation similar to that already in place in Scotland under the Land Reform (Scotland) Act 2003<sup>47</sup>.

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<sup>47</sup> Scottish Outdoor Access Code - <http://www.outdooraccess-scotland.com/the-act-and-the-code/introduction>

## Local Access Forums

With the current constraints on funding and the increasing importance of having a joined up approach to social, economic, environmental and cultural well-being, local access forums (LAFs) continue to be an important resource for the improvement in opportunities for recreational access to the outdoors.

Responses to the 2015 consultation relating to local access forums revolved around their membership and remit. We have carefully considered the proposals sent forward in the responses and are of the view that most of the issues raised can be tackled by making changes to the regulations<sup>48</sup> rather than Part 5 of the CRoW Act itself and updating the guidance previously provided by what was then the Countryside Council for Wales.

Changes identified include (but are not limited to):

- Amendments to enable deputies to represent members who are unable to attend their LAF meetings;
- Steps to encourage a more representative range of members, such as, guidance on when and where to hold meetings to allow for those who work and/or have caring responsibilities;
- Advertising for members on the internet and social media – this could also assist in reducing the cost of re-establishing LAFs;
- Guidance on how to promote the roles and responsibilities of LAFs to other public bodies. This includes how LAFs can engage most effectively with their Public Service Boards;
- Increasing the term of a LAF from 3 to 4 years.

We are not of the view that statutory changes are required to the number of LAFs or to their statutory status or that of the associated national level meeting of LAF chairs and deputy chairs.

### **Proposal 27**

To review the regulations and guidance relating to local access forums with a view to updating and clarifying their role and membership.

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<sup>48</sup> Countryside Access (Local Access Forums) (Wales) Regulations 2001 (SI 2001/4002)

## Questions

### **Question 15**

Will these proposals deliver consistency in the opportunities available for participation in different activities and provide effective safeguards for land management and the natural environment?

### **Question 16**

Will these proposals deliver a more integrated and up to date system for identifying, designating and recording publically accessible areas?

### **Question 17**

Will these proposals provide significant clarification to ensure that the public, land managers and others are clear about their rights, responsibilities and duties in relation to access to the outdoors?