

Number: WG31811



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Taking Forward Wales' Sustainable Management of Natural Resources

Date of issue: 21 June 2017

Action required: Responses by 30 September 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview 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.

How to respond Responses to this consultation should be E-mailed/posted to the address below to arrive by 30 September 2017

Further information and related documents **Large print, Braille and alternative language versions of this document are available on request.**

[Environment \(Wales\) Act 2016](#)

Contact details For further information:

Natural Resources Management Team
Welsh Government
Cathays Park
Pillar J08
East Core
CF10 3NQ

Email: naturalresourcemanagement@wales.gsi.gov.uk

Data protection **How the views and information you give us will be used**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with

the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government.

This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Ministerial Foreword



In Wales, our natural resources are fundamental to our nation and we are committed to ensuring they are managed sustainably to deliver lasting economic, social, cultural and environmental benefits. This will also help us to achieve the goals in the Well-being of Future Generations (Wales) Act 2015.

Over the last few years, we have built a reputation as a world leader in legislating for sustainable development and we are determined to build on that reputation. The UK's exit from the EU is not without challenges; however it can provide new opportunities for Wales to pursue the sustainable management of natural resources.

The long-term resilience of our economy and society is dependent on the resilience of our ecosystems. In Wales, we must not reverse our progress or hinder our ability to improve environmental standards; we must take opportunities to build on them. Our reputation for high-quality produce, for example, is based on the standards we adhere to in relation to human health, animal health, welfare and the environment.

Our landmark Environment (Wales) Act established the legislative framework for the sustainable management of natural resources in Wales. The Act and the creation of the world-first body – Natural Resources Wales (NRW) – were the first steps towards providing a coherent approach to the management of our natural resources.

There are still challenges ahead – the resilience of our ecosystems and our biodiversity continues to decline and the ever-present and overarching challenge of climate change means we must consider where and how we can improve our regulatory framework to ensure we not only support but align to this framework.

The sustainable management of our natural resources is a key contributor to green growth as our sectors rely on their services and this approach helps to improve competitiveness; contributes to addressing resource security concerns and creates growth and jobs, as well as making an important contribution to maintaining and enhancing our natural resources.

The regulatory framework has to enable us to take forward both existing and emerging opportunities to provide for these economic, social and environmental opportunities.

This Consultation follows on from our extensive work on the Well-being of Future Generations (Wales) Act and the Environment (Wales) Act and will support delivery of a cross-cutting agenda to support Wales' future development to ensure we can benefit from the significant opportunities the sustainable management of our natural resources provides.

This paper sets out a number of key proposals to help us continue meeting our objective of managing our natural resources more sustainably.

Together, the proposals demonstrate the Welsh Government's commitment to systematically identify where we believe reform is necessary to ensure we are equipped to sustainably manage our natural resources in preparation for the significant challenges and opportunities we face in the future, not least the decision for the UK to leave the EU.

I am committed to ensuring we maintain and enhance the resilience of our natural resources and ecosystems – to achieve this we need to consider all the potential opportunities to modernise and improve the regulatory framework for the benefit of Wales.

I welcome your views on the proposals contained in this Consultation.

Table of Contents

Ministerial Foreword.....	4
Table of Contents	6
Introduction.....	9
Background	10
Case for Change.....	11
Summary of key proposals.....	12
Chapter 1: Towards the Sustainable Management of Natural Resources	15
Chapter 2: Forestry.....	19
What issues are we considering?	19
Current Position.....	20
Questions	27
Chapter 3: Designated Landscapes	28
What issues are we considering?	28
Current Position.....	29
What changes are we proposing?	29
Questions	34
Chapter 4: Access to Outdoors	35
Current Position.....	36
What changes are we proposing?	37
Questions	46
Chapter 5: Marine and Fisheries	47
Marine - What issues are we considering?.....	47
Current Position.....	48
What changes are we proposing?	48
Questions	50
Fisheries - What issues are we considering?.....	51
Current Position.....	51
What changes are we proposing?	52
Questions	55
Chapter 6: Water.....	56
Abstraction Reform.....	56
What issues are we considering?	56
Current Position.....	57
What changes are we proposing?	57
Questions	58
Drainage Reform.....	59
What issues are we considering?	59

Current Position.....	59
What changes are we proposing?	61
Questions	63
Chapter 7: Waste and Local Environment Quality	64
Waste - Powers of Entry in section 108 of the Environment Act 1995	64
What issues are we considering?	64
Current Position.....	64
Questions	66
Waste - Sanctions under Section 46 of the Environmental Protection Act 1990 (EPA).....	67
What issues are we considering?	67
Current Position.....	67
What changes are we proposing?	68
Questions	68
Environment – Littering from vehicles.....	69
What issues are we considering?	69
Current Position.....	70
What changes are we proposing?	71
Questions	72
Chapter 8: Smarter Regulation – The Role of Basic Measures.....	73
What issues are we considering?	73
Current Position.....	73
What changes are we proposing?	74
Question.....	74
Chapter 9 – Agriculture	75
What issues are we considering?	75
Current Position.....	75
Evidence for change	76
Questions	77
Chapter 10: Wildlife	78
What issues are we considering?	78
Current Position.....	78
Evidence for change	79
Questions	82
Chapter 11 – Assessment of Policy Proposals	83
Questions	84
Annex 1 - List of Questions.....	85
Annex 2 - Glossary	91
Annex 3 - Sustainable Management of Natural Resources.....	95

Annex 4 - Matters Subject to arbitration under the Agricultural Holdings Act 1986 and
Agricultural Tenancies Act 1995..... 97

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 2017¹.

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*² Paper and *Towards the Sustainable Management of Natural Resources White*³ 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

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

² Sustaining A Living Wales, Green Paper, 2012

³ 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 21st 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 equality⁴.

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:

⁴ 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 1: Towards the Sustainable Management of Natural Resources

Our natural resources underpin our economy, particularly many of the key sectors in Wales including farming, fisheries, forestry, tourism and water. The long term resilience of our economy and society is interwoven with the resilience of our ecosystems. However, the resilience of our ecosystems and our biodiversity continues to decline, coupled with the continuing challenge of climate change. Increasing the resilience of our ecosystems will not only improve the status of our natural resources but can help support our prosperity and improve our health.

Chapters 2-10 of this Consultation outline a number of specific policy proposals in areas, which may require legislative mechanisms to address identified issues and align with the sustainable management of natural resources. However, as the pressures and demands on our natural resources continue, our legislative framework needs to be able to address these changing demands, be more progressive and deliver towards the common purpose of sustainable management. If we are to realise the opportunities and successfully mitigate the risks to our natural resources, economy and society, there may be additional opportunities for further regulatory responses, which help to build greater resilience into our ecosystems, enabling them to be more able to address pressures and demands and continue to provide multiple benefits to society now and in the long term.

Our regulatory framework (including legislation and voluntary mechanisms) should not act as a barrier to sustainable management of natural resources but it should provide mechanisms which not only prevent the root causes but increase resource efficiency, for example, by promoting a circular economy, enabling green growth and the development of new innovative mechanisms and incentives to deliver new opportunities.

An effective, modern regulatory framework can help us to implement more sustainable management of our natural resources and, therefore, a more prosperous, resilient and healthy Wales. Putting in place new regulatory mechanisms can help to improve the resilience of our sectors engaged in primary production by improving our processing capacity. Increasing the resilience of our ecosystems can offer new market opportunities and help reduce pollution and improve health conditions.

In addition to seeking views on the specific proposals outlined in Chapters 2-10, we are also seeking general views on whether there are opportunities to further develop the regulatory framework to:

1. Promote a circular economy;
2. Deliver nature based solutions; and
3. Support new markets and innovative approaches.

Promote a circular economy

A circular economy uses resources more efficiently in a loop, where they can be returned to use and their value retained. It is an economy, which is restorative and regenerative by design and aims to keep products, components and materials at their highest utility and value at all times. It aims to decouple economic development from resource consumption, whilst enabling economic growth, creating jobs, and reducing environmental impacts,

including carbon emissions. It is a model, which looks beyond the current "take, make and dispose" extractive industrial model. A circular economy approach offers an opportunity to reinvent our economy, making it more sustainable and competitive, as well as increasing profitability and reducing the exposure of businesses to economic risks associated with the UK's exit from the EU.

The Welsh Government commissioned a report by the Ellen MacArthur Foundation via the Waste and Resources Action Programme (WRAP)⁵ on the benefits of a circular economy for Wales. An initial analysis in the report suggested material cost savings of up to £2.0bn a year could be achieved by transitioning to circular processes and on top of net financial gains, moving towards a circular economy through an inclusive (business, public sector, education) and clearly defined roadmap could reduce Wales' dependency on raw materials, have a positive impact on the jobs market and increase the value and productivity of agricultural systems.

Towards Zero Waste, our waste strategy effectively sets Wales on a path towards a more circular economy, in which ambitious targets for waste prevention and recycling were established. Provisions in the Environment (Wales) Act help to achieve more recycling by businesses and the public sector and this year, the Welsh Government confirmed its commitment to a circular economy by announcing a £6.5m fund to help the country move towards a circular economy.

Question 1

Do you consider there are further opportunities for integration of circular economic approaches? If so, please provide examples of where there are any regulatory obstacles to achieving integration.

Nature Based Solutions

Nature-based solutions are interventions, which use nature and the natural functions of resilient ecosystems to tackle some of the most pressing challenges of our time. They can help address a variety of societal challenges with the potential to contribute to green growth, 'future-proofing' society, improving well-being and provide economic opportunities. These types of solutions help to protect the environment but also provide numerous economic and social benefits. Creating or restoring green spaces in cities, for example, can increase tourism revenues, provide recreational opportunities for citizens, and help lower temperatures and pollution levels in urban areas.

Nature based solutions can provide cost-effective solutions to challenges, such as rising temperatures or flooding, including supporting climate change adaptation and mitigation. Solutions can include green infrastructure and water treatment systems, for example sustainable urban drainage or better soil management for carbon storage and sequestration. Nature based water-retention measures are a key example of how green infrastructure can work alongside traditional grey infrastructure (e.g. flood gates). They take many forms, from small green roofs to large forests, and bring multiple benefits. As well as

⁵ WRAP, [Wales and the Circular Economy, Favourable system conditions and economic opportunities](#)

reducing flood risk, they can have value for biodiversity, recreation and water quality because they reduce soil erosion and can prevent agricultural pollution running into rivers.

Examples of Nature Based Solutions

- Permeable surfaces, green roofs, riparian forest systems and floodplains reduce the adverse effects of severe rainfall events. By absorbing excess rainwater they lower the risk of inner-city flooding and waterlogging.
- Green roofs can cool buildings in the summer and prevent heat loss in the winter;
- Trees, green space and vegetation can attenuate urban heat stress and reduce temperatures; and
- Trees and green walls can halve the amount of health threatening particles in the air.

Question 2

Are there any regulatory barriers to introducing nature based solutions?
Please provide information.

Support new markets and innovative mechanisms

There are a number of different pressures, which take many forms, affecting the resilience of our ecosystems; therefore, the appropriate strategies to maintain and enhance ecosystem resilience may require a mixture of different approaches. What types of regulatory approaches and which work for specific situations will be highly dependent upon the characteristics of the issue under consideration. For example, an approach which addresses point source pollution may not be appropriate for diffuse pollution.

Part 1 of the Environment (Wales) Act introduced an integrated approach, which recognises different responses may be required to address different types of issues. For example, one of the principles of sustainable management of natural resources includes taking action or decision making at the appropriate scale to address ecosystem resilience. This includes collaborative working to deliver results at a local level.

Nature based solutions are one means of addressing issues at a particular scale (which can be any scale from local water supply to landscape). The delivery of nature based solutions may require the establishment of markets, an example being payment for ecosystem services (PES). Realising the value of ecosystem services, and generating an income for their management not only realises positive environmental outcomes but can provide new income streams for land managers.

There are various types of market mechanisms that could provide new methods of help to improve our environmental standards as well as provide new economic and social opportunities. Other types of mechanisms include cap and trade schemes, which have been applied in areas such as water and carbon emissions. For example, the State of California has put in place a cap and trade system, which places a cap on greenhouse gas

(GHG) emissions for the largest industrial emitters of carbon dioxide. These emitters receive, buy or trade permits to emit GHGs up to their assigned cap. The sales of permits by the State of California generates revenue the state can invest in activities to help reduce GHGs. Whilst New South Wales introduced specific schemes for water catchments, applying an area based approach to regulating pollution discharges⁶.

An effective regulatory framework, which not only maintains environmental standards but improves them and provides economic and social opportunities, requires a mixture of regulatory mechanisms. Some of the above are mere examples. We are seeking your views on whether there are potential opportunities for new regulatory approaches to deliver on the sustainable management of natural resources.

Question 3

Are there potential opportunities for market mechanisms or innovative regulatory approaches? Are there any legislative barriers to their implementation?

⁶ <http://www.epa.nsw.gov.au/licensing/hrsts/>

Chapter 2: Forestry

Summary

This chapter sets out some proposals to bring in line certain elements of forestry legislation with the sustainable management of natural resources. This includes:

- Improving alignment of NRW's general duties in the Forestry Act 1967 with their general purpose to pursue sustainable management of natural resources;
- Extending NRW's power to delegate to others (e.g. local communities) its functions for the management of forests;
- New methods of regulating felling licences;
- Streamlining governance arrangements in relation to the Regional Advisory Committee; and
- New protections for ancient and veteran trees.

What issues are we considering?

The law relating to forestry is almost entirely contained within the Forestry Act 1967 and subordinate regulations made under it. The Act is a consolidating measure of the Forestry Act 1919 and amendments to it and there have been very few changes to the Act over the years. There has, over this period, been a shift in the principal purpose of forestry from being concerned primarily with timber production to that purpose also encompassing public access, recreation and sport, nature and wildlife conservation and the maintenance and enhancement of biodiversity.

Wales' mix of planted and semi-natural forests, both broadleaved and conifer, provide a number of ecosystem services, as outlined above. Internationally agreed standards for sustainable forest management are now well-established, including those set out in the 47-country *Forest Europe* process, to which the UK is a signatory. These standards are incorporated into a UK-wide forestry standard⁷ and a comprehensive set of practice guidelines on forests and water, people, biodiversity, climate change, the historic environment, landscape and soil. A large proportion of Welsh forests are managed through voluntary certification schemes. These allow woodland owners, and timber users to demonstrate that their product is from sustainably managed forests, and to use the internationally recognised FSC⁸ or PEFC⁹ certification brands. As a result of the application of sustainable forest management standards, Welsh woodlands are changing, with areas of single species now being replaced by more resilient woodlands containing a wider mix of species, and containing much more variety of structure.

⁷ The UK Forestry Standard, produced by the Forestry Commission, on behalf of Welsh Government, Scottish Government, Department of Environment Agriculture and Rural Development Northern Ireland.

⁸ Forest Stewardship Council

⁹ Programme for the Endorsement of Forest Certification

These changes have been achieved without any major amendment to the Forestry Act since the term forestry can be interpreted very flexibly. The duties and functions relating to forestry regulation and management set out in the Act were transferred to NRW in April 2013. NRW's general purpose is set out in Article 4 of the Natural Resources Body for Wales (Establishment Order) 2012¹⁰. In the exercise of its functions, it must pursue sustainable management of natural resources in relation to Wales, and apply the principles of sustainable management of natural resources. This gives NRW a unique mix of diverse responsibilities encompassing direct management of the Welsh Government Woodland Estate, management of other land and also regulatory and advisory responsibilities for nature conservation, water management and air quality.

There are areas of the Forestry Act 1967 that could be improved to align forestry management with the principles and objective of the sustainable management of natural resources, helping to optimise the economic, social and environmental benefits of Wales' forests, woodlands and trees. These areas are:

- NRW's general duties under the Forestry Act;
- NRW's power to delegate to others its functions for the management of forests;
- Requirements relating to felling licences; and
- Governance arrangements.

In addition there may be potential opportunities in relation to the protection of ancient, veteran and heritage trees in Wales. These trees represent a small percentage of the tree population of Wales, yet they have a significant value in the landscape of Wales. Existing statutory frameworks provide mechanisms to protect some of these special trees in limited circumstances but they do not allow for measures to protect ancient, veteran and heritage trees in every circumstance where it is desirable.

Current Position

NRW's general duties under the Forestry Act

NRW has general duties that include a duty to promote the interests of forestry, the development of afforestation and the production and supply of timber and other forest products and this includes promoting the establishment and maintenance of adequate reserves of growing trees¹¹.

In addition, so far as is consistent with the proper discharge of their functions, NRW must endeavour to achieve a reasonable balance between, on the one hand the development of afforestation, the management of forests and the production and supply of timber with, on

¹⁰ As amended by section 5 of the Environment (Wales) Act 2016

¹¹ Section 1(2) and (3) of the Forestry Act 1967.

the other hand the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special features¹². This is generally referred to as the “balancing duty”.

NRW’s power to delegate its functions under the Forestry Act

NRW has general powers of delegation provided in its Establishment Order¹³ but these are not mirrored in the wording of the Forestry Act and this creates potential difficulty and could be an impediment to involving others in the management of the Welsh Government’s Woodland Estate.

NRW is able to enter into agreements to involve others in the management of recreation facilities on the Welsh Government Woodland estate. It can also engage others to provide it with contract services but the Forestry Act does not provide an expressed power to allow others to make key management decisions about forestry matters on the Welsh Government Woodland Estate.

Requirements relating to felling licences

As a general rule a felling licence issued by NRW is required to fell growing trees in any quantity¹⁴. NRW must grant an unconditional licence except where it appears to be expedient to either impose conditions on a licence or to refuse it in the interests of:

- Good forestry;
- Agriculture;
- The amenities of the district, or
- The establishment and maintenance of adequate reserves of growing trees.

Conditions that can be imposed on a felling licence are for the restocking of the land and the maintenance of restocked trees in accordance with the rules and practice of good forestry for a period not exceeding ten years.

Currently NRW has no power to revoke a licence once granted, or to amend any conditions once imposed.

Governance

NRW is required to maintain a Regional Advisory Committee (RAC) to advise it in relation to its general duty to promote the establishment and maintenance of adequate reserves of growing trees and its functions relating to felling licences¹⁵.

¹² Section 1(3A) of the Forestry Act 1967 inserted by section 4 of the Wildlife and Countryside (Amendment) Act 1985.

¹³ Natural Resources Body for Wales (Establishment) Order 2012

¹⁴ Section 9 of Forestry Act 1967.

¹⁵ Section 37 of the Forestry Act 1967

Ancient, veteran and heritage trees

Wales is one of the least wooded countries in Europe, with woodland covering only 14% of the land area, compared to the EU average of 37%. There were estimated to be some 15 million other trees in Wales outside of those in woodlands that contribute to Wales' economy, rural and urban landscapes and to the quality of life of people and communities¹⁶. More recent evidence shows that there are 93,000ha of small woodlands, groups of trees and individual trees in Wales.¹⁷ In the rural landscape, trees provide a basic skeletal structure whether in the form of woodland, hedgerows or individual trees. Trees are equally important to urban landscapes as structures in gardens, parks¹⁸ and open spaces and often complement the setting of buildings. They can be of historical importance, linking people and communities to place, environment and culture¹⁹. They also provide continuity of habitat for some increasingly rare lichens, mosses and fungi²⁰ and they are a focus for biodiversity. In short, many of Wales' most cherished landscapes and the biodiversity value of those landscapes depend on constituent trees and woodlands for their distinctive character²¹.

It is evident that some trees are of more significance, or value, than others, based on the characteristics of the particular tree and its relative value. The age of a tree together with its size and other notable physical characteristics when compared to the standard for that tree's species will be indicative of a tree's significance, as will its amenity, landscape, historical and economic values. A tree, which makes an exceptional visual impact and is a significant feature in the landscape may, for example, be evaluated as having a considerable amenity and landscape value²². Such a tree would properly be categorised as a valued tree and indicates the principle that not all trees can be considered as being of equal worth.

Whilst in many cases individual trees may be appreciated, the value that can be attributed particularly to ancient, veteran and heritage trees is not easy to express in monetary terms. Such trees undoubtedly have an ecosystem value across a wide spectrum of land use types. When allowed to complete their natural life cycle the biodiversity value of ancient and veteran trees increases as they provide a foundation for developing habitats supporting a diversity of species. There is therefore a need to balance the presence of ancient, veteran and heritage trees in the landscape, recognising the multiple benefits that they can provide as "green monuments", with changing patterns of land use over time. Historically, the law has developed to make provision for the protection of valued trees, including ancient veteran and heritage trees, but such trees are too often perceived as a problem rather than an asset and are not properly cared for²³.

¹⁶ "Woodlands for Wales the Welsh Government's Strategy for Woodlands and Tees" at page 11.

¹⁷ "Tree cover outside woodland in Great Britain" NFI Report 12 April 2017.

¹⁸ Bute Park in Cardiff is an example of an urban park containing mature trees of various species.

¹⁹ The yew tree at St Dygain's Church, Llangernyw, Conwy, is estimated to be over 4,000 years old. St Brynach's Church, Nevern, Pembrokeshire, has an avenue of yew trees estimated to be over 700 years old, including the famous "bleeding yew tree" in respect of which various legends exist.

²⁰ "Woodlands for Wales the Welsh Government's Strategy for Woodlands and Tees" at page 49.

²¹ "Woodlands for Wales the Welsh Government's Strategy for Woodlands and Tees" at page 48.

²² See for example "The Powis Oak", Powis Castle, Welshpool, Powys, a pedunculate oak estimated to be over 350 years old: http://www.monumentaltrees.com/en/gbr/wales/powys/2394_powycastle/4715/

²³ "Woodlands for Wales the Welsh Government's Strategy for Woodlands and Tees" at page 49.

What changes are we proposing?

NRW's general duties under the Forestry Act

We consider that NRW's general duty to promote the interests of forestry and the establishment and maintenance of adequate reserves of growing trees is as important today as it always has been. This is because commercially viable forests contribute to the well-being of Wales and provide the sustainable natural resource to support the range of ecosystem services that forests can provide.

The "balancing duty" has operated well to ensure that NRW achieves a reasonable balance between forestry and nature conservation.

As noted, NRW must, in exercising its functions, pursue the sustainable management of natural resources and apply the supporting principles. NRW applies the principles of the UK Forestry Standard ("the UKFS") in the exercise of its forestry management and regulation functions. The UKFS sets out the standard for sustainable forest management across the United Kingdom and defines the standards, requirements and basis for sustainable management of the forest resource and its regulation. The sustainable management of forests is largely synonymous with the sustainable management of natural resources, so there is already strong alignment between NRW's general duties under the Forestry Act and its general purpose.

We consider that NRW's general duties under the Forestry Act can be refined to more clearly align them to NRW's overall general purpose of sustainable management of natural resources as defined by the Environment (Wales) Act²⁴, helping to maximise the multiple benefits our forests provide.

Proposal 1

To amend NRW's general duties under the Forestry Act 1967 to align more fully with the sustainable management of natural resources.

NRW's power to delegate its functions under the Forestry Act

Applying the principles of sustainable management of natural resources²⁵ We consider it could be helpful to extend the existing powers NRW have under the Forestry Act to involve other parties more in decision making about woodland management on the Welsh Government Woodland Estate. We do not consider such an extension of powers should be unfettered. The public interest in the management of the Welsh Government Woodland Estate should be protected.

²⁴ Sections 3 and 4, Environment (Wales) Act 2016

²⁵ Section 4 Environment (Wales) Act 2016

Such a power could allow NRW to enter into arrangements with communities that give local people much more decision making control over what happens in forests on the Welsh Government Estate. We believe that this would allow them to take advantage of support or make financial arrangements that require longer term tenure not offered by short term management agreements.

Proposal 2

We are considering extending the powers of NRW to delegate certain functions under the Forestry Act 1967, to enable greater collaboration and involvement of local people and communities.

Requirements relating to felling licences

A felling licence is required to fell growing trees in any quantity²⁶. As an alternative to a person having to apply for a felling licence in appropriate cases, an approach would be to enable a forest manager/owner to agree a long-term forest management plan with NRW. The plan, covering a period of five or ten years, would set out conditions regulating the felling, replanting and management of trees on the land to which the plan relates. Once agreed, the manager/owner could manage felling operations in accordance with the agreed management plan without the need to apply to NRW for an express licence to authorise individual felling operations. We consider that this is a smarter more flexible way to regulate and authorise the felling of trees for forest managers/owners that operate at a larger scale.

We consider that the grounds on which NRW can refuse or grant a conditional felling licence together with the conditions that NRW can impose should be amended to align to the principles and objective of the sustainable management of natural resources. This should apply to both felling licences and long term forest management plans.

There are often circumstances in which the plans of an owner or manager change, or where new information comes to light during tree felling so that the replanting conditions imposed in a licence no longer make sense. This has been accommodated in the past, for example by imposing only very broad brush conditions that are less likely to require detailed amendment or in some circumstances by issuing a fresh licence on top of the old one. However to avoid ambiguity and to enable a wider range of conditions to be imposed as we suggest, we consider that NRW should be able, in appropriate circumstances, to revoke and/or amend a felling licence, or management plan, including any conditions included in the plan or licence.

This would complement the existing grounds and conditions. For example, in addition to issuing a conditional felling licence on the grounds that to do so is expedient for the establishment and maintenance of adequate reserves of growing trees, it may also or as an alternative be expedient to do so for the sustainable management of natural resources which could take into account matters such as conserving or enhancing the flora, fauna or natural beauty and amenity of any land. A further example would be in order to contribute

²⁶ Section 9(3) of the Forestry Act 1967 excepts from the general requirement for a felling licence volumes of timber not exceeding 5 cubic metres in any quarter where not more than 2 cubic metres are sold.

to the delivery of carbon budgets, the framework for which is provided in Part 2 of the Environment (Wales) Act 2016, or to support woodland carbon code projects so that a felling licence should not normally be granted for an approved woodland carbon [or Woodland Carbon Code] project if this is not part of the agreed forest management plan.

Proposal 3

We are considering new approaches to felling licences requirements, including opportunities for alternatives (via a management plan) and aligning conditions with the sustainable management of natural resources and its supporting principles.

Governance

The RAC requirement relates to NRW's general duty to promote the establishment and maintenance of adequate reserves of growing trees and its functions in relation to the felling licence regime. But NRW has a much wider and diverse range of responsibilities than was envisaged when the RAC requirement was originally imposed on the Forestry Commissioners by the Forestry Act. We consider that the unique role that NRW has as Wales' principal environmental advisor and regulator means that this governance requirement now serves no practical purpose. Our view is other stakeholder fora are available to NRW for consultation and advice, such as its Wales Land Management Forum. We do not intend that these fora should be placed on a statutory footing other than the responsibilities NRW and other public bodies now have under the Environment (Wales) Act and the WFG Act to collaborate and involve others in pursuit of their general purpose and their specific duties.

Proposal 4

We are considering amending the governance requirement to maintain a Regional Advisory Committee as it is no longer relevant and other stakeholder fora can provide consultation and advisory support.

Ancient, veteran and heritage trees

The framework put in place by the Environment (Wales) Act 2016 provides the means to monitor the sustainable management of ancient, veteran and heritage trees and the opportunities for them to meet local priorities and challenges. That framework will, overtime, indicate if there are unsustainable trends in the management of such trees that indicates that further intervention is required.

Existing statutory frameworks provide protection but those regimes can be refined to improve the protection that can be afforded to ancient, veteran and heritage trees. For example, in terms of the tree preservation order (TPO) regime²⁷:

²⁷ Section 198 Town and Country Planning Act 1990.

- (a) The grounds on which a TPO can be made, namely where it appears to a local planning authority (LPA) that it is “...*expedient in the interests of amenity to make provision for the preservation of trees or woodlands...*”.²⁸. An assessment of “*amenity*” combines visual qualities with public visibility and it must be “*expedient*” to protect a particular tree because of the risk of it being felled or lopped or so forth – it would not be expedient to protect a tree that is, for example, under good arboricultural management²⁹. The “*amenity*” test does not, for example, take into account the wider value of ancient, veteran and heritage trees, particularly their often significant biodiversity value.
- (b) There are a number of exemptions and exceptions to the requirement to obtain LPA consent before any works are carried out to a protected tree. This includes cutting down or carrying out work on trees which are “*dying or dead or have become dangerous*”³⁰. These are often characteristics of ancient, veteran and heritage trees. Whilst notification might be prudent, there is no obligation to notify a local planning authority of works undertaken in reliance on an exemption or exception. This leads to problems in conducting successful prosecutions if evidence of tree condition has been removed and diminishes the effectiveness of a TPO to protect valued trees.
- (c) Exemptions and exceptions to the general prohibition on works to protected trees can be more narrowly framed to improve the level of protection conferred on ancient, veteran and heritage trees. The exemption for trees that have become dangerous could be framed in terms of works that are required to the extent that they “...*are urgently necessary to remove an immediate risk of serious harm*”³¹. This is because ancient and veteran trees exhibit characteristics such as damage and decay that often bring them within the ambit of current exemptions and exceptions and thus expose them to unsympathetic works, including felling, even if they are protected by a TPO.
- (d) Whilst the TPO regime confers protection on selected trees from unauthorised felling or other works, the regime does not make any provision for maintenance of protected trees to facilitate their survival. In the absence of sympathetic maintenance ancient and veteran trees will overtime become susceptible to failure. The extent to which a form of maintenance obligation or duty could be imposed in respect of a protected tree could therefore be investigated and considered.
- (e) Offences and penalties for breach of a TPO could be reviewed in order to ensure that they provide an adequate deterrence, recognising that ancient, veteran and heritage trees are irreplaceable in the landscape. A requirement to notify (sub-paragraph (b) above) would also provide evidential support for successful prosecutions.

Proposal 5

We are considering refining the existing statutory frameworks for ancient, veteran and heritage trees, to improve the protection they are afforded.

²⁸ Section 198(1) of the Town and Country Planning Act 1990.

²⁹ Planning Guidance Wales Technical Advice Note 10 “*Tree Preservation Orders*” at paragraph 15 and 16.

³⁰ Section 198(6) (a) of the Town and Country Planning Act 1990.

³¹ See regulation 14(1) (c) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Questions

Question 4

Do you agree with proposals to align NRW's general duties (including the balancing duty) under the Forestry Act with the sustainable management of natural resources?

Question 5

Do you agree that NRW should be able to delegate its responsibilities for managing the Welsh Government Woodland Estate to others? Please indicate, whether you consider if there should be any limitations on NRW to delegate these functions.

Question 6

Do you agree that a long-term forest management plan agreed between a forest manager/owner and NRW could be an appropriate way to regulate and authorise the felling of trees?

Question 7

Do you agree that conditions in a conditional felling licence or long-term forest management plan should align with the sustainable management of natural resources?

Question 8

Do you agree that NRW should be able to revoke or amend felling licences or forest management plan approvals? Please indicate if you foresee any difficulties amendment or revocation might cause.

Question 9

Do you agree with the proposals relating to the repeal of the requirement of the RAC?

Question 10

Do you agree with the proposals to improve the protection afforded to valued veteran and heritage trees by refining the existing statutory frameworks, principally the tree preservation order regime?

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 cherished³².”

³² 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 Report³³ 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

³³ [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 duty³⁴ 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 principle³⁵, 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.

³⁴ As provided in the National Parks and Access to Countryside Act 1949

³⁵ 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 IUCN³⁶ 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',³⁷ including removing the National Park Authorities from the improvement regime of the Local Government (Wales) Measure 2009.³⁸ 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.

³⁶ International Union for the Conservation of Nature

³⁷ 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

³⁸ 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 UNESCO³⁹ 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.

³⁹ 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 recreation⁴⁰, 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.

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

What changes are we proposing?

The Welsh Outdoor Recreation Survey⁴¹, 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.”⁴²

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.”⁴³

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.

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

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

⁴³ 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).⁴⁴ 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.

⁴⁴ 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.⁴⁵ 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.⁴⁶ 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.

⁴⁵ Natural Resources Wales website, "Restrictions on Access Land" April 2017.

⁴⁶ 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.

Proposal 20
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.
Proposal 21
To introduce provisions to allow flexibility in relation to stock control measures on public rights of way.
Proposal 22
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 2003⁴⁷.

⁴⁷ 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 regulations⁴⁸ 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.

⁴⁸ 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?

Chapter 5: Marine and Fisheries

Summary

This chapter sets out the following proposals relating marine and fisheries.

Marine:

- Amending the Marine and Coastal Access Act 2009 to provide express powers for the Welsh Ministers to produce regional marine plans.

Fisheries:

- Enabling more administrative flexibility for fisheries management;
- Introducing a fit for purpose aquaculture licensing regime; and
- Extending the buyers and sellers regime to include shellfish gathered from intertidal areas.

Marine - What issues are we considering?

Marine planning provides a framework for managing our seas. Under the Marine and Coastal Access Act (2009) (MCAA), the UK is divided into marine planning regions with an associated planning authority. Once a UK Marine Policy Statement (MPS) is in place under the MCAA, the marine planning authorities can prepare a marine plan for these areas. In Scotland, Wales and Northern Ireland the devolved Ministers are the planning authorities and in England the Marine Management Organisation (MMO) is the planning authority.

The MCAA gives the Welsh Ministers powers to produce marine plans for the Welsh inshore (within 12nm) and offshore (beyond 12nm) marine plan regions. The Act requires marine plans to cover the entire marine plan area for which the marine planning authority has responsibility for producing marine plans. There is no express provision for lower level plans that sit underneath plans produced at the national level.

Welsh seas are extensive and support a wide range of activities ranging from aquaculture, aggregates dredging and renewable energy development to ports, shipping, tourism and recreation and fisheries. Our seas are diverse with specific issues and characteristics specific to local areas. In order for this specificity to be planned for in a meaningful way, there may be the need to introduce a lower tier of marine plans, which are guided by the MPS and Welsh national marine plans but which can address local issues and priorities.

Current Position

Marine planning is being established around the UK and more widely across the EU and elsewhere in the world. The English and Welsh inshore and offshore marine plans are being produced under the MCAA and are guided by the UK MPS, which ensures common approach across the UK. The MPS was adopted in 2011.

Welsh Government is producing the first marine plans under the MCAA for the Welsh Inshore and offshore which will be produced as a single document, the Welsh National Marine Plan (WNMP). We aim to consult upon the WNMP in summer 2017 followed by adoption and implementation.

Once adopted, the plan will guide decisions taken by public authorities that have the potential to affect the marine area.

What changes are we proposing?

Other UK marine planning administrations have similar but distinct models for marine planning.

The MMO is planning for areas of waters around England subdivided into eleven regional marine planning areas⁴⁹, which are being planned for sequentially. The East Inshore and offshore area plans have been adopted and the South inshore and offshore area plans are well progressed. Other areas have yet to be planned.

In Scotland, the Marine Scotland Act (2010) includes provisions for regional plans that sit beneath the National Marine Plan for Scotland. Eleven [Scottish Marine Regions](#) have been created which cover sea areas extending out to 12nm. Regional Marine Plans will be developed in turn by [Marine Planning Partnerships](#), allowing more local ownership and decision making about specific issues within their area⁵⁰.

During consultation⁵¹ on marine planning for Wales, Welsh Government asked if there was a need for marine planning at the sub-national level. A wide range of views were expressed on this matter including the view that it was too early to be sure, given planning at the national level had not yet started.

Marine planning is underway and it has become evident that locally specific matters are challenging to adequately address in a national plan. In complex areas with multiple activities and options for use of natural resources such as Milford Haven, the Severn estuary and North Wales Coast a higher degree of local planning may be appropriate

There is a need for more detailed evidence and local engagement in order to produce plans containing an appropriate degree of guidance for decision making at the local level; gathering such evidence and conducting the appropriate engagement as part of a national exercise does not fit well with the strategic nature of a national planning process, particularly when different issues will arise at different times and different scales at a more local level.

⁴⁹ <https://www.gov.uk/government/publications/marine-plan-areas-in-england>

⁵⁰ <http://www.gov.scot/Topics/marine/seamanagement/regional>

⁵¹ <https://consultations.gov.wales/consultations/sustainable-development-welsh-seas-our-approach-marine-planning-wales>

A number of stakeholders have continued to advocate the need for local marine plans to address local issues at an appropriate local scale.

The proposal is to amend the Marine and Coastal Access Act 2009 to provide the Welsh Ministers with express powers to produce regional marine plans within the Welsh marine plan regions.

- What specific changes are we proposing?

To amend the MCAA so far as it applies to the Welsh Inshore region to provide express powers for the Welsh Ministers to identify inshore Welsh marine plan regions and to produce marine plans for these marine plan regions, which are in accordance with the UK MPS and supplement the national plan.

- What options are we considering?

As an alternative to sub-national planning, we are considering the merits of:

- Sub-dividing Welsh seas and producing a plan for each of these areas which, when taken together would cover the Welsh marine planning regions (the approach taken in England).
- the need to require that regional marine plans must cover the entire Welsh marine planning regions or whether they should be produced as and when required where there is clear evidence of the need for a plan at a regional scale to address particular policy issues and priorities;
- including a locally refined and specific policy as part of the national plan document, for any areas meriting such an approach. Retaining such a close coupling between the national plan and any locally specific plan policy would, however, require that national planning was undertaken as a more complex and far reaching single process including consideration and development of local policy all at one alongside national considerations. In practice, this is unlikely to be a viable option relative to a more sequential process of national and then more local planning; and
- the approach in Scotland, where regional marine plans are being produced in partnership and the Scottish Ministers have powers to delegate certain functions related to the production of regional marine plans to certain public authorities. A similar approach may be appropriate for Wales.

Proposal 28

To amend the Marine and Coastal Access Act 2009 to provide the Welsh Ministers with express powers to produce regional marine plans within the Welsh marine plan regions.

What outcomes do we anticipate?

Producing Welsh regional marine plans would provide a more flexible, locally relevant planning framework, which would better align with local needs and priorities. By enabling the Welsh Ministers to produce regional marine plans we would anticipate the following outcomes:

- A national marine plan, which provides an appropriate policy framework for decisions but which recognises that certain evidence and issues can only be tackled at the national level.
- A more iterative and adaptive planning process with the regional marine plans addressing options for multiple use of marine space and supporting sustainable development by guiding future use at an appropriate scale
- Closer interaction between marine planning and local planning on land as well as reflecting and relating to any area statements produced by NRW, thereby supporting stronger connectivity between land and sea with a clear focus on the needs of coastal communities.
- More detailed, spatially relevant plans supported by an appropriate evidence base able to consider national policy at the regional scale.

Questions

Question 18

Do you support the need for new powers to identify Welsh regional marine plan regions and to produce marine plans for these regions?

Question 19

If you do not support regional marine plans, please indicate how you suggest local issues are addressed within the current framework and what specific impact do you think the proposals would have upon your interests?

Fisheries - What issues are we considering?

We are considering potential opportunities to improve three areas of fisheries legislation. These are:

- a) Enabling more administrative flexibility for fisheries management;
- b) Introducing a fit for purpose aquaculture licensing regime; and
- c) Improving the buyers and sellers regime to include shellfish gathered from intertidal areas

At present, there are limitations in the effectiveness of these areas.

Current Position

Administrative flexibility

The Welsh Ministers have a range of powers to make subordinate legislation for the management of fisheries in Wales. However, none of these powers expressly provide administrative flexibility, which enables rapid adaptation of the management regime to respond to the changing dynamic nature of the marine environment. As such, at present it is not possible to adjust Total Allowable Catch (TAC), fishing effort (usually expressed as 'Days at Sea'), Minimum Reference Sizes and temporal and spatial restrictions (amongst other conditions) at short notice (i.e. without the need to make subordinate legislation and the inherent delays that those procedures involve). A power to do so would allow real-time, flexible management of our marine resources in Wales.

Aquaculture licensing

Currently, there is no 'one stop shop' for aquaculture licensing in Wales. At present, there are two licensing powers, which are section 189 of the Marine and Coastal Access Act 2009 and the ability to make Regulating and Several Shellfishery Orders under the Sea Fisheries (Shellfish) Act 1967.

Several Shellfisheries Orders (made under the 1967 Act) grant individuals the exclusive right to take, and cultivate specific shellfish within a specific area, for a set period of time. They also provide other protections for shellfish farmers. Regulating Shellfishery Orders enable shellfisheries specified within the Order to be managed by a third party (known as the Grantee). The procedures involved in making a Several or Regulating Order under the 1967 Act are cumbersome and outdated and, given the powers that are now available under section 189 of the Marine and Coastal Access Act 2009 (which allow permitting regimes to be introduced in relation to sea fisheries resources (which is much wider than solely shellfish)) the mechanism for creating Several and Regulating Shellfishery Orders under the 1967 Act is no longer the most appropriate management tool.

'Buyers and sellers' regime for shellfish from intertidal areas

The current Registration of Buyers and Sellers regime is a European derived scheme under the Common Fisheries Policy (CFP). This scheme allows effective traceability of fish caught from vessels only. However, the CFP provision does not deal with the traceability of fish and shellfish caught or gathered from land (i.e. cockle fisheries) and, consequently, at present there are no legislative provisions available to apply a regime of this nature in relation to those products.

What changes are we proposing?

Enabling more administrative flexibility for fisheries management

This proposal seeks to enable Welsh Ministers to flexibly manage fisheries (through administrative measures). There are occasions, where it would be beneficial to be able to adjust certain factors of the management of fisheries without the need to make subordinate legislation for each and every change.

A potential alternative approach could be the use of flexible permit conditions to control the relevant fisheries management factors (for example, taking fish from a fishery will depend upon the latest data available about the health of the stock and this may need to be changed at short notice). Such a mechanism would avoid the need to include such specific details on the face of legislative instruments, which if the conditions change from year to year (or within year), would otherwise require amendments to the legislation. Such amendments cannot be undertaken at short notice and can be resource intensive.

Associated to this is a requirement to stop certain fisheries activity at short notice. Currently, in relation to certain fisheries activities, the Welsh Ministers have powers under the byelaws of the former Sea Fisheries Committees⁵² (However, there is no mechanism for closing some Welsh fisheries where immediate actions is required. The Welsh Ministers do have powers under the Sea Fish (Conservation) Act 1967, by subordinate legislation to prohibit and regulate fishing activities, however, this approach does not enable real time fisheries management due to the time required for introducing subordinate legislation.

Proposal 29

To provide the Welsh Ministers with powers to flexibly manage fisheries. This could include adjusting certain factors of the management of fisheries without the need to make subordinate legislation for each and every change.

What options are we considering?

These issues could be addressed, if the Welsh Ministers were to be provided with powers to enable the day to day management of Welsh fisheries to be dealt with on an administrative basis. This power would enable the Welsh Ministers via subordinate legislation to impose variable permit conditions and to open/close fisheries at short notice, for example to adapt to environmental conditions.

Limitations could be applied to the administrative arrangements, for example, providing measures that vary between seasons/year (for example, an ability to make changes to the management of the fishery in light of latest stock data). This would enable Ministers to manage fisheries on a species by species basis, through specific conditions and tailor management to the underlying conditions. This could include the introduction and adjustment of TACs (which can be increased or decreased accordingly), the

⁵² Saved and given effect as if made by the Welsh Ministers in a Statutory Instrument by virtue of The Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 S.I. 2010/630 (C.42)).

opening/closing of fisheries, geographical and temporal restrictions (and the adjustment of the same) and the use of appropriate effort control measures such as Days at Sea.

In relation to technical measures to manage a fishery, such as gear restrictions, these are generally included in the detail on the face of legislation. These measures do not usually vary from year to year, and are usually only amended when there has been a significant change through gear or technology creep. Therefore, it is not anticipated we would look to include technical restrictions (and other similar provisions) within the scope of these new flexible management powers.

In terms of the envisaged approach, it is intended that the Welsh Ministers will introduce species specific statutory instruments for each of the major fisheries. These would set out the definitions and, technical limitations (together with any other such restrictions that would not require short term adjustment in order to allow efficient management of the fishery). In addition, it is proposed there would be a power for the Welsh Ministers to administratively (and flexibly) manage the elements of the relevant fishery, which need to be adjusted in light of environmental and stock issues arising from time to time (i.e. through permit conditions).

We are proposing the scope of the matters, which may be managed flexibly through such an administrative system include:

- Total Allowable Catch (TAC);
- Effort Control (ie Days at Sea); and
- Open/Close decision of an area including STOP power.

Introducing a fit for purpose aquaculture licensing regime

Shellfish fisheries as currently provided for under the 1967 Act are granted by Orders (known as Regulating and/or Several Orders). The making of those Orders is subject to cumbersome and outdated procedures outlined in the 1967 Act and only allow minimal oversight by the Welsh Ministers. We recognise the value, and security Several Orders (in particular) provide to operators and we are not proposing any changes to existing Orders at an agreed date (i.e. the 1967 Act in its current form would continue to apply to all existing several and Regulating Orders).

The existing procedure, however, is administratively burdensome, and the process of applications (under the current legislation) is not proportionate to the wider benefits of granting these Orders. Applications can take many months, and some of the more complex applications can take many years to be determined. This is neither an acceptable service to the industry as it leaves operators in doubt for many years nor an effective use of public resources. The current process does not facilitate growth within the sector.

Proposal 30

To introduce an improved aquaculture licensing regime.

What options are we considering?

The proposal is to create a fit for purpose marine aquaculture licensing regime. It is intended these aquaculture operations will be managed using licences, which would remove the need for such aquaculture operations to be established by subordinate legislation. This would bring aquaculture into line with other activities in the marine area such as those governed through the marine licensing regime (established in the MCCA 2009), and commercial fishing, which is also a licensed activity.

These licenses would allow flexible management with license conditions, which can be varied by Welsh Ministers when necessary. This would allow operators to adapt their practices to suit the changing environment, or for example increase production within the site if changing evidence or business needs prevail.

The license should:

- Facilitate flexible management and growth of the sector;
- Be variable by Welsh Ministers;
- Include conditions set by Welsh Ministers;
- Provide security to operators from other activities as Several Orders do;
- Be location, species, and method specific;
- Provide for charges to cover administration costs;
- Provide a power to cancel a license where a breach of conditions occurs. (However other actions should also be available such as fines);
- Provide for offences for example for anyone not the licensee or an endorsee of the license to take any of the cultivated species from the licensed area;
- Provide for offences for example for anyone to interfere with the rights granted by the license; and
- Provide a power to grant the licence for a period of time considered appropriate, with regular review periods if desired.

We propose this new licensing regime will replace 'several' Orders granted under the 1967 Act. As such the 1967 Act would need to be amended in Wales to remove the ability of Welsh Ministers to grant Orders for several fisheries. Welsh Ministers have powers to create permit schemes, which effectively replicate Regulating Orders. However, Welsh Ministers would need to retain the power to make Regulating Orders (jointly with Defra Ministers) to allow cross border fisheries to continue, and where delivery bodies are responsible for management.

What outcomes do we anticipate?

We anticipate this new licensing regime would provide a quicker route to allowing aquaculture development in Wales, providing a new system for non shellfish aquaculture, but also giving shellfish operators a faster way to begin farming. The flexible nature would remove much of the uncertainty of issuing Several Orders for long periods of time. Management Plans would be enforceable as a license condition and allow flexibility.

The nature of issuing licenses would allow Welsh Ministers a control point to consider the environmental impact of the proposed operation, and wider objectives for the marine area in line with the Welsh National Marine Plan and other legislation such as the Habitats Directive as appropriate.

Improving the buyers and sellers regime to include shellfish gathered from intertidal areas

The current buyers and sellers scheme is derived from the Common Fisheries Policy. It is consequently focused on fishing from a boat. The Welsh Ministers do not currently have the power to widen the existing regime to cover all fisheries in Wales (i.e. including those not fished from a boat) and specifically the intertidal shellfish where traceability and unlicensed activity continue to be an issue.

Therefore, we are considering providing the Welsh Ministers with a power to extend the current Registration of Buyers and Sellers Scheme to all important domestic fisheries, however they are caught i.e. from a boat or from the shore. The application of this regime to other fisheries would improve the sustainability of inshore stocks and increase public health by ensuring the origins of shellfish are from legal sources.

Proposal 31

To improve the buyers and sellers regime to include shellfish in intertidal areas.

Questions

Question 20

Do you agree with our proposals to manage fisheries flexibly? Can you provide any example where flexible management would be of benefit to your business.

Question 21

Do you agree with our proposals to introduce a fit for purpose licensing regime for aquaculture? Please consider whether there are any other functions you think the license should cover.

Question 22

Do you agree with our proposals to increase the scope of the current Buyers and Sellers Regime. Please consider what impact you think the proposals will have on your business?

Chapter 6: Water

Abstraction Reform

Summary

This chapter sets out some proposals relating to the abstraction of water in Wales and some minor amendments to drainage

What issues are we considering?

Water abstraction is the process of removing water from natural sources like rivers/lakes/aquifers, and is the principal means of meeting water supply needs in Wales. Excluding the abstraction of water for the energy sector i.e. hydropower where water is immediately returned to the environment, the majority of water abstracted in Wales is used for public water supply. Abstraction for industrial purposes is also economically significant.

Reform of the licensing regime

Most abstraction is regulated through a system of licences issued by the regulator, NRW. Licensing was established under the Water Resources Act 1963 to protect downstream abstractors. But the current licensing regime does not provide adequate flexibility to address the challenges of climate change, growth in demand or the need to protect the natural environment. The related primary legislation has been amended over the last 50 years resulting in a range of different licences. These licences can be inconsistent, inequitable and difficult to change due to related statutory compensation provisions.

Reform of abstraction would also help meet policy and statutory drivers unique to Wales. It helps to meet the purpose of Part 1 of the Environment (Wales) Act 2016 to sustainably manage our natural resources, which contributes to meeting the well-being goals provided in the Well-being of Future Generations (Wales) Act 2015, in particular goal 2 “a resilient Wales” in enhancing a bio-diverse natural environment with healthy functioning ecosystems which supports social, economic and ecological resilience.

In the Welsh Government’s Water Strategy for Wales published in 2015, a clear commitment was given to “*reforming the water abstraction licensing system to inform our future policy and ensure the sustainable management of our water resources*”. This commitment builds on related public consultation proposing to reform the historic policy and law underpinning water abstraction.

In summary, our aim in reforming the controls on abstraction is to ensure robust and resilient water resources by establishing a fair and common basis for all abstractors, bringing the controls on abstraction into the framework of the Environmental Permitting Regulations (EPR).

Current Position

In 2013, the ‘Making the most of every drop’ a joint consultation undertaken by the Welsh Government, NRW, Defra and the Environment Agency (EA) was launched.⁵³ We published a Welsh Government response to the consultation in 2016⁵⁴

Since then, we have worked with Defra to identify whether new primary legislation was required for England and Wales. However, at present there are unlikely to be any opportunities for a joint Bill.

We are seeking views on whether the abstraction reform consulted upon in the ‘Making the most of every drop’ consultation should apply on a Wales only basis. The aims of the policy have been subject to extensive consultation with Welsh stakeholders, which is available in detail in the published consultation document and responses⁵⁵.

We are proposing to continue to work with NRW, Defra, and the EA to use the powers in the Water Act 2014 to bring water abstraction activities into the Environmental Permitting Regulations, however, this will not address all of the issues and we may need to consider other legislative mechanisms to provide NRW with the most effective means of managing our water resources.

What changes are we proposing?

This was covered in the consultation in 2013/14 and in supporting evidence from NRW and EA in the “The Case for Change”⁵⁶.

That document highlighted that a number of catchments already have no spare water, which can be allocated for further consumptive abstraction due to a need to protect the environment. It also emphasised water resource availability in the future is uncertain. It included a range of projected futures, based on different climate change, environmental and socio economic scenarios. It showed the combined impacts of climate change and population increase mean there are significant risks of less water being available in the future than today. Catchments across Wales are predicted to experience significant unmet demand for water under many of the scenario combinations.

⁵³ [Making the most of every drop - A consultation on reforming the water abstraction management system Summary of Responses](#)

⁵⁴ [Making the Most of Every Drop Consultation Reforming the Water Abstraction Management System in Wales](#)

⁵⁵ <https://www.gov.uk/government/consultations/reforming-the-water-abstraction-management-system-making-the-most-of-every-drop>

⁵⁶ <http://www.ukrma.org/wp-content/uploads/2015/01/06A-C4C-Addendum.pdf>

We are proposing a number of small amendments to existing legislation to enable the delivery of a reformed abstraction management system in line with our consultation and the responses we received. In summary, we believe these changes will:

- Increase the amount of water that can be used by systematically linking access to water availability;
- Incentivise abstractors to manage water efficiently;
- Help abstractors to trade available water effectively, ensuring that we get the most value out of our water and do not waste water which could be used;
- Ensure we have a more effective process to review licences, striking the right balance between providing regulatory certainty for abstractors and managing environmental risk; and
- Incentivise abstractors to manage risks from future pressures on water resources, increasing their own resilience and that of river catchments.

Proposal 32

We believe the key legislative changes needed to deliver these changes include amendments to existing legislation to:

- Clarify the definition of water abstraction;
- Remove seasonal licensing;
- Remove time-limiting on licenses;
- Remove compensation for licence changes; and
- Provide a framework for facilitating water trading.

Questions

Question 23

Do you agree with the approach we are proposing, to introduce abstraction reform on a Wales only basis?

Drainage Reform

What issues are we considering?

Drainage and sewerage assets are critical but often overlooked. The legal framework governing them has developed over centuries and this has led to a range of individuals and organisations having ownership and responsibility for the assets as well as resulting in complex asset ownership, having developed around a fragmented organisational structure.

The Welsh Government Water Strategy⁵⁷ includes commitments to review drainage and related legislation, to identify any evidence, data or regulatory gaps and consider how these might be addressed to ensure sewerage undertakers, regulators and other key stakeholders have the correct tools to assist them in the management of our sewerage and drainage systems.

We have engaged with stakeholders and commissioned research into the current legislative and regulatory framework, governing sewerage and drainage, and it is clear significant changes are required. The recommendation from the review was Wales needs new unified drainage and sewerage law to meet the needs of Wales.

In the meantime the following changes to improve the current regime relatively quickly and easily by amending current legislation were identified. They also include a couple of simplifications to the statutory process for the preparation of Water Resource Management Plans.

Current Position

The disjointed asset ownership and responsibilities for sewerage and drainage assets does not align with the interconnected nature of the assets. Rights of access do not always align with requirements to maintain and repair the assets and minimise the risk to environmental damage.

We have identified the following problems:

- Sewage undertakers require permits from NRW and permission from the owners of water courses to discharge surface water into water courses such as lakes and rivers. This can lead to water undertakers being held to ransom by owners of water courses, who may require large payments to allow water to be discharged into water courses or parts of water courses on their land. Consequently, surface water may be discharged into the public sewer network, resulting in it becoming overloaded and discharging diluted sewage.
- Section 21 of the Water Act 2014 inserted s114A into the Water Industry Act allowing sewage undertakers to construct drainage systems for the purposes of removing surface water from the sewerage network, or reducing the rate at which it enters. This facilitates the delivery of sustainable drainage systems for surface water. However, consequential amendments were not made to the Water to enable sewage undertakers to construct and maintain these systems to the extent that they are able to do so in respect of sewerage systems.

⁵⁷ <http://gov.wales/topics/environmentcountryside/epq/waterflooding/publications/water-strategy/?lang=en>

- Whilst sewage undertakers have powers to undertake emergency repairs to sewers, they do not have the equivalent powers to lay a new pipe for emergency purposes.
- Obstructions and poor maintenance of water courses and culverts such as siltation or overgrowth of plants can stop surface water from flowing through the public drainage network, causing a risk of flooding. To rectify sewage undertakers they rely on others parties, such as local authorities to exercise their powers under the Land Drainage Act 1991, which can cause delays and incur costs.
- Currently the right to connect to the public sewerage network is made conditional by s106B of the Water Industry Act 1991. However, upon commencement of Schedule 3 of the Flood and Water Management Act 2010, s106A will be inserted into the Water Industry Act 1991, which will diminish the control that sewage undertakers in Wales currently have over surface water connections, and connections of flows from areas that are neither roof nor yard.

The Water Industry Act 1991 Section 101A gives property owners a right and sets out a framework for them to request a connection to the public sewer network. Sewage undertakers have expressed concern the costs of providing a connection may outweigh the benefits where, for example, provision for a connection to the public sewage service is made, but only a small number of eligible properties within an area opt to connect. There is also uncertainty as to whether the legislation as currently drafted requires the undertaker to physically connect properties to the main public sewer network, or provide them with a sewage service locally, but not connected to the main network.

Consents are required to regulate and limit the volume of certain types of trade effluent being discharged into the public sewage network to prevent pollution. Where a property has consent but does not use it there is often a misconception the consent is an asset that can be traded or sold with the property. By retaining consents they do not require, property owners are preventing others from being given consents.

There is a legal requirement for septic tanks or packaged treatment works (i.e. private sewered systems with a discharge) to be registered with NRW. Registration is not required for cesspits /cesspools (sealed systems that collect sewage). Poorly maintained or substandard cesspits are a serious potential environmental hazard.

The process for preparing and consulting on draft water resource management and drought plans is complex, and involves the Welsh Government undertaking functions that are more appropriate to the water undertaker. If it appears to the undertaker any information contained in that plan is or might be commercially confidential (as regards itself or another person), they notify the Welsh Government, which contacts the person informing them of the right to object. Consultation responses are sent to the Welsh Government which then forwards them to the undertaker.

What changes are we proposing?

The Welsh Government has engaged with Water and sewage undertakers, NRW, developers, the Welsh Local Government Association (WLGA) and local authorities, and encouraged them to propose relatively straightforward amendments to legislation to improve the regulation of sewage and drainage, and to simplify the water resource planning system. These proposals have been developed from this engagement.

<p>Proposal 33</p> <p>Amend the Water Industry Act 1991 to better align rights of access to water and drainage assets and infrastructure to enable undertakers to maintain and repair them and minimise the risk to environmental damage.</p>
<p>Proposal 34</p> <p>Provide sewage undertakers with a right to discharge into watercourses. This right should extend to anything, which is not foul sewage (in order to include land drainage and highway drainage being disconnected from the public sewer network), and should provide a permanent right as part of business as usual, but also a temporary right during works. This right would not override the volumetric consents required from the relevant authority.</p>
<p>Proposal 35</p> <p>Apply similar rules regarding the connection, maintenance and access to drains constructed under section 114a as they apply to sewage assets for example by amending sections 109, 113, 115, 116 to include provision for s114A drainage systems.</p>
<p>Proposal 36</p> <p>Provide new powers (similar to those of s158 and s159) to lay non piped elements of s114A systems</p>
<p>Proposal 37</p> <p>Provide appropriate powers, including powers of entry, to undertakers for the purposes of limiting impact on the performance of sewerage assets. These powers would include the ability to clear watercourses, and also to repair watercourses (subject to relevant environmental consents). These powers would mirror those existing in legislation, and include a power to recharge costs to the riparian owner if required. The powers already in existence in the Land Drainage Act 1991 are under s14 for powers of entry and ability to repair watercourses, and s25 to clear obstructions that impede flow. Any new powers for the undertakers should complement these powers, and not be seen as a substitute for enforcement from the Land Drainage Authority.</p>
<p>Proposal 38</p> <p>Provide powers to sewage undertakers to issue an enforcement notice on properties that would be visible on property searches. The undertaker should then be allowed to enter the property to rectify misconnections, and wherever necessary, recharge the property owner for works undertaken and reinstatement and make provision for prosecution</p>

should they fail to pay any charges. This could be a parallel to a waste notice for leaks on the clean water side.

Proposal 39

Provide the undertaker to have powers to lay a new pipe in an emergency, which would not require a 3 month notice to be served.

Proposal 40

Amend section 106A (part of Schedule 3 of the Flood and Water Management Act 2010) to remove the right of connection. For surface water, when there is a SAB in place, the undertaker should retain overall control over connections to their public network, including the source of these surface water flows.

Proposal 41

Legislate to require property owners to connect to sewage systems provided under section 101A for the undertaker to do this at no cost, with connection costs not included in the costs of determining whether section 101a provision is cost effective. Amend the wording of s 101A(1) from “public sewer” to “sewerage system”, potentially allowing the undertaker to make provision of a sewage service not connected to the public network.

Proposal 42

Provide the sewage undertaker with the power to revoke trade effluent consents, in addition to varying them to allow for active businesses to effectively utilise network capacity

Proposal 43

Legislate to require cesspits/cesspools to be registered.

Proposal 44

Amend the Water Industry Act section 37 to simplify the procedures for preparing draft Water Resource Management and Drought Plans so that consultation responses are sent directly to the undertaker, and the undertaker is then required to publish with the Statement of Response a summary of responses, and to forward the responses to the Welsh Government, Welsh Ministers and NRW.

If it appears to the undertaker that any information contained in that plan is or might be commercially confidential (as regards itself or another person) make the undertaker, not the Welsh Government, responsible for giving that person the right to object to the publication of the information, and report on any information redacted to the Welsh Government.

Questions

Question 24

Do you agree with the proposals presented by the Welsh Government?

Please consider if any of the proposals would create new or unforeseen impact/irregularities?

Question 25

Do you believe there are additional proposals which could improve the current legislative/regulatory landscape in the short term?

Please consider if there are any other potential reforms required in Wales, which may need to be delivered in the longer term.

Chapter 7: Waste and Local Environment Quality

Summary

This chapter sets out proposals relating to:

Waste:

- Amending section 108 of the Environment Act 1995 to remove the requirement to provide notice before entering a residential property and to widen the scope to gather evidence;
- Amending section 46 of the Environment Protection Act 1990 to enable local authorities to issue a fixed penalty notice for failure to comply with a notice on householders requiring them to place specified materials in specified containers.

Local Environment:

- To enable local authorities to issue a financial penalty to the registered keeper of a vehicle if it is believed a person(s) inside that vehicle has committed a littering offence.

Waste - Powers of Entry in section 108 of the Environment Act 1995

What issues are we considering?

Section 108 of the Environment Act 1995 (EA) provides the general enforcement powers for NRW, with Schedule 18 of the EA providing supplemental provisions. The powers whilst extensive have certain limitations. For example, the requirement to provide 7 days notice before entering a property used for residential purposes weakens the ability to enter these premises to gather evidence. The restriction on gathering information on records required to be kept under pollution control enactments prevents evidence being gathered about financial benefit accrued or likely to accrue. The current provision also makes it difficult to seize documents and electronically stored information where it is mixed or saved with other non-pollution control information. The terms of s.108 differ between Wales, England and Scotland. The powers as currently provided are, therefore, not wide enough or fit for purpose to deal with modern environmental crime. We seek opportunities for improving the provision in Wales and to provide NRW with similar powers to those available in Scotland.

Current Position

As currently drafted, section 108 requires the regulator (except in an emergency) to provide 7 days notice of the proposed entry to residential premises and to have either the consent of the person who is in occupation of those premises or authority under a warrant issued by a justice of the peace. NRW have advised the need to provide 7 days advance notice can undermine the gathering of evidence as it provides the opportunity for any relevant information to be removed from residential premises. The proposal is to remove the need for providing 7 days notice to the person in occupation of the premises, but to retain the need for a warrant.

The second part of the proposal concerns documentary or computerised records and the power to remove evidence. Currently the power of seizure of evidence is limited to those records required to be kept under the pollution control enactments, or which it is necessary for the regulator to see for the purposes of investigation or examination. The powers are limited to the production or furnishing of extracts, inspection and copying; it does not permit removal and retention of records for analysis. Advances in technology mean information may now be contained in a variety of physical or electronic formats. Any information is also likely to be stored together with other irrelevant material, or with material subject to other protections such as legal privilege, which makes it difficult to conduct a proper lawful analysis.

What changes are we proposing?

We consider section 108 is no longer fit for purpose in a modern regulatory framework as the advanced notice provision weakens the regulators ability to enter premises to gather evidence. The powers limit the information, which can be gathered to that kept for purposes of pollution control or flood risk enactments, however because of the large sums of money involved with waste crime it is useful when gathering evidence to be able to access other information for example on financial transactions. The current powers also limit the provision of information from computerised records to extracts, which are necessary for the purpose of examination or investigation it does not provide powers to seize documents and retain them, nor to seize computers for analysis. In our digitised age, evidence sources are likely to be kept on computer or in digitised form.

Waste crime is an acquisitive crime, the motivation is financial gain. Intelligence suggests that the primary method of operation is for waste criminals to fraudulently misdescribe the waste being disposed of, they charge the market rate for collection and then change the description of the waste on paper for onward movement and disposal, therefore financially benefitting from the difference. This happens with hazardous waste, which is misdescribed in order to avoid expensive treatment.

In cases where the regulator needs to search residential properties, sometimes simultaneously with a business property, NRW warranted officers are unable to search the residential properties without giving notice, which can defeat the object as any evidence may be disposed of. After providing 7 days notice NRW must then have the consent of the person who is in occupation or enter the premises under the authority of a warrant. Currently, for residential premises where there is a risk of evidence being destroyed NRW have been liaising with police forces to obtain search warrants under police powers. It can take substantial police input to prepare and obtain search warrants and to arrange resources for arrests which stretches police resources and can cause delays. In some cases delays can mean that the illegal activity is not stopped sooner and additional waste continues to arrive on site increasing the eventual clean up costs. Section 108 powers are dis-benefitting the regulator, the environment and the public purse and need amendment to make it fit for purpose and to reflect the changed technology and operating practices.

Proposal 45

The proposal is to remove the need for providing 7 days notice to the person in occupation of the residential premises, but to retain the need for a warrant and to provide the ability to obtain a wider range of information and to remove (and retain) material for examination, including information stored electronically.

What outcomes do we anticipate?

We want to provide opportunities for economic development in a way, which is environmentally sustainable, socially inclusive and provides safer, cleaner and more resilient communities. Tackling waste crime helps to ensure legitimate businesses can operate on a level playing field and, reduces unfair competition from unscrupulous operators. We believe these measures are needed to ensure criminals are not polluting the environment, endangering human health or having an adverse effect on local communities.

It is increasingly difficult to arrange police resources and where NRW have to seize documentation themselves they must do this quickly and, securely in order to avoid challenge. It is expected that the changes to section 108 will save money to the public purse in terms of NRW and police resources.

It is a generic change to powers of entry and seizure of evidence which will be available to NRW for use in other policy areas.

NRW will continue to be bound by their Enforcement and Prosecution Policy and the Regulators Code, which helps to ensure additional powers, will be used fairly and proportionately.

Questions

Question 26

Do you agree that Welsh government should amend section 108 of the Environment Act 1995 so that:

- it removes the need for providing 7 days notice to the person in occupation of the premises;
- retains the need for a warrant;
- extends the description of information that can be required; and
- provides the ability to remove (and retain) material for examination, including information stored electronically?

Waste - Sanctions under Section 46 of the Environmental Protection Act 1990 (EPA).

What issues are we considering?

Local Authorities have been set statutory recovery (recycling, preparation for re-use and composting) targets under the Waste (Wales) Measure 2010. These follow non statutory targets set in successive national waste strategies for Wales.

These targets have driven a huge improvement in municipal recycling rates, with local authorities introducing collections of separately collected recyclables, including food, to meet the targets. The increase in recycling has resulted in significant financial saving to local authorities through both avoided costs of disposal and increased income from the sale of materials.

Despite this, almost half of the material being placed in residual waste containers (wheelie bins or sacks) is material that can be easily recycled. Encouraging householders to divert this material from residual waste into recycled waste is a priority for local authorities, to meet targets and reduce costs of disposal. Whilst there is ongoing awareness raising and householder education, many Local Authorities identify enforcement as the principal route for achieving diversion of recyclable materials from residual waste.

Local authorities have powers under section 46(4) of The Environmental Protection Act 1990 to serve notices on householders requiring them to place specified materials in specified containers. These powers also enable local authorities to serve notice to specify materials which should not be placed in residual waste containers:

Section 46(4)(d) “the substances or articles which may or may not be put into the receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them”

Some local authority officers have expressed concerns about the operational usefulness of section 46 due to the complexity of the process involved in imposing criminal sanctions on householders who fail to comply with the requirements of a notice.

Current Position

If a householder fails to comply with the provisions of section 46 a local authority may prosecute them through the courts and if they are found guilty they are liable to a fine.

Section 46(6) “A person who fails, without reasonable excuse, to comply with any requirements imposed under subsection (1), 1A),](3)(c) or (d) or (4) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”

Some local authority officers have argued there could be greater use of section 46 powers if the process of dealing with non compliance was not solely confined to prosecution.

What changes are we proposing?

The Welsh Government is proposing to introduce civil sanctions for non compliance with section 46, enabling local authorities to serve Fixed Penalty Notices on householders who fail to comply with notices rather than prosecuting them through the courts. It is proposed local authorities will retain powers to prosecute householders through the courts.

Proposal 46

To amend section 46 of the Environment Protection Act 1990 to enable local authorities to issue a fixed penalty notice for failure to comply with a notice on householders requiring them to place specified materials in specified containers.

What outcomes do we anticipate?

It is expected local authorities will increase levels of enforcement of section 46 notices because serving Fixed Penalty Notices will be a quicker and simpler alternative to prosecuting through the courts. The outcomes will be the diversion of more recyclable material from residual waste and consequent increases in both recycling performance and savings to local authorities.

Questions

Question 27

Do you agree that the Welsh Government should amend section 46 of The Environmental Protection Act 1990 so that it includes the option of Local Authorities serving Fixed Penalty Notices for failure to comply with notices rather than having to prosecute through the courts?

Environment – Littering from vehicles

What issues are we considering?

Roadside litter is difficult and often dangerous to remove and represents a significant cost to the taxpayer. A recent report published by Keep Wales Tidy⁵⁸ estimates collecting and disposing of roadside litter in Wales costs Local Authorities around £3.5 million a year. However, the report notes this figure does not include the additional economic impact of road closures and traffic congestion, both inevitable results of trying to clean up these areas.

To help monitor litter levels in Wales, Keep Wales Tidy carry out an annual street cleanliness survey across all local authorities and for 2016/17 they reported that 95.5% of streets surveyed were graded B and above (these are streets defined as being acceptable in terms of cleanliness to members of the public)⁵⁹. However, whilst these surveys do provide a useful snapshot of litter trends in Wales, they do not cover major highways or roundabouts, on account of the safety risks and costs involved. Similar constraints and difficulties also mean local authorities do not consistently collect data when clearing roadside litter; therefore there is little robust, scientific evidence to help determine the nature and scale of the problem. However, these challenges are not unique to Wales and due to the complex nature of roadside litter, a single, cost effective method of gathering the necessary information is difficult.

Despite these data limitations the Welsh Government is aware of a growing concern amongst members of the public over roadside litter and its impact on the quality of their local environments. These concerns are not limited to the possible adverse effects on wildlife but also relate to the wider effect on the well-being of people in communities across Wales and on their local economies, especially those reliant on tourism.

Enforcement in Wales

Local authorities in Wales have a statutory duty to ensure highways, public walkways and recreational areas are kept clear of litter. Littering, including from a vehicle, is a criminal offence under section 87 of the Environmental Protection Act 1990 (EPA 1990)⁶⁰ and can lead to a criminal prosecution and fine of up to £2,500. Under section 88 of EPA 1990, if an authorised officer of a local authority has reason to believe someone has committed an offence under section 87, that person can be given the opportunity of discharging liability by payment of a Fixed Penalty Notice (FPN). If the FPN is not paid the offender can be prosecuted through the criminal courts and, if found guilty, they would have to pay a more substantial fine than the FPN. They would also acquire a criminal record.

⁵⁸ [Keep Wales Tidy, "Tackling Litter On Our Roads", March 2015](#)

⁵⁹ [Keep Wales Tidy, "How Clean Are Our Streets?: The All Wales Local Environmental Audit and Management System Report 2016-17"](#)

⁶⁰ [Environmental Protection Act 1990. Section 87 \(Offence of leaving litter\) and Section 88 \(Fixed Penalty Notices for Leaving Litter\)](#)

However, local authorities have reported witnessing, identifying and proving the offence of littering from vehicles, particularly when they are moving, is difficult⁶¹. This can be particularly problematic where there is a passenger (or passengers) in the vehicle and the officer is unable to determine who has committed the offence. As the registered keeper is not legally required to identify who threw the litter from the vehicle, pursuing enforcement action further can prove difficult. An additional barrier often cited is the amount of time and resources required to gather sufficient evidence to undertake enforcement action⁶². Consequently, the existing powers available to local authorities are often underused and enforcement in relation to littering from vehicles is limited.

It is for these reasons the Welsh Government is now considering whether new legislative powers are required to help local authorities to tackle littering from vehicles.

Current Position

The Welsh Government takes littering very seriously and its main aim is to prevent it from occurring in the first place. Our actions to tackle the problem are based on a collaborative approach, working with key partner organisations to help change public attitudes and behaviour through community involvement and education. We believe encouraging people to take pride in their local environment, and to take action themselves, will lead to longer lasting improvements. However, we also recognise an effective enforcement regime is necessary to stop those individuals intent on breaking the law and to deter others from doing so.

As previously noted FPNs can be issued to those caught littering from vehicles, however we are aware of concerns over potential limitations and barriers to this enforcement approach. In London, powers are available under Section 24 of the London Local Authorities Act 2007⁶³ (amended in 2012) to enable London Councils to issue Penalty Charge Notices (PCNs) to the registered keeper of a vehicle when an enforcement officer has reason to believe that litter was thrown from the vehicle in contravention of section 87 EPA 1990. Essentially the registered owner of the vehicle bears responsibility for the action of everyone inside the vehicle.

A PCN is a civil fine which, unlike a criminal penalty such as an FPN, does not carry the risk of criminal prosecution. If the registered keeper feels they are not liable they can appeal to the Borough and, if the appeal is rejected, they can appeal to a traffic adjudicator. If a charge goes unpaid the Borough can recover it as if it were payable under a county court order⁶⁴.

These powers are to be extended by the UK Government to all local authorities in England by way of an amendment to the Environmental Protection Act 1990, inserting a new section 88A, made via section 154 the Anti-social Behaviour Crime and Policing Act 2014⁶⁵. This amendment provides the Secretary of State with regulation making powers under which the

⁶¹ [Keep Wales Tidy, "Tackling Litter On Our Roads", March 2015](#)

⁶² [Department for Environment, Farming & Rural Affairs "Scoping study to guide research into littering from vehicles - EQ0109"](#)

⁶³ [London Local Authorities Act 2007.](#)

⁶⁴ [Department for Environment, Farming & Rural Affairs "Scoping study to guide research into littering from vehicles - EQ0109"](#)

⁶⁵ [Anti-social Behaviour Crime and Policing Act 2014](#)

keeper of a vehicle may be required to pay a PCN to a litter authority where there is reason to believe a littering offence has been committed in respect of the vehicle (without any necessity for the identity of the individual who dropped the litter to be known). However, these powers have yet to be commenced and the UK Government is currently consulting on proposals to introduce secondary legislation which would bring these powers into force and make detailed provisions in relation to the issue of PCNs in such circumstances. The Welsh Government is now considering whether similar powers should be made available in Wales.

In Scotland and Northern Ireland, littering is also a criminal offence and if a person is found guilty of the offence they can be issued with a fixed penalty notice of £80 or could potentially be prosecuted and risk a fine of up to £2,500. There are no additional enforcement provisions in either country specifically aimed at littering from vehicles.

What changes are we proposing?

As previously noted accurate data on the current level of roadside litter is difficult to obtain, however there is a general perception it is increasing⁶⁶ and that this is having a negative impact on our local environment. Whilst Welsh local authorities do have a number of enforcement powers available to them, they have raised concerns these are not effective when it comes to tackling litter from vehicles⁶⁷.

To help determine how best to address these concerns, the Welsh Government has examined legislative changes made elsewhere in the UK and in particular the powers available in London. The Department for Environment, Farming & Rural Affairs (Defra) are currently consulting on extending these powers to the rest of England and the Welsh Government will monitor the outcome of this process⁶⁸.

However, the Welsh Government is now gathering evidence to help shape our policies to tackle littering from vehicles and welcomes views to determine if a similar approach to England should be pursued in Wales or whether alternatives need to be considered.

The Welsh Government is proposing to introduce additional powers in Wales that will allow local authorities to issue a financial penalty to the registered keeper of a vehicle if it is believed a person(s) inside that vehicle has committed a littering offence. Unlike cases where an FPN is issued for a littering offence, it would not be necessary to first establish the identity of the individual who dropped the litter. It would be sufficient, for the purposes of issuing a financial penalty, to prove simply the litter was discarded from the vehicle in question. This would mean the registered keeper of the vehicle is legally responsible for the littering action of that person(s) and they could be fined even if they were not in the vehicle at the time the littering offence took place.

However, our main aim is to ensure local authorities are equipped with the most efficient and effective enforcement tools available and, therefore, we welcome views on whether other legislative changes could be implemented in Wales.

⁶⁶ [Keep Wales Tidy, "Tackling Litter On Our Roads", March 2015](#)

⁶⁷ [Keep Wales Tidy, "Tackling Litter On Our Roads", March 2015](#)

⁶⁸ [Department for Environment, Food & Rural Affairs consultation on the introduction of Penalty Charge Notices for littering from vehicles in England.](#)

Proposal 47

To enable local authorities to issue a financial penalty to the registered keeper of a vehicle if it is believed a person(s) inside that vehicle has committed a littering offence.

What outcomes do we anticipate?

It is proposed a new enforcement regime would be an efficient use of local authorities' resources, providing an additional "tool" for them to tackle littering. It would also help to act as a deterrent as local authorities would be more likely to undertake enforcement activity and this in turn could lead to a reduction in littering from vehicles. Such a reduction would have the added benefit of lowering the cost to local authorities in organising litter clearance and help improve roadside amenities and safety.

Questions

Question 28

Do you agree the Welsh Government should introduce powers in Wales that will allow local authorities to be able to issue a financial penalty to a registered keeper of a vehicle if litter has been dropped from that vehicle, regardless of whether the identity of the individual who committed the littering offence is known?

Please consider if there are alternative legislative changes the Welsh Government should consider to help tackle littering from vehicles?

Chapter 8: Smarter Regulation – The Role of Basic Measures

What issues are we considering?

Urban and rural land management practice has wide scale impacts on our environment. One particular issue is diffuse pollution, which is the release of potential pollutants from a range of activities that, individually, may have no effect on the resilience of our ecosystems or natural resources, but, cumulatively can have a significant effect. Impacts for example on water can raise drinking water treatment costs.

Agriculture is a key source of diffuse pollution, but urban land, forestry, atmospheric deposition and rural dwellings can also be important sources. By its very nature, the management of diffuse pollution is complex and requires the careful analysis and understanding of various natural and human processes.

The complexity and geographical variability of, for example, catchments across the country means no single set of measures will be universally applicable. To address the impacts of diffuse pollution, new smarter and proportionate means of regulation are required.

Current Position

Basic measures provide direct conditions or minimum standards for undertaking specified, in the main, low-risk activities and are carried out in an appropriate manner. They provide a statutory baseline to provide a general level of environmental protection and help maintain and enhance the resilience of ecosystems. In effect, they can provide a harmonised approach and provide a level playing field for businesses, whilst helping to achieve a desired environmental outcome. They also can provide clarity with regard to what is and what is not permitted within the physical environment.

Low risk activities have a high frequency (carried out by a large number of people/organisations) but individually have a low impact on our ecosystems and natural resources but cumulatively can have a significant effect.

Basic measures offer a lower level regulatory approach to activities, some of which do not always require formal licences or consents, which is a proportionate, consistent and targeted response to the regulation of low risk activities, helping to contribute to the sustainable management of natural resources under the Environment (Wales) Act.

The UK Government and devolved administrations already have some powers to make these rules, for example in the Water Resource Act 1991 or under EU Directives such as the Water Framework Directive. However, there may be other low risk activities which are suitable for regulation by basic measures.

What changes are we proposing?

We are considering the viability of new powers for the Welsh Ministers to, via secondary legislation, make provision for basic measures in relation to the sustainable management of natural resources. The scope of these powers would be limited by the enabling power and the parameters of the measures would still require the establishment of a statutory instrument and therefore would still be subject to a legislative process.

Engagement with NRW and other stakeholders suggests that basic measures could help reduce bureaucracy, enable development and protect the environment. In most cases, responsible persons and organisations would need to take little, if any, action to comply with the rules, as they would be based on common good practice. Those found to be in breach of the rules would likely be issued with a proportionate civil sanction or fixed or variable penalty notices.

Our engagement has identified some activities, which may be suitable for basic measures, these include:

- Water quality and the introduction of basic measures for land management in the context of reducing agricultural pollution, which links to the delivery of tackling diffuse pollution provided in the Water Strategy;
- A risk based approach enabling flexibility in land management whilst ensuring environmental protection is maintained could be an alternative in certain circumstances to the requirements of the current felling licence regime that requires an express licence to fell growing trees in all but limited instances.
- Agriculture for the protection of water, air and soil quality.

Question

Question 29

Should basic measures be introduced as a mechanism for regulating low risk activities?
Please consider what type of activities would benefit from regulation by basic measures.

Chapter 9 – Agriculture

What issues are we considering?

The Welsh Government is seeking views on whether the jurisdiction of the Agricultural Land Tribunal Wales (ALTW) should be extended to incorporate disputes currently specified as referable for arbitration under the Agricultural Holdings Act 1986 (AHA). Under the current provisions of the AHA, the Royal Institute of Chartered Surveyors (RICS) is specified as the statutory body to provide arbitration services. To enable the ALTW to take on additional functions currently subject to arbitration would require an amendment to the AHA.

Current Position

The ALTW, established under Section 73 of the Agriculture Act 1947, principally determines matters arising from the application of the AHA. Examples of applications to the ALTW include those made in relation to disputed tenancy succession cases, the issuing of bad husbandry for a tenant and for ordering a landlord to repair or provide fixed equipment. In addition, the ALTW has jurisdiction to make orders related to the drainage of land under the Land Drainage Act 1991.

The ALTW:

- Has jurisdiction for the geographical area of Wales as laid down in the Agricultural Land Tribunals (Area) Order 1982 (SI 1982/97).
- Is funded by the Welsh Government but its members and decisions are independent of Government.
- Has two parts, the secretariat and tribunal members. Both work together, during the application process doing different jobs. It is the role of the tribunal members to hear and decide applications. It is the role of the secretariat to carry out administrative duties involving the processing of applications and appeals.
- The tribunal chair is appointed by the Lord Chancellor and must be a barrister or solicitor of at least seven years' experience. Panel members are also appointed by the Lord Chancellor.
- Tribunal hearings are managed by the chairperson or deputy chairperson, who must also have a legal qualification. They will write decisions, advise of adjournments and set directions where necessary. The hearings are also attended by panel members.

At present, the ALTW⁶⁹ considers around 20 cases per year. There is no administrative charge to applicants and the Tribunal's service is offered free of charge to all. The ALTW can consider cases via written procedure or oral hearing.

⁶⁹ More information about the ALTW's remit and operation can be found on the Tribunal's website: <http://alt.gov.wales/?lang=en>.

Arbitration process under the AHA

Arbitration is the primary method of dispute resolution under the AHA. The provisions of the Arbitration Act 1996 apply to all arbitrations conducted under the AHA, subject to requirements stipulated in the Act.

Both the tenant and the landlord can make an application for arbitration to the RICS, the body providing arbitration services under the AHA. There is an administration fee, currently set at £115 for each application. The arbitrator is appointed by agreement between the parties or, in default of agreement, by RICS.

The arbitrator reviews the presented evidence, acting in a quasi-judicial role, and makes the final determination. Even though arbitrations are not full court proceedings, the parties are likely to appoint legal representatives to present their case at a hearing. Expert witnesses can be called to give evidence. Arbitration decisions are binding, however, parties can reach an agreement at any stage in the process.

Apart from the initial application fee, there are additional costs associated with the process such as the arbitrator fees and legal fees. Depending on the dispute, the cost can be as high as £25,000 in extreme cases. Arbitration is usually a lengthy process, and can continue for two to three years.

Third Party Determination

Third party determination, as an alternative form of dispute resolution (i.e. in addition to arbitration), was introduced by the Deregulation Act 2015. This allows compulsory arbitration matters (see Annex IV) to be determined by a third party, as long as both the landlord and tenant can agree on who can be appointed as an expert to resolve the particular issues between them. The intention of which is to modernise the AHA regime and lead to the swifter and less costly resolution of disputes.

Evidence for change

The arbitration provisions of the AHA are seen as a costly and slow mechanism for resolving disputes, which arise between a landlord and tenant. The high cost and the expected length of arbitration, together with the confrontational nature of the process, may make this form of dispute resolution an unattractive option for parties. At present, landlords are more likely to apply for resolution, especially in cases of a rent review when their income can be directly affected. Tenants, especially those on lower incomes, are unlikely to follow the arbitration route.

Ensuring all citizens in Wales have fair access to justice is a priority for the Welsh Government. Removing the requirement or option of referring to arbitration and moving this function to the ALTW would allow all tenants and landlords to have their case heard and fully considered at a significantly reduced cost as the functioning of the ALTW is funded by the Welsh Government.

The ALTW is highly regarded in the farming community and the Tribunal has the expertise and knowledge to deal with disputes relating to written tenancy agreements. A legislative change could provide multiple benefits to tenants and landlords in Wales. In particular, this

would make dispute resolutions more efficient, quicker and cheaper and, as a result, more accessible to all.

Instead of having one arbitrator deciding the case, the Tribunal is set up as a Panel of three, with a legally qualified Chair and two members representing the agricultural sector. Instead of a highly argumentative and antagonistic situation, the ALTW would operate more as a mediator, considering all evidence relevant to the dispute and come to a consensus between the panel members.

Proposal 48

We are seeking views on whether there is merit in extending the jurisdiction of the Agricultural Land Tribunal Wales to incorporate matters currently specified for arbitration in the AHA and consequently amending the Agricultural Holdings Act 1986 to achieve this.

We are considering the following options:

- Changing the ALTW's remit and functions in Wales
- Maintaining the current system which allows for arbitration under the AHA and third party determination, as an alternative, for agricultural tenancy disputes, under provisions of the Deregulation Act 2015

We consider this will achieve the following outcomes:

- A fairer and more accessible justice system for dispute resolutions linked to agricultural tenancies made under the AHA
- A quicker resolution of disputes related to agricultural tenancy agreements

Questions

Question 30

Should the jurisdiction of the Agricultural Land Tribunal Wales be extended?

Chapter 10: Wildlife

What issues are we considering?

We are seeking a view on whether the current Welsh Government Code of Practice is an effective method of controlling the regulation of snares. We are also seeking views on whether methods of killing or taking wild animals and imposing specific requirements relating to the use of snares provided in section 11 of the Wildlife and Countryside Act 1981 Act are appropriate.

Whilst the Welsh Government has developed a Code of Practice to improve snare user practice in fox control, we are considering whether further regulatory action may be required to existing controls on the use of snares to improve animal welfare standards.

Current Position

When snares are used properly, they should provide a legitimate and practical method of pest control. They provide a means of capturing animals, such as foxes, which are commonly regarded as pest species and those, such as rabbits, which are both agricultural pests and a source of food. Used in the proper manner, snares can be effective and they are widely used by farmers, gamekeepers and other land managers. The regulatory framework relating to snares includes:

Wildlife and Countryside Act 1981 (WCA) - (section 11) under this Act, it is an offence to set in position any self-locking snare which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact therewith. It prohibits the use of any self-locking snare for the purpose of killing or taking any wild animal. For any wild animal included in Schedule 6, it is illegal to set in position of any snare *calculated* to cause bodily injury or to be used for their killing or taking. It is also an offence to use any snare which is of such a nature and so placed as to be calculated to cause bodily injury to any animal coming into contact therewith; and while the snare remains in position, fail (without reasonable excuse) to inspect it once every day.

Animal Welfare Act 2006 - makes it an offence for a person to cause unnecessary suffering to an animal under their control (section 4), including an animal in a snare. This Act makes provision for the issuing of codes of practice for the welfare needs of animals. Failure to comply with such a code is not an offence in itself. However, failure to comply with a relevant provision of a code of practice may be relied upon by a court as tending to establish liability. The 'Welsh Government Code of Best Practice on the use of snares in fox control' is a statutory code issued under Section 14 of the Animal Welfare Act 2006.

Deer Act 1991 - section 4 prohibits the use of snares to capture, kill or cause bodily harm to deer.

Wild Mammals Protection Act 1996 - Section 1 prohibits violent acts with intent to inflict unnecessary suffering on wild mammals.

Evidence for change

Defra commissioned the Food and Environment Research Agency (FERA) to carry out research on the use of snares on an England and Wales basis. Their report entitled 'Determining the Extent of Use and Humaneness of Snares in England and Wales'⁷⁰ was published in 2012. This research showed that animals caught in snares unnecessarily suffer and highlighted non-compliance with the Code of Practice on the Use of Snares in Fox and Rabbit Control (CoP), which was developed in 2005 by the Independent Working Group on Snares. This was a non-statutory code which laid down best practice. It also detailed the legislative provisions in this area. The FERA research showed that, some operators were either unaware of, or did not comply with this CoP.

Following the publication of this research Welsh Government held a series of discussion groups with stakeholders. Early on in these discussions it became clear that stakeholders thought that the 2005 CoP was unsatisfactory as legal requirements and best practices were not clearly set out. As a result a new Welsh Code providing clear and practicable advice to snare operators was developed. The Code advises snare users on how to comply with the law in terms of equipment and operations and should help improve animal welfare standards and reduce the capture of non-target species. The 'Welsh Government Code of Best Practice on the use of snares in fox control' was published in 2015⁷¹.

Since the Welsh Government Code has been published a number of organisations involved have been actively promoting the Code amongst their members. They have run awareness and training events, with the aim of improving operator practice and welfare standards. It is hoped that the new Code will help to drive up operator practice.

The Code was developed to improve animal welfare standards and the Welsh Government is actively reviewing the Code to ensure it meets this requirement. The Welsh Government has sought evidence from the police, snare user representatives, welfare groups and veterinary associations and would welcome additional evidence on the effectiveness of the Code in Wales.

Wildlife legislation has been considered as part of the analysis in the Law Commission report on wildlife law reform⁷². The Law Commission has recommended the operation and inspection of snares may benefit in the future from additional regulations.

The way we treat our animals is an important reflection of our society's values and Welsh Government is committed to improving animal welfare standards in Wales. Snares should remain available to land managers as a legal method of dealing with pest species and the use of snares must be subject to robust safeguards. Snares are not intended for and should not be intentionally used to kill animals. No animal should be allowed to be caught in a snare set in a manner which is deliberately cruel.

⁷⁰ http://randd.defra.gov.uk/Document.aspx?Document=9872_wm0315-humaneness-snares.pdf

⁷¹ <http://gov.wales/docs/desh/publications/150915-code-of-practice-snares-en.pdf>

⁷² <http://www.lawcom.gov.uk/project/wildlife-law/>

Proposal 49

To place a requirement upon any person setting a snare to inspect it at least once every 24 hours. The placing of a self-locking snare is already illegal, as it is a device designed or constructed in such a manner as to prevent the loop formed by the snare loosening automatically when the force exerted to tighten the loop is relaxed. The result is that the loop continuously tightens and this process cannot be reversed, without the intervention of an external party. Free-running snares (a wire loop that relaxes when an animal stops pulling), as opposed to self-locking snares, are a legal means of capturing a number of animals. The use of free-running snares should allow non-target species to be released alive, which ensures that any general risk to wildlife is minimised. However, this does depend on snares being checked at least once a day to ensure that trapped animals are not subjected to unnecessary suffering and that non-target species are released promptly. There is already a clearly stated legal requirement for daily inspection. However, there is a concern some snare operators may evade this responsibility by failing to check snares at least every 24 hours. On the basis of “at least once every day” a snare could, potentially, be left unchecked for almost 48 hours. We believe clarifying “at least once every day” would be beneficial.

Proposal 50

Whether it is a requirement that any animal caught in a snare, whether alive or dead, must be removed when the snare is inspected. Animals left in unattended snares may die either from starvation, or dehydration. In such cases it is often impossible to prove that snares are not being visited every 24 hours. The mere presence of a dead animal in a snare does not, at present, prove that a snare has not been regularly checked. It is possible for the accused to claim the snare was checked but the animal was discovered to be dead and it was merely left in place.

Proposal 51

Whether the controls on snaring in section 11 of the WCA should apply to all self-locking snares and not, as at present simply to those which are “of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact therewith”.

This highlights the importance of continuing to make it an offence to use a device that has been adapted in such a way that causes injury to any wild animal. This would help avoid free running snares being adapted in such a way as to be used as a self-locking snare. This would also strengthen the idea snares should be used only for holding and restraining an animal, and not set with the intention of inflicting injury.

Proposal 52

Whether there should be a modification to the offence in section 11(2)(a) WCA, of setting in position any snare, trap, electrical device or poison which is likely (rather than calculated) to cause injury to animals listed in Schedule 6 to WCA. A modification of an existing offence to help prevent the misuse and inappropriate setting of snares such as setting snares on a badger sett.

Proposal 53

Whether there should be an offence to possess (without reasonable excuse) a self-locking snare.

Whilst legislation prohibits the operation of a self-locking snare, possession of such a device is not currently prohibited. Given the use of such devices is illegal, we believe there is generally no legitimate reason for the possession or sale of a self-locking snare. However, in limited circumstances and under licence an exemption would allow possession for exhibits or educational purposes.

Proposal 54

Whether there should be an offence for anyone to use or be in possession of a snare on any land without the owner/occupiers permission. Legislation currently does not deal with individuals setting snares on land without obtaining permission. Managers of land need protection from uncontrolled intrusion of this type and the damage associated with unregulated and unauthorised snaring.

Proposal 55

Whether the Welsh Ministers should take a power to ban by order any type of snare (in addition to self-locking snares, which are already illegal) and/or to make requirements in relation to the use of a snare. Such an Order would allow action to deal with particular problems that come to light in relation to snaring. It would give flexibility to ban snares, which may not be readily defined as self-locking. It could give detail on any additional specification relating to the technical requirements that a snare should require such as a stop to limit the closure of the wire loop, a non-movable ground anchor, swivel, wire or break-away devices. It could provide for additional requirements on how a snare should be used such as on the checking, labeling/tagging, setting, placement, of a snare and any training required. If training was required by such an Order, the Welsh Government would also need to approve training bodies to deliver snare training and to designate an administrator to maintain records of trained operators. Such an order could also provide the power to ban snaring completely.

Questions

Question 31

Do you think the Welsh Government Code of Best Practice on the use of snares in fox control is improving animal welfare standards? Do you have evidence on the effectiveness of the Code in Wales?

Question 32

Do you agree clarification of the term “at least once every day” would be beneficial?

Question 33

Do you agree a requirement to remove an animal caught would remove ambiguity in relation to the regular checking of snares?

Question 34

Should there be a requirement not to possess or sell a self-locking snare? Would this result in any disadvantages?

Question 35

Should there be an offence for anyone using or in possession of a snare on any land without the owner/occupiers permission safeguard owner/occupiers from unauthorised setting of snares on their land?

Question 36

Should there be further Order making powers for the Welsh Ministers to regulate snares? Would this provide an effective and flexible mechanism to control snare use in the future? Please consider whether Welsh Ministers should have such a broad power to, via Order, specify further requirements such as checking, labelling and for snare operators to be trained.

Chapter 11 – Assessment of Policy Proposals

Throughout this consultation document, initial evidence has been provided to support the case for reform. The Welsh Government will gather further detailed information on costs and benefits, and we will welcome and take into account any further evidence submitted during the consultation on this Consultation.

Where it is determined legislative reform is required, evidence will be developed into a full Regulatory Impact Assessment (RIA) to support the development of any legislation in future.

The policy proposals are designed to help deliver the Programme for Government “Taking Wales Forward”, for example fulfilling the potential of specific areas (e.g. designated landscapes), including their economic potential, by helping to encourage more vibrant communities and thriving tourism opportunities. Some of the proposals build upon previous success in optimising our natural resources. For example, 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.

Well-being of Future Generations Act 2015 (WFG Act)

By maintaining and enhancing our natural resources, the proposals contained within this Consultation will contribute to the delivery of the well-being goals set out in the WFG Act. Repurposing key pieces of legislation as we propose should ensure we manage our natural resources in a way which improves our economic, social, cultural, and ecological well-being over the long-term.

The proposals relate to all the well-being goals. For example, improved access to the countryside and improved opportunities for outdoor recreation contribute to a ‘healthier Wales’, due to the associated health benefits. Similarly, a ‘Wales of vibrant culture...’ is helped by implementing forest design plans and protecting valued green monuments and cultural value of heritage trees.

Equality and Human Rights

An initial Equality Impact Assessment screening exercise has been completed to determine how relevant the proposals in this Consultation are to equalities and human rights. This includes an assessment of the impact on people of different ages, disabilities and races. We intend to explore these issues further through consultation and engagement events with a broad range of key stakeholders, and hope to help develop a strong and meaningful evidence base from which to assess the differential impacts of proposals on people with protected characteristics.

Due regard to the United Nations Convention on the Rights of the Child (UNCRC)

An initial screening assessment indicates that the proposals set out in this Consultation will support the principles of the Rights of Children and Young Persons (Wales) Measure (2011). We have screened the proposals against each of the Articles in the Convention, to determine whether each Article is breached, respected, or given greater effect by the proposals, and to indicate any additional action which is needed. This assessment should be read alongside the initial Equalities Impact Assessment screening exercise.

Proposal 56

We want to ensure that any future policy is reflective of the needs of Welsh citizens, so we would appreciate any views in relation to any of the proposals in this Consultation that may have an impact on: a) Human rights; b) Welsh language; or c) the protected characteristics as prescribed within the Equality Act 2010. These characteristics include gender; age; religion; race; sexual orientation; transgender; marriage or Civil Partnership; Pregnancy and Maternity; and, disability.

Questions**Question 37**

Do consultees have any other comments or useful information on the costs and benefits in relation to any of the proposals in this Consultation ?

Question 38

We would like to know your views on the effects that these policy proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 39

Please also explain how you believe the proposed policy proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 40

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Annex 1 - List of Questions

Towards the Sustainable Management of Natural Resources Promote a Circular Economy

Question 1

Do you consider there are further opportunities for integration of circular economic approaches? If so, please provide examples of where there are any regulatory obstacles to achieving integration.

Delivery of Nature Based Solutions

Question 2

Are there any regulatory barriers to introducing nature based solutions? Please provide information.

Support New Markets and Innovative Mechanisms

Question 3

Are there potential opportunities for market mechanisms or innovative regulatory approaches? Are there any legislative barriers to their implementation?

Forestry

Question 4

Do you agree with proposals to align NRW's general duties (including the balancing duty) under the Forestry Act with the sustainable management of natural resources?

Question 5

Do you agree that NRW should be able to delegate its responsibilities for managing the Welsh Government Woodland Estate to others? Please indicate, whether you consider if there should be any limitations on NRW to delegate these functions.

Question 6

Do you agree that a long-term forest management plan agreed between a forest manger/owner and NRW could be an appropriate way to regulate and authorise the felling of trees?

Question 7

Do you agree that conditions in a conditional felling licence or long-term forest management plan should align with the sustainable management of natural resources?

Question 8

Do you agree that NRW should be able to revoke or amend felling licences or forest management plan approvals? Please indicate if you foresee any difficulties amendment or revocation might cause.

Question 9

Do you agree with the proposals relating to the repeal of the requirement of the RAC?

Question 10

Do you agree with the proposals to improve the protection afforded to valued veteran and heritage trees by refining the existing statutory frameworks, principally the tree preservation order regime?

Designated Landscapes**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?⁷³ If so, please explain which and why.

Access to Outdoors**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

⁷³ <http://gov.wales/docs/desh/publications/170508-future-landscapes-delivering-for-wales-en.pdf>

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?

Marine and Fisheries

Marine

Question 18

Do you support the need for new powers to identify Welsh Regional marine plan regions and to produce marine plans for these Regions?

Question 19

If you do not support Regional marine plans, please indicate how you suggest local issues are addressed within the current framework and what specific impact do you think the proposals would have upon your interests?

Fisheries

Question 20

Do you agree with our proposals to manage fisheries flexibly? Can you provide any example where flexible management would be of benefit to your business?

Question 21

Do you agree with our proposals to introduce a fit for purpose licensing regime for aquaculture? Please consider whether there are any other functions you think the license should cover.

Question 22

Do you agree with our proposals to increase the scope of the current Buyers and Sellers Regime. Please consider what impact you think the proposals will have on your business.

Water

Abstraction Reform

Question 23

Do you agree with the approach we are proposing, to introduce abstraction reform on a Wales only basis?

Drainage Reform

Question 24

Do you agree with the proposals presented by the Welsh Government?

Question 25

Do you believe there are additional proposals which could improve the current legislative/regulatory landscape in the short term?

Please consider if there are any other potential reforms required in Wales, which may need to be delivered in the longer term.

Waste and Local Environment Quality

Waste – Powers of Entry

Question 26

Do you agree that Welsh government should amend section 108 of the Environment Act 1995 so that:

- it removes the need for providing 7 days notice to the person in occupation of the premises;
- retains the need for a warrant;
- extends the description of information that can be required; and
- provides the ability to remove (and retain) material for examination, including information stored electronically?

Waste – Sanctions under Section 46 of the Environmental Protection Act 1990

Question 27

Do you agree that the Welsh Government should amend section 46 of The Environmental Protection Act 1990 so that it includes the option of Local Authorities serving Fixed Penalty Notices for failure to comply with notices rather than having to prosecute through the courts?

Environment – Littering from Vehicles

Question 28

Do you agree the Welsh Government should introduce powers in Wales that will allow local authorities to be able to issue a financial penalty to a registered keeper of a vehicle if litter has been dropped from that vehicle, regardless of whether the identity of the individual who committed the littering offence is known?

Smarter Regulation – The Role of Basic Measures

Question 29

Should basic measures be introduced as a mechanism for regulating low risk activities? Please consider what type of activities would benefit from regulation by basic measures.

Agriculture

Question 30

Should the jurisdiction of the Agricultural Land Tribunal Wales be extended?

Wildlife

Question 31

Do you think the Welsh Government Code of Best Practice on the use of snares in fox control is improving animal welfare standards? Do you have evidence on the effectiveness of the Code in Wales?

Question 32

Do you agree clarification of the term “at least once every day” would be beneficial?

Question 33

Do you agree a requirement to remove an animal caught would remove ambiguity in relation to the regular checking of snares?

Question 34

Should there be a requirement not to possess or sell a self-locking snare? Would this result in any disadvantages?

Question 35

Should there be an offence for anyone using or in possession of a snare on any land without the owner/occupiers permission safeguard owner/occupiers from unauthorised setting of snares on their land?

Question 36

Should there be further Order making powers for the Welsh Ministers to regulate snares? Would this provide an effective and flexible mechanism to control snare use in the future? Please consider whether Welsh Ministers should have such a broad power to, via Order, specify further requirements such as checking, labelling and for snare operators to be trained.

Assessment of Policy Proposals

Question 37

Do consultees have any other comments or useful information on the costs and benefits in relation to any of the proposals in this Consultation ?

Question 38

We would like to know your views on the effects that these policy proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 39

Please also explain how you believe the proposed policy proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 40

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use the response form provided.

Annex 2 - Glossary

Abstraction - Removal of water from a surface or groundwater source
Aquaculture - the rearing of aquatic animals or the cultivation of aquatic plants for food
Areas of Outstanding Natural Beauty - an area of countryside designated by a government agency as having natural features of exceptional beauty and therefore given a protected status
Benefits – these are the multiple services provided by ecosystems. These are: Supporting services, for example nutrient cycling, oxygen production and soil formation. These are the services that are necessary for the production of all other services. Provisioning services, for example food, fibre, fuel and water. These are the products obtained from ecosystems. Regulating services, for example climate regulation, water purification and flood protection. These are the benefits obtained from the regulation of ecosystem processes. Cultural services, for example education, recreation, and aesthetic benefits. These are the cultural benefits people obtain from ecosystems.
Circular Economy - is one that is restorative and regenerative by design and aims to keep products, components and materials at their highest utility and value at all times.
Decarbonisation - The reduction or removal of carbon dioxide from energy sources.
Designated Landscapes – are nationally important landscapes which have been designated either as a National Parks or Area of Outstanding Natural Beauty.
Diffuse Pollution - is the release of potential pollutants from a range of activities that, individually, may have no effect on the resilience of our ecosystems or natural resources, but, cumulatively can have a significant effect.
Drainage - A collection of pipes, channels and other engineering works designed to convey stormwater way from a built up environment.
Ecosystem - An ecosystem is made up of living organisms (plants, animals and microorganisms) in conjunction with their non-living environment (air, water, minerals and soil) and all the diverse and complex interactions that take place between them
Ecosystem Approach - seeks to maintain the integrity and functioning of ecosystems as a whole to avoid rapid undesirable ecological change. The approach recognises that humans are an integral component of ecosystems and equally that ecosystems provide a range of services that underpin human wellbeing and wider society ⁷⁴ .

⁷⁴ <http://www.cbd.int/ecosystem>

The term ecosystem approach originally comes from the Convention on Biological Diversity (CBD), where it is described as “a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way”⁷⁵.

Ecosystem resilience - When applied to ecosystems - the ability of an ecosystem to withstand, or recover from disturbance and its capacity to survive and adapt so that its biological diversity, natural processes and provision of ecosystem services are maintained. In the Environment (Wales) Act, the following characteristics reflect resilience:

- diversity between and within ecosystems
- the connections between and within ecosystems
- the scale of ecosystems
- the condition of ecosystems (including their structure and functioning)
- the adaptability of ecosystems⁷⁶

Fixed Penalty Notice - A monetary penalty intended to be used for minor offences

Nature Based Solutions - actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

Natural Resources –

- Animal, plants and other organisms,
- Air, water and soil,
- Minerals,
- Geological features and processes,
- Physiographical features,
- Climatic features and processes⁷⁷

The list reflects the living (biotic) and non-living (abiotic) components of our natural environment and therefore represents the resources as individual components that make up our natural resources.

Payment for Ecosystem Services – a voluntary transaction where a well-defined ecosystem service is bought by an ecosystem service user by an ecosystem service provider for the purpose of securing ecosystem service provision.

Penalty Charge Notice - a penalty for contravention of regulations. It can be paid, contested by appeal, or contested by defending a claim for payment under the small claims track of the county court.

Private Sewer - A sewer for which responsibility is not vested in the sewerage undertaker. Generally it is collectively owned and maintained by the owner(s) of the building(s) it serves.

⁷⁵ <http://www.cbd.int/ecosystem>

⁷⁶ Section 4(i) Environment (Wales) Act 2016

⁷⁷ Section 2 Environment (Wales) Act 2016

Public Sewer - A sewer for which responsibility is vested with the sewerage undertaker to maintain it.
Residual waste - waste that remains after recycling or composting material has been removed from the waste stream.
Semi-natural forests - have current stands predominantly composed of trees and shrubs that are native to the site and are not obviously planted. Thus they appear to have arisen mainly from natural regeneration or from coppice/pollard growth from naturally regenerated individuals.
Septic Tank - A structure for the collection and partial treatment of sewage.
Sewage - Wastewater and/or surface water conveyed by a drain or sewer.
Sewage Undertaker - An organisation with the legal duty to provide sewerage services in an area.
Sewer - A pipe or conduit that carries wastewater or drainage water serving more than one property.
Sewerage System - A network of pipelines and ancillary works that conveys wastewater and/or surface water from drains to a treatment works or other place of disposal
Sustainable Development is defined in the Well-being of Future Generations (Wales) Act as the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle ...aimed at achieving the well-being goals ⁷⁸
Sustainable Development Principle is to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs ⁷⁹ .
Sustainable Drainage - The application of drainage techniques that are considered to be environmentally beneficial, causing minimal or no long-term detrimental impact.
Sustainable Management of Natural Resources is defined in the Environment (Wales) Act as using natural resources in a way and at a rate, or taking other action that promotes or not taking action which hinders the achievement of maintaining and enhancing the resilience of ecosystems and the benefits they provide and in so doing meets the needs of current generations without compromising the ability of future generations to meet their needs and contributes to the seven well-being goals in the Well-being of Future Generations (Wales) Act.
Total Allowable Catch - are catch limits (expressed in tonnes or numbers) that are set for most commercial fish stocks.
Well-being is the social, economic, cultural and environmental well-being as

⁷⁸ Section 3 Well-being of Future Generations (Wales) Act 2015

⁷⁹ Section 5 Well-being of Future Generations (Wales) Act 2016

reflected in the 7 well-being goals provided in the Well-being of Future Generations (Wales) Act. These goals are:

- A prosperous Wales,
- A resilient Wales,
- A healthier Wales,
- A more equal Wales,
- A Wales of cohesive communities,
- A Wales of vibrant culture and thriving Welsh language,
- A globally responsible Wales

WRAP - Waste and Resources Action Programme

Annex 3 - Sustainable Management of Natural Resources

Sustainable Management of Natural Resources

Part 1 of the Environment (Wales) Act 2016 introduced the sustainable management of natural resources (SMNR) to enable Wales' natural resources to be managed in a more proactive, sustainable and joined-up manner.

The objective of sustainable management is to ensure that the way we manage and the rate of use of our natural resources, and the multiple benefits that they provide to us, does not lead to the long-term decline of these resources and supporting ecosystems.

The use of natural resources should not exceed their natural capacities for their long-term viability and the cumulative effect of a move to sustainable management will be to build the resilience of our ecosystems.

The purpose of sustainable management of natural resources is:

- To reflect the role that our natural resources play in contributing to the achievement of all the well-being goals introduced by the Well-being of Future Generations (Wales) Act 2015;
- To maintain and improve the condition of our ecosystems and emphasise the role of ecosystem benefits (or services) within the decision-making process;
- To ensure that 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;
- To ensure that the impact of activities on our natural resources and ecosystems is considered in terms of how they affect the resilience of our ecosystems and consequently their ability to provide social, economic and environmental benefits for both current and future generations;
- To ensure that a wide range of relevant ecosystem benefits can be considered and valued within the decision-making and delivery process. This includes the value we place on our natural resources for their own sake; and
- To reduce the negative impacts generated by the use of natural resources.

SMNR is now the general purpose of NRW and it must pursue SMNR in carrying out all of its functions and apply the principles of SMNR.

The Welsh Ministers must produce a natural resources policy to contribute to achieving SMNR and must apply the principles of SMNR in the preparation and implementation of the policy.

Ecosystem Benefits/Services

Ecosystem benefits, for the purpose of the Act are:

- Supporting services, for example nutrient cycling, oxygen production and soil formation. These are the services that are necessary for the production of all other services.
- Provisioning services, for example food, fibre, fuel and water. These are the products obtained from ecosystems.
- Regulating services, for example climate regulation, water purification and flood protection. These are the benefits obtained from the regulation of ecosystem processes.
- Cultural services, for example education, recreation, and aesthetic benefits. These are the cultural benefits people obtain from ecosystems.

The Principles of SNMR

The below principles incorporate the ecosystem approach as adopted by the UN Convention on Biological Diversity.

- Adaptive Management of our natural resources by identifying, planning, monitoring, reviewing and, where appropriate, changing action;
- Scale – consider the appropriate scale for addressing the particular issues (decision-making delivery and enforcement);
- Collaboration and Engagement:
 - i. Promote and engage in collaboration and co-operation;
 - ii. Make appropriate arrangements for public participation in decision-making;
 - iii. Take account of all relevant evidence and gather evidence in respect of uncertainties;
- Benefits - take account of the benefits and intrinsic value of natural resources and ecosystems;
- Long-term - take account of the short, medium and long term consequences of actions;
- Preventive - take action to prevent significant damage to ecosystems;
- Resilience - take account of the resilience of ecosystems, in particular the following aspects:
 - i. Diversity between and within ecosystems;
 - ii. The connections between and within ecosystems;
 - iii. The scale of ecosystems;
 - iv. The condition of ecosystems (including their structure and functioning);
 - v. The adaptability of ecosystems.

The above principles are interlinked to provide an integrated approach. For example in order to manage for multiple benefits it will be necessary to gather evidence on the state of ecosystems and their ability to provide the benefits not only in the short term but also over the long term. To assess their value will require engagement with stakeholders and other interested parties and any actions taken to manage these benefits should be taken with consideration of the impacts on the resilience of the ecosystem. These actions should then be monitored to assess the impacts over the long-term.

Annex 4 - Matters Subject to arbitration under the Agricultural Holdings Act 1986 and Agricultural Tenancies Act 1995

Act	Legislative Provision	Matter
AHA 1986	Section 2	Application by parties to an agreement letting agricultural land for less than from year to year
AHA 1986	Section 6	Right for parties to apply for a written tenancy agreement
AHA 1986	Section 7	The Welsh Ministers may make regulations prescribing terms as to the maintenance, repair and insurance of fixed equipment (“the model clauses”). Any matters arising under such regulations may be determined by arbitration or third party determination
AHA 1986	Section 8	Arbitration or third party determination where terms of a written agreement are inconsistent with model clauses
AHA 1986	Section 9	Application by landlord for compensation where liability in respect of maintenance or repair of fixed equipment is transferred from the tenant
AHA 1986	Section 10	Application by parties to resolve any dispute for the amount payable by a landlord electing to purchase a fixture or building
AHA 1986	Section 12	Arbitration or third party determination of rent payable on an agricultural holding
AHA 1986	Section 13	Arbitration or third party determination of increases in rent for landlord’s improvements
AHA 1986	Section 14	Variation of terms of tenancy as to permanent pasture
AHA 1986	Section 15	Application by landlord to determine whether a tenant’s disposal of produce and cropping is injuring or deteriorating a holding
AHA 1986	Section 20	Application by tenant for compensation for damage by game
AHA 1986	Section 33	Reduction in rent where notice is given to the

		tenant to quit part of the holding
AHA 1986	Section 48	Terms of new tenancy
AHA 1986	Section 80(7)	Settlement of rent payable by a tenant on division of a holding into one part market garden
AHA 1986	Section 83	Settlement of claims on termination of tenancy
Agricultural Tenancies Act 1995	Section 28	Provides that any dispute between the landlord and tenant under a farm business tenancy shall be determined by arbitration.