

Welsh Government consultation on Taking Forward Wales' Sustainable Management of Natural Resources

Natural Resources Wales Response

Summary of our Response

This is a wide ranging consultation which touches on many areas which fall within the direct remit of NRW. Some of the proposals set out in the consultation have been the subject of separate consultation exercises e.g. *Making the most of Every Drop, Reforming the Abstraction Management System in Wales*¹). Given the breadth and depth of the proposals in this consultation our response is extensive. It is critical that the opportunities for integration between sectors are fully realised to ensure alignment to the SMNR objective and ways of working. Our response sets out the gaps and additional mechanisms, including funding mechanisms, which may need to be developed to fully realise the benefits for sustainable management of natural resources, driving multiple benefits for people and places across Wales. This is particularly important for land management and agriculture where Brexit is likely to drive profound change. We believe further discussion with the land management sector in particular is required to refine the Access proposals to design an approach fully aligned to SMNR, supporting resilient ecosystems, viable farm incomes as well as driving the well-being benefits for people and communities.

Chapter 1 – Toward the sustainable management of natural resources

We are broadly supportive of the proposals in Chapter 1. However, we consider there is an opportunity to look more holistically across regulation, incentives and ways of working to identify means to drive sustainable management of natural resources. The present focus on regulatory approaches, although important is only part of a wider range of tools available to deliver SMNR. It is the synergistic interaction of all these elements that will form part of a comprehensive delivery framework. Designing elements alongside one another is more likely to deliver beneficial synergies.

Chapter 2 – Forestry

We consider the proposals for Forestry within Chapter 2 as being helpful and supportive in taking us toward delivering the SMNR. The proposals on delegation of responsibilities, endorsement of forest management plans, addition of further types of conditions to felling licences, the ability to revoke and amend felling licences, and repealing the requirement for a regional advisory committee are particularly welcome as they will further increase our ability to ensure natural resources are managed more sustainably. However, given the potentially far-reaching consequences of several of these proposals, much greater clarity and detail around the wording of

¹ <https://naturalresources.wales/media/1663/making-the-most-of-every-drop-consultation-on-reforming-the-water-abstraction-management-system.pdf>

actual amendments is needed to ensure that the broadly progressive spirit of their conception is realised in practice.

Chapter 3 – Designated Landscapes

With respect to Designated Landscapes proposals in Chapter 3, it is our view that there are currently no legislative barriers that prevent exploring new ways of working to deliver WFG outcomes and SMNR. However, there are opportunities to enhance the delivery model through modifications to policy, procedure and practice that would make the new agenda easier to deliver, many of which came to light in the 2015 Marsden Report. NRW believes that making these modifications would be more efficient in terms of timescales and resources and provides an opportunity to fully utilise the new legislative suite without resorting to amendments before it has been fully tested.

Chapter 4 – Access to the Outdoors

In considering the proposals for Access in Chapter 4, we highlight the need to balance the benefits of open access with the impacts this may have on discharging our statutory duties towards protected species, designated sites and fisheries. SMNR has a clear focus on supporting ecosystem resilience and we believe there is a need to refine the proposals to safeguard against the unintended consequences open access may have on ecosystem resilience and biodiversity. We also highlight the need to ensure that landowners benefit from the opportunities that greater access may bring. It is our view that Welsh Government needs to bring all interested sectors together to refine the access proposals to develop supporting mechanisms to ensure that the greater access for all also supports viable farm businesses plus the wider well-being benefits for people and communities, via Welsh Government's National Access Forum. The proposal to develop a Statutory Access Code is a key step in this process.

Chapter 5 – Marine and Fisheries

Whilst NRW accepts the potential benefits of the sub-national marine planning proposals, we stress the value of gaining experience with marine planning at a national level, through the anticipated Welsh National Marine Plan, before exploring sub-national planning further. NRW is tasked with developing Area Statements for Wales' marine area. This is an important opportunity to bring together locally refined evidence that informs implementation of national policy set out in the plan. This could go some way to addressing some of the issues set out in this consultation.

Joining up planning and decision-making over the land-sea interface continues to be a challenge. Marine and Terrestrial planning operates under different legislation and relevant consents and permits are given by a range of authorities. We suggest actions to tackle this issue.

NRW supports Welsh Government's proposal to provide Welsh Ministers with further powers to flexibly manage marine fisheries. NRW further support the provision of adaptive powers being granted to the Welsh Minister to allow the opening and

closure of marine fisheries at short notice and in response to potential unforeseen environmental conditions. These specific legislative amendments will contribute to the sustainable management of Welsh marine fisheries resources, but the effectiveness of the legislation needs to be considered longer term in the context new Welsh sustainability legislation, the UK leaving the European Union and a changing devolved constitutional landscape, post Brexit.

Chapter 6 - Water

NRW welcomes WGs ongoing commitment to improving the water environment as detailed in Chapter 6 of this consultation. We see the consultation and the current Brexit process, as an opportunity to adopt an integrated and streamlined approach to managing water, improving upon the approaches adopted within current EU directives.

We note that proposals for Abstraction Reform have been consulted previously, *Making the most of Every Drop, Reforming the Abstraction Management System in Wales*, and we continue to support its programme. Chapter 6 also contains proposals that were also subject to an earlier Welsh Government Consultation *Implementation of Sustainable Drainage Systems on New Developments*. Our responses to these previous consultations can be found on our website²³.

Chapter 7 – Waste and Local Environment Quality

The proposals within Chapter 7 relate to specific details around NRW's legal powers such as power of entry and seizure, and local authority powers to serve fix penalty notices. With respect to the proposals to change NRW's powers of entry, we highlight the need to ensure that the proposed new powers extend beyond the Environment Act 1995, to include powers of entry under the Water Resources Act 1991 and the Reservoir Act 1975, ensuring consistency.

Chapter 8 – Smarter Regulation – the role of basic measures.

NRW support the development and introduction of basic measures as a mechanism for regulating low risk activities, as proposed in Chapter 8. NRW believe that basic measures should be introduced for activities where there is evidence that shows linkage between a low risk activity and an unacceptable impact. We believe that Basic Measures would play a critical role in a revised regulatory framework that supports the delivery of the SMNR. In support of a revised regulatory framework, we would also propose wider access to Civil Sanctions, beyond the limited set of regimes for which they are available in Wales. Civil Sanctions are a critical element of the SMNR delivery model we propose in our overarching comments, providing a proportionate enforcement framework below the regulatory floor.

Chapter 9 – Agriculture

² <https://naturalresources.wales/media/1663/making-the-most-of-every-drop-consultation-on-reforming-the-water-abstraction-management-system.pdf>

³ <https://naturalresources.wales/media/682489/implementation-of-sustainable-drainage-systems-on-new-developments.pdf>

NRW supports the proposal in Chapter 9, to extend the jurisdiction of the Agricultural Land Tribunal Wales to incorporate those disputes for which arbitration under the Agricultural Holdings Act 1986 is the only resolution mechanism currently available. Some 80% of the land in Wales is farmed and a significant proportion of this is managed under a tenancy arrangement. The nature of the relationship between landlords and tenants can therefore have a major impact on the management of natural resources. We are aware existing tenancy arrangements can make it more difficult to agree on who should be responsible for installing and/or modernising infrastructure such as slurry stores. In this context, any measure which improves the capacity to resolve disputes more easily is likely to provide additional benefits in terms of natural resource management.

Chapter 10 – Wildlife

In considering the proposals within Chapter 10, we would point out that our remit does not extend to animal welfare, but we are concerned with the conservation of protected species. More broadly NRW supports the need to reform wildlife legislation to provide improvements to wildlife management and protection. NRW believes that the current consultation, presents an opportunity to deliver elements of the referenced Law Commission's report.

Chapter 11 - Assessment of Policy Proposals

We welcome these proposals and the move to modernise legislation and progress forwards to create a healthier and more equal Wales, in line with the ambition set out in the Wellbeing of Future Generations Act.

Given that the Wellbeing of Future Generations Act provides the context for these reforms we would expect that further progression of them will deliver on human rights, Welsh language and protected characteristics. However, implications for the Welsh language are not discussed explicitly and the consideration of protected characteristics is not complete.

Introduction & Overarching Comments

Natural Resources Wales (NRW) is the principal environmental advisor to Welsh Government and Wales' principal environmental regulator, with a purpose to pursue sustainable management of natural resources (SMNR) across all its functions. The consultation touches on a number of topics which fall within our remit. Our response is extensive as we believe there is greater scope to integrate the individual sectoral proposals to develop more fully developed SMNR proposals - to build ecosystem resilience and maximise the contribution to well-being, as required under the Well-being of Future Generations Act and Environment (Wales) Act.

The recent publication of the Natural Resources Policy (NRP) also provides an important steer. The NRP sets out the Welsh Government's policy ambition across all policies within Cabinet. In further refining the proposals set out in this consultation we believe there is an opportunity to focus on the NRP ambition and consider what needs to change in the legislation to ensure that the delivery mechanisms, such as agri-environment schemes or the planning system, drive through the benefits for SMNR. Considering what legislation needs to change to further the ambition of the NRP and facilitate delivery of SMNR is a crucial additional step that is needed to tie together policy and legislative change.

Important context for our response is also provided by the Global Risks Report 2017⁴ published by the World Economic Forum earlier this year, which identifies the following key risks that need to be managed:

- Growth and reform of the economy
- Rebuilding communities
- Managing technology disruption
- Strengthening cooperation
- Accelerating action on the environment.

The new legislation in Wales is a great start to allow Wales to play its part in tackling and managing these global risks.

NRW should have a role in relation to managing many of these risks and we want to work with WG and others so that our expertise and delivery is utilised. We have provided details within our response on our strategy for regulation but we are aware that input to developing technologies and innovation where the risks to and opportunities for the sustainable management of natural resources at the outset will have a greater influence on the outcomes delivered. We ask WG to support our involvement in this work so that together we can work on innovation, product development as well as supply chain initiatives to incentivise the products and behaviours that will deliver SMNR.

⁴ <https://www.weforum.org/reports/the-global-risks-report-2017>

We can support WG in driving the behaviour change identified as necessary in the new legislation, working with communities and on government on economic reform that supports SMNR.

We welcome the Minister's opening remarks concerning the need to seek measures to support the cross cutting agenda that SMNR represents. Furthermore, as the Minister highlights, there is a clear need to identify *systematically* where reform to the present system is necessary to support this *systemic* ambition.

We recognise that the present consultation is a step forward in developing such a systemic approach, considering as it does legislative and regulatory reform across a wide range of policy areas that are central to the delivery of SMNR. However, in drafting our responses to individual proposals, a number of other over-arching issues have come to light which are largely absent from the present consultation, but are nonetheless extremely relevant to the wider implementation of and perception of SMNR amongst stakeholders. As SMNR is a new approach, we feel special attention needs to be paid to communicating how the different pieces of the puzzle fit together from the outset, in order to minimise confusion and maximise buy-in.

There is some scope for the discussion of some of these emerging issues in our responses to Chapter 1 of the consultation, but we wish to outline these issues and possible approaches to them ahead of our main consultation response, as they provide important context to our detailed response.

The challenge of developing a systemic approach to SMNR

We support the Minister's suggestion that the solution to this challenge lies in adopting an intelligent, systemic approach. A fundamental prerequisite of SMNR is connecting agendas and actions across silos in a manner that delivers the integrated change that SMNR requires. While there is value in terms of synchronous reform across a wide range of sectors under the umbrella of SMNR, this approach presents a significant challenge in terms of the manageability and resource requirements to progress such a diverse range of issues in an efficient and timely manner.

Perhaps this is the real challenge ahead: for SMNR to be effectively delivered, the integration it requires demands coordination and resourcing of many diverse elements into manageable work programmes running in parallel. We would like to offer some suggestions on how the conflict between the imperative to integrate and the necessity of manageability can be addressed in taking this consultation forward.

Systems approaches in the Public Sector

In their review of systems approaches to public sector complex problems the OECD concluded⁵:

⁵ OECD Observatory of Public Sector Innovation (2017) Working with Change: Systems Approaches to Public Sector Challenges. <http://www.oecd.org/publications/systems-approaches-to-public-sector-challenges-9789264279865-en.htm>

“Systems approaches help government confront, in a holistic way, problems that span administrative and territorial boundaries. They call for constant adjustment throughout the policy cycle, with implications for how institutions, processes, skills and actors are organized. Because they focus on outcomes, systems approaches require multiple actors within and across levels of government to work together. In order to effect systems change, administrations must develop a vision for a desired future outcome, a definition of the principles according to which that future system will operate, and a set of interventions that will start to change the existing system into the future system....Furthermore, systems approaches can help organisations better manage complexity by striking a balance between simplification (focusing on the intended outcome) and complexification (tackling multiple factors within a system at the same time).

This seems particularly appropriate in the present context. It follows that a key arbiter between the conflicting pressures of simplification and complexification is the appropriate division of the objective into *discrete but connected tasks that are hierarchical in nature*. This ensures that the size and nature of the tasks are better matched to the existing resourcing and structure of resources available to deliver them. By doing so, individual tasks are likely to be inherently more manageable and deliverable.

Even so, when dealing with many of the “wicked” highly complex and highly unpredictable issues that underpin the challenge of SMNR, the principle of adaptive management needs to be enshrined in order that the objective (in this case SMNR) may be accomplished despite changing circumstances.

Applying systems approaches to delivering SMNR: SMNR enabling mechanisms

When applied to the specific challenge of delivering reform towards SMNR, as laid out in the consultation, systems thinking would suggest that a key means of breaking down the potentially unwieldy complexity (such as the breadth and depth of topics demonstrated in this consultation), without over-simplification, is the use of a hierarchical, issue-focussed approach.

The Environment Act and the Wellbeing and Future Generations Act and the principles they enshrine arguably provide context and enabling mechanisms to some extent: for example through the provision of experimental powers, and through establishing the mechanism of area statements. However, there remains a considerable “mechanisms gap” in connecting the ambition of the primary legislation to the wide ranging detailed reform that is required at a sectoral level to ensure its delivery.

The present consultation attempts to bridge this gap in a manner that largely misses the next level in the hierarchy that a systems approach evokes: a step which is focussed on the outcomes sought in the primary legislation and seeks to enable these outcomes through provision of overarching enabling mechanisms applicable across all relevant policy areas.

Such a systemic approach could be implemented by considering firstly a modest number of high level *SMNR-enabling mechanisms*: tools that provide the context and

imperative for the development of SMNR-facing policy across the range of existing policy areas. In order to drive change based on live issues rather than historic silos, reform could then proceed as a series of subsidiary consultations focussing on key systemic issues for SMNR delivery, which may involve several policy areas, requiring an integrated application of the enabling mechanisms. This in effect shifts moves away from purely sectoral responses towards integrated SMNR problem solving, facilitated by the toolbox of enabling mechanisms. In doing so, it breaks down the “uber-consultation” into a series of connected, functional programmes of reform.

We have attempted to depict this approach contrasted with the present approach in Fig 1a & 1b below.

What might enabling mechanisms for SMNR look like?

In general, in order to aid a systemic approach to SMNR the mechanisms used should be broadly applicable to a range of policy areas embodying the fundamental principles of SMNR.

We recognise that achieving SMNR it is fundamentally about delivering *behaviour change* across a wide range of stakeholders. Behaviours are influenced by several factors. The present consultation correctly identifies regulation as key to delivery of SMNR. However, it is important to note that the definition of regulation implied in this consultation is narrower than the definition used in NRW’s Regulatory Principles⁶. The difference is critical to the delivery of the ambition expressed in this consultation.

NRW believe that regulation is about doing something that makes a difference – changing, regulating the system to promote a desired outcome. This is not just about the law. To provide this clarity, we frame our approach in terms of formal regulation and informal regulation, reflecting where interventions may or may not be underpinned by the law.

Formal regulation is underpinned by legislation, but this is just one aspect of regulation. To deliver SMNR, securing compliance with existing (or even future) legislative frameworks will not be enough. We will instead need to combine formal regulation with “beyond compliance” interventions, advice, guidance, incentives and behavioural nudges.

If we are to take a systematic approach to delivering SMNR, we believe an integrated approach is needed across the formal/informal regulation spectrum, in line with our Regulatory Principles. To this end, in addition to the regulatory enabling mechanisms put forward in the present consultation (basic measures, smarter regulation – Chapter 8) we suggest that other key drivers of behavioural change at the informal end of the spectrum should be explored and enabled via specific mechanisms. This co-designed approach, which we expand upon below, will provide a truly systemic SMNR-enabling context in which future policy development and consultations can be conducted.

⁶ <https://naturalresources.wales/media/678390/our-regulatory-principles-version-2-april-2016.pdf>

A model for delivering SMNR

Formal regulation provides a push on behaviours that is enhanced if combined with a pull via informal regulation in the form of incentives. It is further enhanced if progress is facilitated through deployment of smart insights into the process of behaviour change. We have attempted to represent this in the conceptual model depicted in Figure 2. We believe such a model represents a more systemic approach to the challenge of delivering SMNR, than a focus on purely regulatory measures.

While there is an argument for implementing formal regulatory reform first, we believe that there is real value, as per our Regulatory Principles, in co-developing the three key elements in Figure 2 (page 12). This should ensure that they are capable of functioning in concert. Furthermore, by consulting on these tools as an *integrated package*, they provide a holistic SMNR setting for subsequent reform at the sectoral level. We consider each element in turn.

Overarching legislation and processes:
 Wellbeing of Future Generations Act
 Environment Act
 Natural Resource Policy Statement
 Area Statements

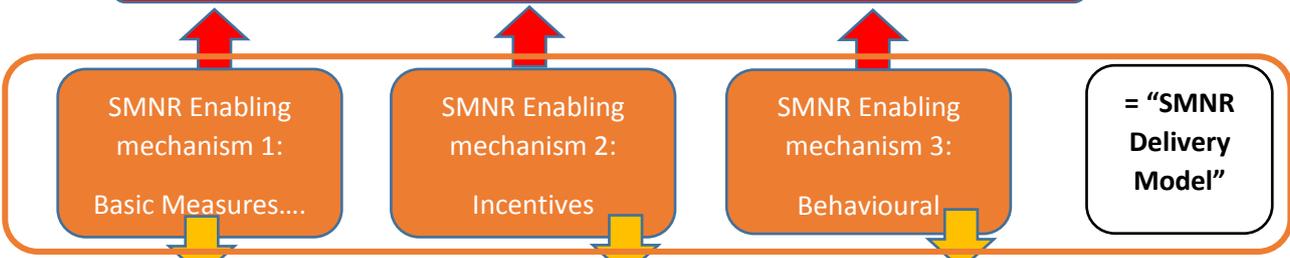
“Uber-SMNR-consultation”



Fig 1a. Present approach – single uber-consultation mixing many sector-specific delivery issues with some enabling mechanisms

Overarching legislation and processes:
 Wellbeing of Future Generations Act
 Environment Act
 Natural Resource Policy Statement
 Area Statements

“SMNR Enabling mechanisms” consultation



“Delivering SMNR” consultation (one of several, issue-based)

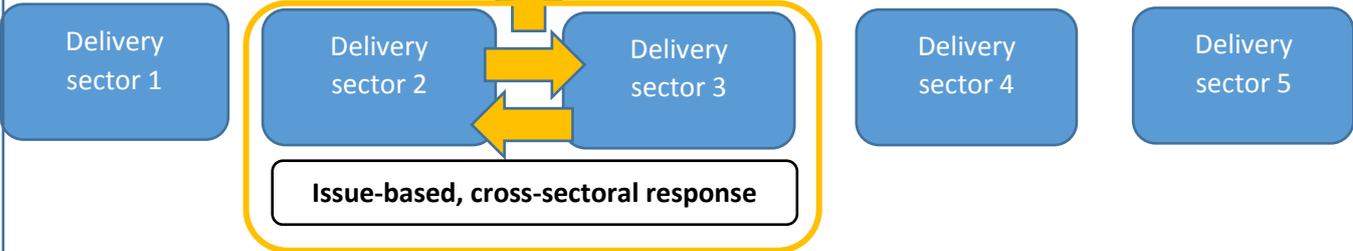


Figure 1b. Alternative approach with hierarchical consultations. First consultation establishes enabling mechanisms that add up to SMNR delivery model. Subsequent consultations apply the model to SMNR delivery issues, encouraging a coordinated response from relevant sectors

Element 1: Formal Regulation.

To be fit for purpose in the wider delivery model, formal regulation needs to provide the push up to the regulatory floor (the threshold in environmental standards below which formal regulation and associated sanctions are employed), reducing environmental harm to societally acceptable levels, thereby increasing the resilience of ecosystems. In line with NRW's Regulatory Principles, our regulatory system needs to achieve this in a comprehensive, transparent, accountable and proportionate manner. Enabling mechanisms supporting this element might include:

- Basic measures / smarter regulation, as outlined in Chapter 8 of this consultation, which we fully support as a means of providing a clear, fair, consistent regulatory floor.
- Expanding the range of legislation for which civil sanctions (including fixed penalties and enforcement undertakings) can be deployed.
- Review of environment-facing legislation in the light of basic measures and ensure that it presents a rational gap and overlap free approach. This may be especially necessary given the change of status of CAP Cross-Compliance following Brexit.

Element 2: Incentives

Incentives should pick up where formal regulation leaves off, developed to complement formal regulation, supporting operators to realise the benefits of going beyond compliance, towards the ambitious goals of SMNR. Incentives are usually, but not always based on financial remuneration. Other forms of incentives may include developing new markets (for example a value-added Welsh brand), prizes and awards. Generally speaking, the higher the level of environmental outcome delivered the greater the incentive.

The model in Figure 2 uses incentives to provide a seamless integration with formal regulation and sanctions below the regulatory floor, with incentives operating above the regulatory floor, which together drive change towards defined SMNR goals.

SMNR will require further investment, whether; money, time, expertise or natural resources. The case for such investment is clearly recognised by the Minister in the forward to the recently published Natural Resources Policy, where the cost effectiveness of investment in natural resources is highlighted.

Given the significant ongoing pressures on public finances and use of public funds, as part of consideration of the model we propose in Figure 2, there is a need to consider:

- What the future landscape for financing these ambitions might be;
- The roles existing provisions may play; and
- Identification of funding gaps and the potential for new funding approaches, where appropriate.

We believe that the Welsh Government policy ambition will require an overall funding framework to deliver SMNR in Wales (much of it already exists but the framework can show how all of the funding streams work together to deliver SMNR) within which sit multiple funding mechanisms, some of which are indicated in Figure 2. We suggest there is a case for change which is more than simply a change relating to the legal frameworks that allow (for example) regulators such as NRW to raise fees and charges, but to look at how multiple funding arrangements could work in concert and across sectors.

It is in this context that NRW also needs to review its charging scheme and whether this is fit for purpose. It may be that changes are required in NRW's approach, which may need to be supported or facilitated through further legislative or policy changes. Whilst more efficient and novel ways of working will allow existing money raised through our charging scheme to go further, supporting the behaviours needed to deliver SMNR, it is only a small part of the funding need, other funding streams need to be more closely aligned to the required delivery framework.

Such legislative and policy changes would seek to address constraints arising at the point of creation of NRW. The Public Bodies Act 2011 only allowed for the establishment of NRW and the transfer of existing functions to that body. It would therefore be necessary to modify those functions where the existing functions do not provide the appropriate provisions. It will be necessary to better secure clarity on Welsh Government's policy position in relation to charging, and identify barriers imposed by existing legislation which could be addressed in further legislative development work by Welsh Government to deliver their policy agenda

The present absence of a coordinated approach to funding SMNR is one of the key findings of recent research undertaken by NRW into the wider market for ecosystem services in Wales. We identified considerable private sector environmental funding activity in Wales. Sources of funding are varied, ranging from planning gain from wind farm developments, investment in catchments to enhance water quality, to philanthropic investment for landscape-scale restoration projects. Each project tends to have its own funding model, operating in relative isolation to each other, often confined to a particular geographic area. To this mix we can add public sector funding for the environment, of which Glastir and RDP funds are presently the main focus.

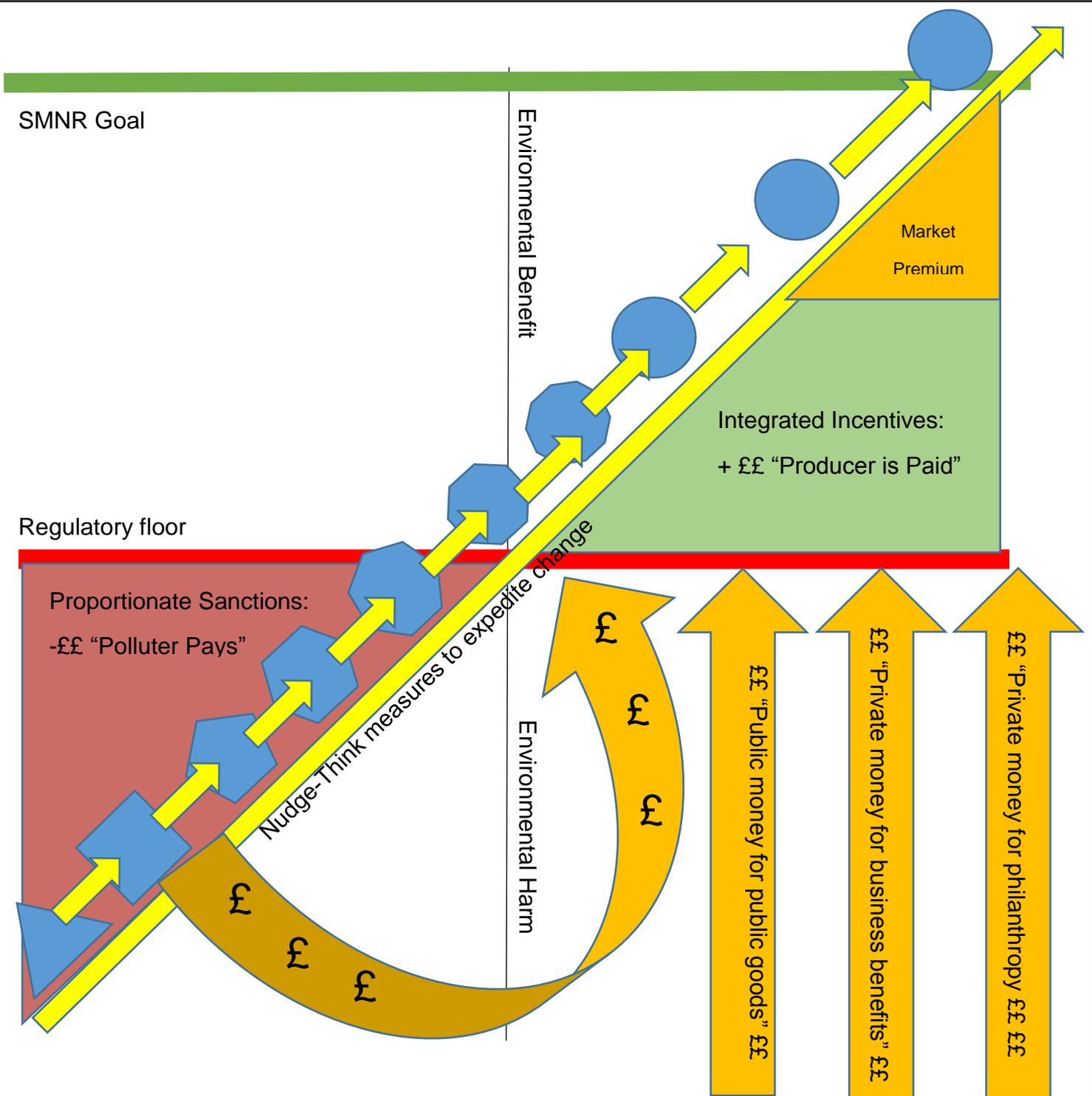


Figure 2 Conceptual model of delivering SMNR through behaviour change, stimulated by enabling mechanisms based around formal and informal regulation, including incentives and behavioural insights.

Our research suggests there is scope for a coordinated SMNR funding body that would serve as a key enabling mechanism that could serve the following purposes:

- Connecting buyers to sellers - acting as a clearing house for PES, an approach clearly prioritised in the NRP
- Creating an investment “shop window” – providing ready-to-go investment prospectuses that could attract funding and create or maintain associated jobs in the environment sector, in line with the ambition of the NRP
- Integrate public and private funding – agri-environment budget, businesses investment & philanthropic funding in a coordinated manner with greater security and value for money for all participants.⁷
- Identify sectoral gaps through market analysis and addressed via “shop window”
- Identify spatial gaps in investment in natural resources – closely linked to Area Statements. We are encouraged to see a similar suggestion in the NRP for alignment of the Area Statements with the delivery of CAP replacement scheme in Wales.

Brexit: Risk or Opportunity – Brand Wales

The cessation of the traditional CAP Pillar 1&2 funding streams will ultimately necessitate design of a new system that takes forward the ambition of the framing legislation and the NRP. The coordinated value for money that the approach described above could potentially achieve will likely become increasingly important in post-Brexit Wales. Furthermore, Brexit removes many of the scheme constraints to which present schemes have been designed, potentially allowing freedom to develop such an approach, more suited to Wales’ specific needs, subject to clarification on the relationship with Westminster.

In designing this future, as recognised in the new NRP, there is considerable scope to build on the strong foundations of our globally recognised legislation, using formal and informal regulation to support a strong global Brand Wales of the products of a sustainable Wales. In this manner moving above the regulatory floor towards our SMNR objectives could provide a market premium incentivising the transition for operators.

A high-profile sustainable Brand Wales could also attract inward green investment into the PES market in Wales, especially if underpinned by the strong evidence-based rationale of the Area Statement / SoNaRR / NRP process.

Element 3 “Nudge-Think” approaches to Behaviour Change

NRW’s view of formal and informal regulation encompasses the use of advice and guidance of a form that stimulates behaviour change. We recognise that most

⁷ www.randd.defra.gov.uk/Document.aspx?Document=13583_LM0105finalreport.pdf

successful examples of shifting behaviours use a variety of behavioural insights in their implementation to ensure that the potential motivations provided by formal regulation and incentives are catalysed in an efficient manner into the desired behaviour change⁸. Without the use of such techniques much of the considerable investment in both regulation and incentives may be wasted.

Welsh Government clearly recognises the importance of behavioural techniques in implementing policy and has investigated their use for two trial applications: voter registration and prevention of deliberate illegal grass fires.⁹ Within the field of sustainability there are many more examples of the successful use of behavioural insights¹⁰.

The lessons learned from these projects could be usefully applied to SMNR delivery, perhaps via an extension of the present Welsh Government behavioural insights work to support the development of a specific SMNR behavioural insights programme. We offer some suggestions of the sort of approaches and measures that could be explored:

- Steering default behaviours through regulation (e.g. carrier bag charging).
- Steering design of incentives through understanding of motivations.
- Deploying socially normative messaging in communications to shift acceptability. This could be delivered by behaviourally astute advice and guidance. For example, in the agricultural sector, advice and guidance, building on CoGAP could be developed which moves the emphasis on from “good agricultural practice” to what amounts to “socially acceptable agricultural practice” or “industry-standard agricultural practice” where there is a joint understanding of the need to move behaviours forward.
- Targeting messaging at pivotal audiences.
- Observing and understanding the unintended consequences that occur through policy change, regulation and incentive schemes.
- Facilitating clear feedback on progress toward SMNR by the development of a publicly available “dashboard” and “league tables” of best and worst operators?
- Facility to make public commitments and pledges, similar to Wales Sustainability Charter, with more emphasis on actions.
- Design of smart competitions and prizes.
- Target influencing activity at times of natural change: e.g. farm sales, business start-ups
- Stimulate team mentality to harness through incentives that favour cooperative approaches to regulation and receiving incentives

⁸ Petersson, Caroline (2015). Enabling sustainable choices in everyday life – 12 strategies to promote behaviour change. GAIA Programme.

http://malmo.se/download/18.3c0b3b6f15965118c0e1c867/1491301404169/Enabling_sustainable_choices_u_tskrift+20150518.pdf

⁹ <http://gov.wales/topics/localgovernment/publications/behavioural-insights-reports/?lang=en>

¹⁰ Petersson, Caroline (2015). Enabling sustainable choices in everyday life – 12 strategies to promote behaviour change. GAIA Programme.

- Education in schools, higher education (e.g. Trinity St Davids Institute of Sustainable Practice, Innovation & Resource)

Taking the model forward

We understand that the model outlined above and the subsequent discussion is not explicitly raised in the present consultation, but elements of it have been raised in various discussions we have had with Welsh Government and stakeholders around the ambition of the new legislation. In developing our response, the issues arising from many of the specialists who have inputted have helped us to crystallise our thinking and hence begin to develop this potential delivery model.

Such an approach is already informing NRW's input into the Wales Land Management Forum Sub Group on Agricultural Pollution, where the group is looking at regulation, grant funding and facilitation as a coordinated system to deliver the step change in outcomes that the group recognises is necessary. This stakeholder group can play a key role in exploring the potential scope of basic measures, ground truthing and informing agri-environment review proposals and developing behaviourally smart interventions and communications. Exploring these elements synchronously within the group should offer the integrative SMNR benefits we outline above.

More widely we see considerable scope for taking forward the ambition of the NRP (e.g. linkages between future agri-environment schemes and Area Statements) through further development of this model and look forward to discussing this with Welsh Government.

There are widespread implications for us and other stakeholders for many of the regulatory proposals contained in the consultation and our overarching comments. Thorough regulatory impact assessment will be crucial to develop these proposals further and ensure that they are fit for the purpose of delivering SMNR.

We would welcome the opportunity of discussing this approach and all its implications for NRW and other stakeholders with Welsh Government. In the remainder of the consultation response we of course focus on the explicit proposals made in this consultation and questions around these, although we also flag up opportunities that we believe the above model presents in specific areas.

Chapter 1 - Towards the Sustainable Management of Natural Resources

Opening Remarks

Broadly we support the proposals. However, in line with our introductory remarks, we consider there is an opportunity to look more holistically across regulation, incentives and ways of working to identify means to drive sustainable management of natural resources. The present focus on regulatory approaches, although important is only part of a wider range of tools available to deliver SMNR. It is the synergistic interaction of all these elements that will form part of a comprehensive framework for SMNR. Designing these elements alongside one another is more likely to deliver the required synergy.

Delivering this synergistic approach will be highly dependent on effective partnership working. Central to this, our work with the Public Service Boards around preparing and delivering Area Statements will deploy the principles enshrined in WCFG Act to mainstream nature based solutions.

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.

We agree that there are further opportunities for integration of circular economy approaches, however, we feel the focus of the consultation is on the 'end-of-life' end of the current linear 'take, make and dispose' model. To fully support a circular economy we need to also focus on the earlier stages of a product's lifecycle: product design and manufacture.

Whilst increasing recycling rates is important, it is essential that mechanisms and drivers are put in place to encourage prevention and re-use of waste. Where we do recover recycle and then recycle, the markets need to exist and there needs to be a demand for the recovered materials by both manufactures and consumers. An emphasis through regulation and incentives on product design and manufacture to utilise these recyclates, as well as designing in easier extraction of recycle at end of life are all key elements to promoting a truly circular economy. Quality Protocols and the Definition of Wastes Codes of Practice are good examples of enablers to the circular economy.

In the spirit of a truly circular economy, we feel that there are further cyclic links that could be made elsewhere in this consultation, for example between land use, access to the outdoors and health. Here, at present we spend public money supporting land use and we spend public money improving health. There is scope to spend money to support land use that has downstream benefits to health, via access to the outdoors and production of healthy food. In doing so, when designing new (post-Brexit) land use incentives, if we consider the full range of downstream benefits they could leverage (e.g. health), some of which we are paying for already through other conventional programmes. In so doing we'd move away from a 'pay to purchase / pay to clean up afterwards' approach and instead move to pay for an approach that

integrates the 'before, during and after' cyclic linkages into its design. A major impediment to this kind of approach is the ring fencing of sectoral budgets in such a way that solutions that deliver across several sectors are not identified as viable options. There may be scope for the Future Generations Commissioner's Office to help identify and prioritise such opportunities.

A key part of realising the circular economy, or at least promoting localism, is sustainably producing and sourcing natural resources from Wales. For example given that the UK and Wales imports 80% of all timber used, there is considerable potential to support Wales' economy by planting more, productive sustainable woodland and bringing more woodland into active, sustainable management, as well as looking to use wood and timber products in design and manufacturing as alternatives to non-biodegradable single use materials that contribute to landfill.

Land itself, as the ultimate finite resource, should be regarded as a resource to be managed in a circular fashion through our planning and permitting systems. Land (including recycling brownfield and restoring contaminated land) is a key a feature of the European circular economy and its resource use efficiency programmes¹¹. The issue of addressing Wales' legacy of gross land/soil contamination from heavy industry and the considerable obstacles (financial and regulatory) to remediate was flagged as a top issue in last year's UK Parliamentary Soil Health Inquiry¹². Associated benefits are then transferred to improvements in human health and wellbeing.

Quick wins

- Need to define a clear regulatory floor that gives parity and clarity of regulation to different land-use sectors.
- Consistent use of sector standards (e.g. CoGAP and UKFS) and their purpose and alignment to basic measures (defining compliance) and good practice for SMNR (which could define the future basis for support payments).
- There is potential to explore regime improvements to EIA agriculture and EIA forestry regimes to better support tackling carbon emission reduction and land use change to meet those targets.

¹¹ http://ec.europa.eu/environment/land_use/index_en.htm and <https://www.eea.europa.eu/highlights/land-recycling-helps-europe>

¹² <https://publications.parliament.uk/pa/cm201617/cmselect/cmenvaud/180/180.pdf>

Question 2: Are there any regulatory barriers to introducing nature based solutions?

There are a number of potential regulatory barriers to introducing nature based approaches. Before outlining these we would first like to clarify the use of the phrase “nature based solution” The use of the word ‘solution’ imparts a sense of certainty that may not be entirely appropriate. There are a range of nature-based *approaches* that can be used as a means of contributing to solutions, but will not always, alone, provide a complete ‘solution’.

It is also worth mentioning that the nature-based solutions examples in the consultation document are framed primarily from an urban perspective and while these opportunities are significant, we also stress the opportunity for the use of such mechanisms throughout rural Wales too.

Regulatory barrier to nature-based approaches can be divided into two basic sorts: barriers that directly hinder nature-based approaches and ‘short circuits’ that continue to promote conventional grey-infrastructure solutions over nature based approaches.

Direct regulatory challenges to nature-based approaches include:

- How to include environmental value in cost-benefit-analysis?
- For flood risk management funding there is a barrier around cost-effectiveness / cost-benefits.
- Long term ownership & maintenance –where does responsibility lie?
- Difficult to ‘explore opportunities’ without initial investment into trials/projects.
- Need to switch from a short term focus to longer term. Regulation and business management structures have often encouraged short-term thinking to the exclusion of long-term considerations. For example 5 year planning cycles in the Water Industry, mitigated now by the 25 year outlook incorporated into WAMPS with respect to abstraction, have worked against investment in long term infrastructure and the acceptance of greater uncertainty, and therefore regulatory risk, associated with nature based solutions as opposed to end of pipe solutions.
- Separate, often short term funding streams, with separate drivers not always compatible (e.g. agri incentives vs natural flood management).
- Government policies not always compatible/complementary.
- Dispersed responsibility for flood risk management between risk management authorities.
- No current mechanism to support community led programmes/ maintenance of assets/green spaces or green infrastructure etc.
- A ‘nice to do’ rather than a regulatory requirement means it lacks ‘teeth’.

Wales is not alone in facing regulatory challenges to deliver nature based approaches. The Flood Risk Management (Scotland) Act 2009 requires Risk Management Authorities to consider whether techniques that work with natural

features and characteristics can contribute to managing flood risk. While the Act is a step forward, a legal requirement to deploy where appropriate rather than just a need to 'consider' would secure greater roll-out of such approaches in Scotland.

'Grey infrastructure short-circuits' to nature based approaches. In addition to regulatory barriers to nature-based approaches there are many practices and guidelines which facilitate grey infrastructure approaches and inhibit the use of nature based solutions.

Urban parks. Urban parks are essential to the health and well-being of our increasingly sedentary population – and the amount of scientific evidence for this is growing very rapidly. However, local authorities are under no statutory obligation to provide publicly accessible green space in urban areas, nor to maintain it in a usable condition. The scientific evidence for this nature based solution to urban health problems is overwhelming, but local authorities across the UK are cutting back on their investment in this area. This could be halted in the short term if local authorities were placed under a statutory obligation to maintain the parks they already have, and to seek to improve the provision of parks so that every household in Wales meets the aspiration set out in "Climbing Higher" of being within easy walking distance of high quality green space.

Wetlands are an under-used nature based solution which have the potential to contribute to improved water quality, biodiversity, local business and flood mitigation. Wider uptake is needed for the benefits to be realised and this could be better incentivised through a comprehensive innovative regulatory framework providing clarity around their design standards, use and maintenance. Wetlands range in complexity and function from swales or blocked ditches at their simplest to constructed reed bed systems used to treat higher nutrient loads. Across Wales a number of initiatives are exploring the potential benefits to Welsh farms. These include:

- European Innovation Partnership bid - Constructed Wetlands – an examination of a sustainable methods for reducing storage of slurry – Supported by the Dairy Innovation Board and Coleg Sir Gar. Includes NRW, Farming Connect, IBERS, Planed and dairy farmers.
- Building Resilience In Catchments (BRICs) a WG RDP Sustainable Management Scheme which is a collaborative project across the supply chain.

More widely in agriculture, there is a significant potential role for the adoption of nature based solutions so called 'agroecology'. Two recent reports by Scottish Natural Heritage outline the potential in this field.¹³

When grey infrastructure is the preferred option. Even where no nature based approach exists and a conventional infrastructure approach is required, there may be opportunity to offset environmental impact using nature-based approaches. For example, during construction of road schemes appropriate areas of land can be set aside or enhanced as mitigation to address environmental impacts arising from the scheme. At present, we believe the Highways Act may present limitations to this –

¹³ <http://www.snh.gov.uk/docs/A2335481.pdf> and <http://www.snh.gov.uk/docs/A1652615.pdf>

restricting the types and purposes of land that can be provided under compulsory purchase. Maintaining and enhancing the resilience and connectivity of ecosystems across landscapes that are severed by new roads is a significant challenge, and the continued development of road infrastructure within Wales will need to address SMNR principles

The task of identifying opportunity for strategic land use change will be a key challenge of our Area Statement work. There is a need for a spatial toolkit built on a shared spatial data platform for Wales to support this task, as well as mechanisms to incentivise land use change where it is in pursuit of SMNR. This could be for a range of reasons: providing appropriate mitigation for new roads; ensuring a supply of land for woodland creation; dealing with potential abandonment of marginal upland areas; unlocking opportunities for sustainable management of public land, and / or safeguarding land for future ecosystem benefits. Enabling mechanisms that could be facilitated by policy and / or legislation could include land acquisition, compulsory purchase, land banking and land exchange, as well as supporting mechanisms such as the EIA regulation, to ensure they are fit for purpose.

Question 3. Are there potential opportunities for market mechanisms or innovative regulatory approaches? Are there any legislative barriers to their implementation?

Given the present contraction in public funding and likely further reductions in public investment in the environment as a result of Brexit, there is considerable need to develop other means of providing the investment that our environment requires to maintain and enhance the services we enjoy that underpin our wellbeing and economic activity.

Fortunately there is growing interest in payments for ecosystem services (PES) and related natural resource accounting approaches, combined with innovation that could facilitate these markets.

We have already discussed our recent research into the present market for ecosystem services in Wales in our Overarching Comments section at the beginning of this consultation. This work has highlighted the present considerable variety of public and private sector investment in ecosystem services in Wales.

As already highlighted, a key finding from this work was the present fragmented nature of this investment. We have outlined the potential benefits of facilitating relationships between ecosystem service investors and suppliers through a spatially coordinated 'shop window' for ecosystem service investment, linked to the Area Statement process. The recent Natural Resource Policy (NRP) document hints at a similar solution for the replacement for CAP agri-environment funding. Combining both public and private sector funds would further deliver enhanced economies and security for both sides.

As we have suggested in our previous response to the draft NRP, there are a number of 'PES-friendly' components that might be deployed in future policy to stimulate PES. These include:

- Encouraging long term investment through providing very clear government commitment via long term policy assurances, which allow businesses to plan on timescales at which nature based approaches begin to make good business sense.
- Allowing flexibility in CAP-replacement funding mechanisms that permit / encourage land managers to seek additional sources of private sector funding for additional service provision.
- Continuing to fund basic monitoring and regulatory enforcement budgets upon which the evidence base for PES as well as the regulatory floor above which it operates is built.
- Moving towards outcome-based interventions rather than prescription-based interventions which can better integrate multiple sources of funding and stimulate real innovation amongst suppliers for delivery of the actual service.
- Promoting natural resource accounting across government internally and as business best practice in Wales. Making natural resource dependencies and impacts explicit will help their incorporation into management strategies and risk registers.
- Introduction of basic measures as a means of providing the consistent regulatory floor on which PES markets are built (see response to Chapter 8)
- A common data platform (as already discussed) is key to provide information on baseline for the inception of PES schemes as well as a repository for PES outcomes. This dataset can then be used to identify gaps in PES take-up and identify where PES investment is failing and extra pump priming / investment is needed.
- Lastly we believe there is a strong case for public sector payments to land managers for the encouragement of new markets in ecosystem services to be exempt from World Trade Organisation rules covering state support of agriculture. PES is an emerging sector and as such it is arguable that government should be able to subsidise suppliers (land managers) in these new markets just as government has chosen to subsidise suppliers of renewable energy for example. While these payments would be made in many cases to farmers engaging in agricultural activity, this should not mean that the subsidy should be seen to subsidise agriculture *per se* – rather the provision of other non-food ecosystem services in addition to agricultural output. Breaking away from the income foregone formula could, where appropriate, incentivise farmers to provide positive enhancements in ecosystem services rather than couch payments in terms of the agricultural cost of provision.

There is also scope in Wales for more complex green market mechanisms designed to offer a return on investment for business investors. These include:

- Classic and hybrid cap and trade mechanisms to achieve outcomes that exceed a clearly defined Welsh regulatory floor. An example of such a scheme forms part of the Better Resilience In Catchments project in Pembrokeshire.
- the development of bespoke 'eco-financial' institutions at a regional or local level to deliver SMNR outcomes that could draw upon the insights of key

institutional economists such as North¹⁴, Coase¹⁵ and Ostrom¹⁶ and build on examples of best practice in Australia and New Zealand¹⁷.

In these instances chief legislative barrier is the lack of any clear statutory provision for such approaches. This could perhaps be addressed by the establishment of statutory powers to enable Welsh Ministers to introduce regulations by statutory instrument to enable:

- classic and hybrid cap and trade schemes
- partnerships with professional bodies such as RICS, the Law Society or the Bar.
- delegation of regulatory powers to PSBs, Unitary Authorities or Special Purpose Vehicles (such as the mooted Eco-Bank for the Cleddau)
- direction of NRW to support such institutions in so far as they assist delivery of our SMNR purpose.

Focussing on specific sectors, for woodland creation there is significant potential private investment available (ca. £20 million/annum¹⁸) at a UK level. Woodland creation is the most cost effective and reliable approach to increasing carbon sequestered within Welsh ecosystems, which can improve the net carbon status of the Welsh carbon budgets. Given this, there is a case for greater urgency in policy, plan, programme or project level decision making. The regulatory context and parameters for considering ecosystem service trade-offs and synergies with woodland creation have not been designed with SMNR in mind. Pursuant to this there is need for an enhanced shared spatial data platform and a decision making process that takes into account national and local considerations.

There is growing support for the use of tree planting in areas where it can reduce the flow of diffuse pollutants from agriculture into water. Forest Research is leading a European wide project called PESFOR-W to understand better how Payments for Ecosystem Services (PES) can be developed to provide cost-effective solutions to enable tree planting for water benefits.

There may also be opportunities around the development of a binding policy (and regulatory support mechanisms) on both the control of permanent woodland removal and compensatory planting (especially within development planning but also whether there is a change of land use for other purposes, e.g. wind farm development on the WGWE). This could be in combination with the Woodland Carbon Code Scheme, the Peatland Code, or biodiversity offsetting (e.g. Environment Bank). There is a

¹⁴ North, Douglass (1992). Transaction costs, institutions, and economic performance. ICEG. San Francisco

¹⁵The Problem of Social Cost . *R. H. Coase*, *The Journal of Law & Economics* Vol. 3 (Oct., 1960), pp. 1-44
<https://econ.ucsb.edu/~tedb/Courses/UCSBpf/readings/coase.pdf>

¹⁶ Ostrom, Elinor (1990). *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge, UK: Cambridge University Press. *ISBN 9780521405997*.

¹⁷ Building Institutions for Sustainability: A New Zealand Case Study:
<https://researchspace.auckland.ac.nz/handle/2292/635>

¹⁸ Pers.comm – Martin Bishop, CONFOR.

commitment in the Woodlands for Wales¹⁹ strategy to compensation, however there is nothing specific on woodland removal, in contrast to the explicit approach used in Scotland that sets out how and where deforestation is appropriate and supports woodland creation policies by ensuring that any loss of woodlands is managed, for public benefit and compensated for, preferably, locally. Work has commenced in NRW on developing an approach to deliver compensatory planting linked to wind farm development on the WGWE, and there is potential for this model to be expanded and used elsewhere.

The potential for marketing carbon and other ecosystem service enhancements from the restoration of peatland in Wales is considerable. Our large peatland resource combined with good technical understanding, spatial data, evidence base and practical experience of large scale peatland restoration puts Wales in a strong place to develop this market, underpinned by the recently introduced Peatland Code, targeting corporate social responsibility investment. The Sustainable Management Scheme-funded '*Realising the Natural Capital of Welsh Peatlands*' project should yield valuable insight into the opportunities and challenges to bringing peatland restoration projects and private sector investors together in Wales.

¹⁹ <http://gov.wales/topics/environmentcountryside/forestry/our-strategy/?lang=en>

Chapter 2 - Forestry

Opening Remarks

Overall the proposals are helpful in pursuance of SMNR, and the sections on delegation of responsibilities, endorsement of forest management plans, addition of further types of conditions to felling licences, the ability to revoke and amend felling licences, and repealing the requirement for a regional advisory committee are particularly welcome. These elements will further increase our ability to ensure natural resources are managed more sustainably. Two sections would benefit from additional detail: Proposals 1 (NRW's general duties under the Forestry Act) and Proposal 5 (ancient, veteran and heritage trees): we would like to see more detail as to what is proposed in practice for these items.

Question 4 (Proposal 1) - 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?

NRW supports in principle this re-alignment, subject to ongoing reference to the following duties which we consider essential: promoting the interests of forestry: the development of afforestation and the production and supply of timber and other forest products, including the promoting the establishment and maintenance of adequate reserves of growing trees.

SMNR is a way of working – a framing set of axiomatic principles. Using these principles for modification of the general duties to promote the interests of forestry and the establishment and maintenance of adequate reserves of growing trees needs to be delivered in a manner that does not contradict for example the general aim to develop a circular economy with respect to timber and woodland products, and that does not undermine the aims of the *Woodlands for Wales* strategy (and SoNaRR) to create more and better woodland. Pursuant to this, the present proposal would benefit from additional specific wording.

The consultation into The Future of Forestry in Scotland addressed a similar issue, and the consultation responses²⁰ may be helpful in framing any re-alignment, whilst accepting the different legislative framework in Wales.

Question 5 (Proposal 2) - 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.

NRW supports this proposal in principle as it supports the delivery of SMNR and improves access to the flow of benefits arising from the WGWE, but have identified the following issues / concerns:

²⁰ <https://consult.scotland.gov.uk/forestry/future-of-forestry/results/00513966.pdf>

We agree that any extension of powers should be fettered to protect the public interest. Any delegated management responsibility for areas of the WGWE should also require ongoing compliance with the UK Forestry Standard and be pursuant to the principles of SMNR, to ensure the delivery of multi-purpose benefits from the Estate.

The WGWE is also certified according to the UK Woodland Assurance Standard (UKWAS) and there could be implications for maintaining ongoing certification if management responsibility is delegated to others.

There is a potential lack of skills, both within NRW and the community forestry sector, to manage delegated responsibilities and risks. This could include issues relating to access proposals (Chapter 4), that may change dedicated and permissive rights for example in relation to access to watercourses.

With respect to joint ventures which may go beyond the “others” described in the consultation (i.e. local communities), these must be fully scoped in terms of costs and benefits to the public purse and clear direction given to NRW about the scope of its delegation responsibilities.

Question 9 considers repealing the requirement of the RAC (a panel of external forestry advisors, who can advise on the performance of specific forestry functions). With the possibility of more complex forestry management NRW has already considered ways of ensuring appropriate checks and balances are available in a post RAC world; and these are outlined in our Question 9 response

Question 6 (Proposal 3) - 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?

NRW support this proposal. However, we note that this mechanism is already set out clearly in the UKFS. The mechanism does not require legislation to be implemented but would be strengthened by it.

Stakeholders within the forestry sector are asking for this and this point was recognised in the Better Regulation Delivery Office in 2015 as a means to ‘level the playing field’ between our management of the WGWE and how we regulate the sector. This has also been recognised by the NAW Environment and Sustainability Committee. However, the ability to apply for discrete areas of felling should be retained as it may be important to some elements of the sector.

Gaps: There is no mention in the proposals of NRW’s ability to recover costs for producing either felling licences or forest management plans, this facility needs to be included to ensure we are compliant with WG’s *Managing Welsh Public Money*²¹. There is also no mention of linking forest management plans directly with felling licence legislation, as has been done in S18(3) of the Forestry Act (Northern Ireland) 2010. This will not dispense with the need for a linking contract but will provide the required clarity.

Quick wins: The forest management plan template and associated applicants’

²¹ <http://gov.wales/funding/managing-welsh-public-money/?lang=en>

guidance is already in an advanced stage of development and can be introduced when required so it meets WG requirements.

Question 7 (Proposal 3) - 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?

We agree in principle. NRW's remit is to pursue the sustainable management of natural resources and therefore it is appropriate to align felling licences and management plans to this purpose, where this alignment at present may in part be lacking. We note again that SMNR is a general way of working while the UK Forestry Standard is the long-standing benchmark of good forestry practice, which in many respects already embodies the key principles of SMNR. However, the following points should be addressed:

- NRW need the facility to add conditions to a felling licence that enable us to be compliant with Regulation 61 of the Conservation of Habitats and Species Regulations 2010 as amended (the 'Habitats Regulations' 2010).
- Welsh Government should consider using similar wording for additional felling licence conditions as in Schedule 7 of the Nature Conservation (Scotland) Act 2004 as these issues apply equally to Wales as for Scotland.
- Welsh Government should consider S10(2) of the Forestry Act 1967 which includes the words 'but shall grant it unconditionally,' as unconditional licences are considerably fewer than conditional licences. The wording in S16(2) of the Forestry Act (Northern Ireland) 2010 is clearer, allowing the Department to grant the licence or refuse it.
- Consideration should be given to developing basic measures (as per Chapter 8), linked to relevant civil sanctions, that sit below and underpin the Felling Licence Regime. Licence conditions could be applied in circumstances that require them. The importance and relationship of the UK Forestry Standard to any basic measures in Wales must be made explicit.

Quick Wins: As noted above, the forest management plan template and associated applicants' guidance is already in an advanced stage of development and can be introduced when required so it meets WG requirements.

Question 8 (Proposal 3) - 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.

NRW supports this proposal. However, we note the following:

- This will be additional work for NRW therefore, as in our response to Question 6, where appropriate we will need to be able to recover our costs for this service, to ensure are compliant with Welsh Government's *Managing Welsh Public Money*.

- Further details about the criteria for amendment or revocation is required and we would be happy to advise Welsh Government in this respect.
- The relationship to Rural Development Plan funding, in relation to amendment or revocation needs to be considered.
- The issue of the competency of agents and third parties making and submitting applications needs to be considered.
- There is potential to link this reform with basic measures (Chapter 8) to help provide a rational approach to low risk forestry management. Similarly the importance and relationship of the UK Forestry Standard to any basic measures in Wales must be made explicit.

Question 9 (Proposal 4) - Do you agree with the proposals relating to the repeal of the requirement of the RAC?

NRW support this proposal and are already developing an approach that delivers the requirements in an effective modern way. - This new appeals / escalation process for high risk or complex cases such as woodland removal and woodland creation, will deliver in accordance with SMNR principles and meet UKWAS certification needs (relevant to the WGWE and other privately managed woodlands). NRW has held discussion with the Institute of Chartered Foresters around them taking a lead role, in partnership with sector representatives and stakeholders. There might also be an opportunity to link this to the public register and consultation process.

Question 10 (Proposal 5) - 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?

We support this proposal in principle but we note there is little detail as to how it will work in practice and how the existing TPO legislation will be amended. The proposal has limited implications for NRW in its current form, as TPOs are enacted by Local Authorities, although anyone presently considering felling a TPO protected tree has to assess whether a felling licence exemption applies and is therefore likely to come through NRW at present.

The main issue with current protections for trees and woodlands in Wales is that TPOs and the Forestry Act operate in isolation and are not well supported by other legislation such as planning directives, habitat regulations etc. in order to provide a balanced outcome in line with Natural Resource Policy. Such a balanced approach could be developed as part of the Area Statement that considers the local/national trade-offs and impact on national policy objectives set out in *Woodlands for Wales*. Such an approach may require fine tuning of relevant legislation, which will become apparent further into the area statement process.

The Town and Country Planning Act 1990 and its amending legislation has a different set of exemptions and care is required to avoid the problems that have arisen in England with their removal of the exemption category of *dying* trees.

Section 18(5) of the Forestry Act (Northern Ireland) 2010 contains a requirement (in their equivalent of the forest management plan) 'where any land ... consists of, or includes, ancient woodland, [that] the Department shall have regard to the desirability of maintaining the special character of that woodland'. This would be an appropriate clause for use in Wales.

Any refinement of existing statutory frameworks should be aligned with the principles of SMNR.

Gaps: It is not clear why the proposal is restricted to just veteran and heritage trees. For example, urban trees are of particular value because of their location and the services they provide in areas of limited supply. Initiatives such as Treezilla²² and the Woodland Trust's Ancient Tree Inventory are examples of citizen science that could support the protection of trees in urban environments and elsewhere.

²² <http://www.treezilla.org/>

Chapter 3 – Designated Landscapes

Opening Remarks

The context for these proposals stems from the Welsh Government commissioned independent review of Designated Landscapes. The 'Marsden Report'²³ was published in 2015 with sixty-nine recommendations. In response to this Report Welsh Government established the Future Landscapes Wales Partnership, chaired by Lord Elis-Thomas, AM. The Partnership, made up of the Designated Landscapes, Welsh Government, NRW and a range of third / private sector partners, was tasked to examine four key themes from the Marsden Report around the Designated Landscapes: creating a shared vision, governance arrangements, resourcing and wider rural economic development.

The questions set out in Chapter 3 are largely based on the tentative proposals to explore options and opportunities which are emerging from the on-going work of the Future Landscapes Wales Partnership work which is focussed on helping to address the wider environmental and well-being challenges.

Landscape is a product of change and is always evolving, whether through human intervention or natural processes, but Brexit could result in rural areas facing an era of unprecedented change. Protected landscapes cover 25% of Wales. Therefore clarity and certainty of the role of Designated Landscapes, will provide a strong basis to support the opportunities and challenges arising from the systemic change required to deliver SMNR, proposals relating to Access to the Outdoors (Chapter 4) and support rural communities in / through Brexit transition.

It is NRW's view that there are currently no legislative barriers in place that prevent new ways of working, but in order to place these organisations in a strong position to deliver the new agenda in Wales there are opportunities to enhance the delivery model through modifications to policy, procedure and practice.

NRW believes that this approach would be more efficient in terms of timescales and resources. We already have an opportunity to work more widely within the scope of the new foundation legislative suite, without prematurely resorting to amendments.

Proposal 6 - At present, there is a lack of clarity regarding the scope and detail of Proposal 6. Instigating the most fundamental change to the National Parks and AONBs (Designated Landscapes) in nearly seventy years requires great care to ensure the policy intention is achieved.

NRW supports the view that prior to any new legislative provision, opportunities within the new suite of legislation should be fully explored by the Designated

²³ 'National Landscapes: Realising their Potential Review of Designated Landscapes in Wales Report', Marsden et al 2015

Landscapes Authorities and their partners, including the new Well-being Duty on public bodies, which makes provision for 'improving the economic, social, environmental and cultural well-being'.²⁴ However, if legislation were forthcoming, NRW would support progressive measures to expand the application of the SMNR principles, as set out in s4 Environment (Wales) Act 2016, to the Designated Landscapes' Authorities when undertaking their duties. This would achieve alignment with the modern agenda, with NRW's new purpose and would provide a clear delivery mechanism for Area Statements priorities, by placing the Designated Landscapes as 'the drivers' of SMNR delivery in their areas, which is a key proposal endorsed by the Future Landscapes Wales programme.²⁵

Any changes to the purposes of the Designated Landscapes would require a careful reconsideration of the Sandford Principle to ensure continuity of the precautionary principle (and its SMNR Principles equivalent: Preventative, Long-term, Evidence-based) to mitigate against any potential loss of natural beauty or landscape quality.

Proposal 7 - NRW supports the proposal to give greater weight in decision making to the agreed special qualities of the areas but we are mindful that the special qualities are not limited to natural resources but also include anthropogenic and cultural elements. At present special qualities legally only relate to National Parks, however there is existing legislative provision for special qualities to be applied to AONBs through the conferring Conservation Board status, which provides an additional recreation purpose and corresponding Sandford-type Principle²⁶

The expression of the special qualities for each Designated Landscape is articulated and endorsed in their statutory management plans. There are several progressive ways that could give greater weight to the special qualities through either policy or legislative amendments to enhance the role and status of the National Park and AONB Management Plans.

Proposal 8 - NRW support Welsh Governments' position on Direct Elections, as the analysis undertaken as part of the Future Landscapes Wales programme in this area concluded that the issue is about engagement and participation rather than representation.

NRW also supports Welsh Governments' position that Performance Management should be consistent and strengthened to ensure transparency and accountability, through streamlining and application of proportionality principle.

NRW supports a flexible approach of different models evolving to reflect local circumstances and needs. NRW believes that there are currently no legislative barriers to achieving this.

²⁴ S2 Well-being of Future Generations (Wales) Act 2015.

²⁵ Key proposition from Future Landscapes Wales: Delivering for Wales Report, May 2017 Welsh Government, NRW, Designated Landscapes et al ISBN: 978 1 4734 9520 3.

²⁶ s87 (1) Countryside and Rights of Way Act 2000

Additionally, NRW is supportive of the development of the 'hub concept' for wider partnerships to be developed by the Designated Landscapes working outside their boundaries with new partners, to support the delivery SMNR and green growth. NRW does however have concerns around the capacity of the Designated Landscapes to be in a position to fully explore this opportunity.

Proposal 9 - This Proposal raises a number of issues around the role, status, accreditation, governance and operational framework for these new areas and whether they would have the levers and tools to directly deliver SMNR.

NRW is aware of the public and political interest in recognising new areas to safeguard valued landscapes. As these new areas will have legal status, the process to establish them, whether by NRW or another body, will require the support of additional resources.

NRW recognises that Proposal 9 is not about expanding the existing suite of formal designations, but we believe that given the high level of interest that this would raise expectations and the that scarce resources would be better focussed on managing existing designated landscapes. ~~lead to an increased demand for further landscape designations.~~

The emerging Area Statements will provide a framework identifying the benefits, priorities, risks and opportunities that natural resources can provide through the sustainable management of an area. When pan-Wales Area Statements are in place, we can better understand what mechanisms are needed to fill the gaps. Therefore, it would be timely to consider the need for any new types of designation as this juncture.

There are already place-based approaches being developed at a local scale (e.g. BBNPA Place-making toolkit) and there is merit in taking a landscape approach to managing the SMNR benefits in an integrated way and at an appropriate scale, but to instigate the step change needed to meet environmental challenges requires a more systemic approach, as depicted in our overarching comments.

Question 11 - Should the statutory purposes of AONB and National Parks be aligned with the sustainable management of natural resources?

NRW would welcome clarification on the detail of this proposal and whether the policy intent for better alignment could be more expediently achieved through application of the principles as set out in the Environment (Wales) Act.

The National Parks and AONBs are often cited among the best examples that we currently have of pursuing the sustainable management of natural resources in highly sensitive areas. There is no evidence to suggest that the existing statutory purposes are a barrier to implementing the sustainable management of natural resources and therefore our view is that legislation to change the statutory purposes of National Parks and AONBs is unnecessary. Instead, NRW believes effort would be better directed on supporting the Designated Landscapes to manage our natural resources.

The first purpose of National Parks relates to the conservation and enhancement of natural beauty, wildlife and culture, and the second purpose relates to promoting opportunities for the public's understanding and enjoyment of the special qualities of the area. AONB's have a single purpose to conserve and enhance natural beauty. These purposes contain cultural and anthropogenic elements through natural beauty, including landscape character, cultural associations, visual amenity and 'bro', which are broader than 'natural resources' and 'ecosystems resilience' as set out in s2-3 Environment (Wales) Act 2016. Therefore, we believe that the current purposes reflect elements from both the Environment (Wales) 2016 and Well-being of Future Generations (Wales) Acts. Landscape is a result of the composition of the whole rather than its component parts, containing both a range of natural resources and human infrastructure.

As the designating authority in Wales, NRW is mindful that changes to the purposes of National Parks and AONBs could have unintended consequences such as:

1. the potential dilution of protection, threatening ecosystem resilience and adaptability;
2. a legal misalignment for existing designations, with the original mandate for the legal designation being broader than the proposed revised purposes;
3. an incongruity in relation to the statutory designation process, which along with other legislative provisions, would also require major and far reaching amendment to primary legislation.

NRW would support the retention of the term natural beauty as this the statutory basis for National Park and AONB designation. Natural beauty is also widely recognised and extensively referred to across a range of legislation including, NRW's own powers and duties and is underwritten by established case law.

NRW believes that the opportunities provided by the suite of new legislation in Wales should be fully explored, which include the new sustainable development 'well-being duty' on National Park and AONB Local Authorities. Given this new duty and the specific duty on National Park Authorities to 'foster the economic and social well-being of local communities within the National Park'²⁷, NRW believes that there is already sufficient legislative provision in this area and has not been made aware of any evidence that the lack of a specific economic purpose is barrier to taking forward the sustainable management of natural resources and well-being including green growth.

As per our response to Proposal 6, if legislation was forthcoming, then NRW would support a more expedient alternative to proposed changes to the purposes of National Parks and AONBs by expanding the application of the SMNR principles²⁸ to the National Park and AONB Authorities. This would achieve policy ambition of greater alignment with the modern agenda, with NRW's new purpose and would provide a clear delivery mechanism for Area Statements priorities, by placing the

²⁷ S62(1) Environment Act 1995.

²⁸ As set out in s4 Environment Act (Wales) 2016.

Designated Landscapes as ‘the drivers’ of the sustainable management of natural resources delivery in their areas, which is a key proposal endorsed by the Future Landscapes Wales programme.²⁹

NRW disagrees that proposals to change the statutory purposes of AONBs and National Parks would render the Sandford Principle³⁰ as defunct. S62 Environment Act 1995 (amending S11A(2) National Parks and Rights of Way Act 1949) establishes the Sandford Principle in law. The Sandford Principle does not give primacy to nature conservation but states that if there appears to be conflict between the two purposes of the National Parks then greater weight should be attached to the first purpose of ‘conserving and enhancing the natural beauty, wildlife and cultural heritage of the area’.

NRW believes that any changes to the purposes of the Designated Landscapes would require a careful re-consideration of the Sandford Principle and the Test of Major Development³¹ in the light of the SMNR principles, to ensure continuity of the precautionary principle to mitigate against any potential loss of natural beauty, landscape quality, biodiversity or ecosystem resilience.

In summary, NRW supports the expanding the application of the SMNR principles to the Designated Landscapes’ Authorities but believes that the current purposes are framed more broadly than natural resources management and ecosystem resilience.

NRW believes that the opportunities provided by the suite of new legislation in Wales should be fully explored. Following assessment over the next few years, then further legislation could follow in the future to address any arising issues.

Any proposed changes in relation to Designated Landscapes must be enabling, not restrictive in relation to wider land use and land use change decisions and priorities, e.g. in relation to promoting new woodland creation.

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?

NRW supports the proposal to give greater weight in decision making to the agreed special qualities of the areas, in line with SMNR, which could be achieved through statutory or policy provisions.

The special qualities of Designated Landscape are articulated through their management plans, which are subject to public consultation and have democratic sign-off. NRW believes that strengthening the status of the management plans through greater recognition in rural and planning policy, would result in greater

²⁹ Key proposition from Future Landscapes Wales: Delivering for Wales Report, May 2017 Welsh Government, NRW, Designated Landscapes et al ISBN: 978 1 4734 9520 3.

³⁰ S62 Environment Act 1995 (amending S11A(2) National Parks and Rights of Way Act 1949).

³¹ Test of Major Development in National Parks and AONBs, 5.5.6 Chapter 5 Planning Policy Wales.

weight to be given to special qualities in decision making. Brexit provides a unique opportunity to implement change and integrate SMNR into agri-environment delivery.

There are several progressive ways that could give greater weight to the special qualities:

- Through strengthening the recognition and status of the National Park and AONB management plans. This would require specific recognition in the planning system including Planning Policy Wales and National Development Framework.³²
- By recognition of the management plans in wider land management, agri-environment schemes and rural policy. Brexit provides an unprecedented opportunity to implement this through a revised Rural Development Policy and provisions in new agri-environment schemes. The Designated Landscapes management plans provide an opportunity to help plug the rural policy gap by providing a mechanism for the delivery of national policy at a local level.
- Through amending the duty on public bodies, statutory undertakers and certain utilities, so that they would 'have regard' to the delivery of the National Park or AONB management plan when conducting their business in these areas.³³

Of course SMNR may mean some land use and / land management change, which could impact upon special qualities of the designated landscape in order to deliver an equal or better outcome in terms of public benefit. In this case legislation must be constituted that facilitates decision making relating to any cases for change, have regard for PSBs well-being plans and be capable of interfacing with relevant regulatory regimes.

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?

Before a legislative solution is sought, NRW advocates testing the new ways of working from the Environment (Wales) and Well-being of Future Generations (Wales) Acts. Area Statements will provide an impetus for new networks and collaborative working and will help identify where there are gaps in delivery that would need to be filled by a new approach.

We would support the existing flexible arrangements which enable the Designated Landscapes to act as hubs working beyond their boundaries.

It is unclear whether a new suite of designations is the solution to better achieve the sustainable management of natural resources, would have the levers and tools to

³² Including Planning Policy Wales, National Development Framework, National Infrastructure Projects, Technical Advice Notes and future Rural Development Plans.

³³ S62(1) Environment Act 1995 and s85(1) Countryside and Rights of Way Act place a duty on public bodies, statutory undertakers, any person holding public office and Ministers to have regard for the purpose(s) of National Parks and AONBs when conducting any business that may affect these areas

deliver or would satisfy latent demand for new National Parks and AONBs, as it is the status, legal protection, resourcing and brand of these statutory designations that is sought.

If this proposal goes forward into statute it is likely to place new responsibilities on NRW (or local authorities) which would require additional resources from Welsh Government to implement this new area of work.

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.

Provision exists in statute for the Designated Landscapes to support the delivery of the new agenda in Wales. NRW would advocate working collaboratively with the Designated Landscapes to explore their new duties and using the National Parks experimental powers to test and pilot innovative solutions for the sustainable management of natural resources and promoting the circular economy through sustainable development.

Gaps: There is an opportunity to strengthen s62 / s85 'have regard' duties by linking it to the delivery of the Designated Landscapes management plans:

- There is widespread consensus on this from the Marsden Consultation responses.
- Linking the duty to management plan actions provides an opportunity for greater weight to be given to special qualities and tangible outputs to be delivered by statutory undertakers, certain utilities and public bodies with clear accountability on compliance.
- The statutory quinquennial review of management plans means that they are relevant to addressing current and longer term challenges.
- Provides a positive opportunity to engage statutory undertakers and other public sector bodies develop innovative ways of working for mutual benefit.

Quick Wins

- Using existing legislative (National Park) experimental powers to support NRW in testing and delivering SNMR and new legislative opportunities provided in the Well-being of Future Generations (Wales) Act to develop the circular economy through sustainable development.
- With the Designated Landscapes demonstrating leadership, work collaboratively to develop the hub approach to deliver beyond their boundaries.
- Applying the SMNR principles and Future Generations ways of working to develop and build on the collaborative partnership and consensus within the Future Landscapes Wales programme.

- Taking forward the Natural Resources Policy (August 2017) and Future Landscapes Wales Report Implementation Plan (May 2017), which has the ambition for the Designated Landscapes to be the drivers of the sustainable management of natural resources in their areas.

Chapter 4 – Access to Outdoors

Opening Remarks

In general, the further development of these proposals will require an appropriate balance to be sought between increasing access and ensuring that the resilience of species, habitats and protected landscapes are not undermined.

We addressed the questions in this chapter within our responses to the individual proposals rather than separately.

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.

Key points:

- We welcome the intention to provide equity of access for a wider range of activities
- It is unclear what extent of the network will be deemed suitable, and as such how much this impact of this proposal will be in practice in providing equity of access
- We think that local authorities would need additional resource to manage the impacts of this proposal, especially in National Parks and Areas of Outstanding Natural Beauty due to visitor numbers and proportion of Access Land.
- There will be implications for the management of promoted routes.
- There would need to be a very careful assessment of the impact of this proposal on land managers, nature and heritage conservation and warden/ ranger services, to ensure that a balanced SMNR outcome is achieved.
- There would be a need to consider cross border issues with England

Consistency in the opportunities available Whilst we welcome the intention to widen the opportunities for cyclists and horse riders, consideration should be given to making the proposal sufficiently flexible to accommodate future activities.

Suitability We estimate that around 79% of the rights of way network in Wales is public footpaths. How much of this becomes practically available to other user groups will depend on several factors, including:

- The amount of limiting structures, width and surfacing
- Possible conflict on shared use paths
- Health and safety considerations
- Impact on other interests, including land owners, nature and heritage conservation
- The ability of local authorities to organise and fund suitable infrastructure and maintenance

Points relevant to this proposal were included in our response to the previous consultation on '*Improving opportunities to access the outdoors for responsible recreation*'³⁴, specifically in relation to our advice in response to question 8 of that consultation.

The nature of features, authorised structures on footpaths (e.g. stiles, kissing gates), width and surfacing will restrict the suitability and usability of footpaths for horse riders and cyclists in practice. This proposal will be dependent in part on successful implementation of proposal 21 and a net reduction in structures that impact on access whilst retaining those structures that are required by land managers for the purposes of stock control. It will also require funding to address the maintenance implications that will arise in places.

In taking forward a blanket approach to increasing rights there is a need to consider a mechanism to enable authorities to restrict access for higher rights users where access would be unsuitable or unsafe e.g. on narrow cliff top paths or where routes are too narrow. See 'Planning and management' below.

Supporting Users It will be important that there is adequate information provided for users and landowners about new rights and the limitations. This could be addressed in part through the proposed Statutory Access Code (Proposal 26).

With regard to introducing new rights to footpaths it is worth noting that previous studies of potential conflict between users, in particular the introduction of cycling / mountain biking on to routes which had previously been only for walking, has generally found that perceived conflict is higher than actual conflict (see for example Cessford, G (2002) Perception and Reality of Conflict: Walkers and Mountain Bikes on the Queen Charlotte Track in New Zealand).

Promoted Routes It will be important to consider the impact of this proposal on promoted routes. We estimate, for example, that approximately 700km (45%) of the Wales Coast Path is Public Footpath which would be legally available for other uses.

National Trails are high quality long distance walking routes and without adequate resources being available for managing higher rights where necessary, this proposal has the potential to impact on how well the Trails perform against established quality standards. Whilst some sections of National Trail happen to be bridleway, it would be

³⁴ <http://naturalresources.wales/media/5627/improving-opportunities-to-access-the-outdoors-for-responsible-recreation-org.pdf>

important to manage expectations in terms of NTs being available for higher rights in their entirety.

As with access for all the border areas there would be a need to consider the issue of Offa's Dyke Path NT with rights on one side of the border operating in one way and rights on the other operating in another, particularly when considering that it is often difficult to know where the border is on the ground [except for bilingual signs in Wales).

Welsh Government could also consider introducing a power for designating a series of higher quality routes as a 'Wales Recreational (Regional) Route' (see Proposal 19 response below).

Planning & Management This proposal is likely to place an increased demand on local authorities in terms of:

- Provision of information and promotion of known suitable routes as they are likely to be the first point of contact for users wanting to inform their visits
- Identifying and assessing those paths which need to be restricted e.g. due to safety
- Improving, maintaining and repairing paths because of higher rights use, in particular to the surface, structures and signage of the highway to ensure that it is still suitable for walkers and the demands of higher rights users in a proportion of places
- We suggest that authorities should plan for implementation of this proposal and include it in future ROWIPs, and in turn through Integrated Access Plans under Proposal 23.

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, hand-gliding or para-gliding

General: Due to the nature of the wording used in Schedule 2, it is not fully clear what activities Welsh Government propose revoking. To clarify what activities are restricted on CRow access land and to better integrate the proposed statutory caveat, we would recommend a comprehensive reform of Schedule 2 of the Countryside and Rights of Way Act (CRow).

All behaviour related restrictions in Schedule 2, such as (h), (k), (l), (n), (o), (r), should be removed in favour of a general requirement to 'act responsibly' as defined by an associated Access Code – this would in effect be a basic measures approach

(see Chapter 8). All activity related restrictions should be reviewed to ensure that they clearly describe the intended activity.

Consistency of opportunity To improve consistency and diversity of opportunity, we accept the need for the proposed amendments to Schedule (1) (b) and (c) to allow wider activities: including water related recreation, paragliding and hang gliding and allowing horse riding access on defined CRoW access land.

Proposal 11 does not provide for cycling on CRoW land. To attain the consistency WG is seeking, consideration will need to be given to aligning Proposal 10 and Proposal 11 e.g. amending Section 2 (1) (a) to allow cycling.

A change of rights will require resources to actively improve many access points and routes on to CRoW land that are mostly suitable only for those on foot.

To be consistent and to implement Government policy, we'd expect introduced statutory changes to CRoW to be mirrored on the NRW managed Welsh Government Woodland Estate (WGWE) by extending the current CRoW dedication[s]. Dedicating new rights would reduce liability for NRW as a land manager, which we would welcome. Doing so would have implications for management of recreational routes and areas, as well sustainable forest management on the NRW managed WGWE.

Some of the changes will require amendment of the Forestry Commission Byelaws 1982 which were made under the Forestry Act 1967 (e.g. to allow boats). We have not assessed the resource implications for NRW arising from re-dedicating the WGWE.

We only know of one other area dedicated voluntarily under CRoW in Wales: land at Freshwater East, Pembrokeshire, dedicated by Pembrokeshire Coast National Park Authority.

These proposals [and others in Chapter 4] would need to be implemented along with a statutory code as clear guidance would be needed to ensure that activities are carried out responsibly without impacting significantly on nature conservation and other special features, land management and other recreational users.

As for the introduction of the CROW Act, we would expect Government to carry out assessments about the likely impacts to habitats and species for these and other proposals.

Effective safeguards E&Rs are important to ensure appropriate safeguards, balancing the public's interests and that of land managers, nature and heritage conservation other recreational users. In our view a full review of CROW E&Rs will be needed to take account of the different activities and new types of land and water to which CRoW would apply e.g. E&Rs are not applicable to CRoW coastal land in England.

Further guidance would be needed to ensure E&Rs were only able to be applied when necessary and ensuring a least restrictive [managed] approach.

Proposal to remove or amend restriction to Schedule 2 (1):

(b) uses a vessel or sailboard on any non-tidal water.

This proposal is necessary to implement proposals 14 and 15. From our assessment of inland waters within CRoW access land, the implementation of Proposal 11 without Proposal 14 would not significantly extend or improve opportunities for inclusive water related recreation.

Defining of the vessels that can be used is required. In addition, provisions should exclude rights to use mechanically propelled [motorised] vessels.

We have addressed water related recreation issues more fully in our response to proposals 14, 15 and 17 including our concerns about the extension of CROW and applicability of CRoW E&Rs to rivers.

(c) has with him any animal other than a dog

Consistency of opportunity & clarity of access We presume the intention of this proposal was to remove the restriction on horses only, as allowing any animal would place an unnecessary burden on land managers as well as leading to conflict between users.

The proposal would significantly extend the access opportunities for horse rider and improve consistency with public access on urban commons, where horse riding rights currently exist but are only 7% of statutorily accessible land in Wales. Urban commons have often been designated for nature conservation interest which suggests that access for horse riding can co-exist in a harmonious way.

Existing access to urban commons for horse riding is via the rights of way network and appropriate furniture isn't always provided, as highlighted in the BHS report 'Making Way for Horses'. We would therefore expect there to be a need for extra resources for LAs to facilitate access for horse riding as well as for increased access management interventions on access land in some places e.g. areas of high use.

Effective safeguards There would be a need to assess whether some or all of the restrictions which can be applied to restrict access on foot or with dogs to CRoW land could usefully be applied to horses, and whether there is the need for additional safeguards. Guidance in the statutory code will be important in limiting the need for additional restrictions.

(i) bathes in any non-tidal water; and

(s) engages in any organised games, or in camping, hand-gliding or para-gliding

Organised games: There is a need to further define and consider potential conflicts in opening up CRoW land to 'organised games'. Also, to ensure that activities such

as challenge events are not misinterpreted as being allowed. The increasing popularity of such events which concentrate large numbers in an area over a short space of time can have negative impacts; therefore, the need to gain permission from landowners and NRW on SSSIs should remain in our view. If the restriction on events and organised games is going to be relaxed under CRoW, sufficient guidance will be needed for organisers on how to act responsibly, linked to the statutory caveat and Access Code.

Access for hand gliders and paragliders is on a permissive basis currently and this proposal would help formalise and extend existing opportunities.

Bathing in upland water bodies that are mapped as part of wider CRoW land already takes place to some extent and removing this restriction would help clarify rights.

Camping: Irresponsible camping is one of the main issues raised in Scotland with their Land Reform (Scotland) Act 2003 process. The intention in Scotland was to formalise access for people camping responsibly in remote areas. However, the act enabled people to create informal campsites near roads and car parks in populated areas. This has caused major issues in some parts with littering and other antisocial behaviour. Welsh Government should consider how this could be addressed if making changes to legislation e.g. requiring such camping to be carried out at least 500m from a public highway for mechanically propelled vehicles [BOATs, carriageways].

Gaps in proposal 11: Although these proposals have the potential to provide a greater range of opportunities, there are some activities which because they take place underground are not included under CRoW, such as caving and potholing. Concerns have been raised with NRW by parts of the caving community as to the current position in Wales (& England) that access rights under CROW do not apply to caving, when in their view they should. S1 (6) of the Land Reform (Scotland) Act 2003 states that "Access rights are exercisable above and below (as well as on) the surface of the land" and in our view, it would be useful if the question as to whether access rights under CROW was clarified in relation to caving. This issue wasn't included in our Green Paper response; however, this consultation and subsequent work does provide an opportunity for Welsh Government to consider caving rights.

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 support this proposal since the specific exclusion of bridleways in the provisions for authorising cycle races under section 31 of the Road Traffic Act 1988 is anomalous and should be harmonised.

This proposal could bring benefits in terms of economic activity in rural areas.

There is a key issue around the possible increased use of publicly accessible land and routes for the purpose of organised events, particularly with reference to proposal 11. There is a need to clarify the definition of commercial activities and inclusion of [larger] events within its scope. There is currently limited coordination with event organisers and only voluntary codes of conduct. We recommend that event planning should be included in the statutory code [proposal 26].

We would also note that there is a similar need to review and revise the rules around the authorising of motor sport events affecting public rights of way as per the Deregulation Act 2015 introduced in England.

Proposal 13: To extend CROW access land to the coast and cliffs

Key Points:

- We support this proposal as a means of extending public access opportunities and providing consistency, integration and clarification.
- These provisions should be developed to fit Welsh requirements. However, there will be greater consistency and clarity for users and others if the starting point for designation of CROW land at the coast is Natural England's 'Coastal Access Scheme' which underpins the extension of CROW to coastal land in England and the creation of the England Coast Path.
- We also believe that consideration should be given to designating the Wales Coast Path as a Long Distance Route (LDR) using revised sections of the 1949 National Parks & Access to the Countryside Act to further provide clarity and as a statutory basis for integration of linear and area based coastal access. Whether the WCP was then marketed as a 'National Trail' would be a further consideration.
- In implementing area and / or linear access proposals, it will be important to consider the needs of land owners, users, health and safety and nature and heritage conservation, as per a balanced SMNR approach. Extension of CROW Act access land to the coast and cliffs should ensure consistency with the protection afforded to habitats and species by relevant UK and European legislation, including current provisions for restriction of access under Section 26 of the CROW Act.
- It is important the proposals and their implications are explored jointly to ensure current access provision doesn't become less consistent and more complicated. Accommodating higher rights under Proposals 10 and 11 in a narrow coastal corridor could bring additional challenges than on more extensive areas of access land in terms of suitability and conflict with other users and land uses.

Extension of CROW access Land When considering the extension of CROW to the coast it will be important to clearly define 'coast and cliffs' and determine if the new access areas will be defined by maps or by description. Regard should be given to the desirability of amending legislation relating to:

- exclusions and restrictions (CROW Chapter II)
- excepted land (CROW Schedule 1)
- restrictions to be observed by persons exercising the right of access (CROW Schedule 2)
-

In England, for example, coastal land differs from other access land in that there is no provision for discretionary exclusions or restrictions (CROW s22), Public Rights of Way are excepted land, and restrictions relating to fishing have been removed.

Extending CRoW access land would have significant resource implications for NRW as the lead relevant authority for preparing and maintaining maps. There would be a need for additional dedicated staff to prepare and consult on maps and greater capacity for GIS support and environmental assessments to ensure proposals would not have any detrimental impact; there would also be some ongoing costs related to managing additional exclusions and restrictions.

Designation of the Wales Coast Path NRW's non-statutory 'Route Criteria' for the Wales Coast Path require that the path is permanently available as of right. Thus, access land is not in itself deemed suitable as it is subject to exclusions and restrictions. However, it is likely that increased area access will make the creation of linear rights of way across it less contentious than at present, especially if the WCP is legally designated as an entity under the 1949 Act.

If designation of the WCP as a LDR is undertaken arrangements for 'rollback' on eroding coasts, as in England, can be legally determined.

In keeping with the Government's aims in this Chapter, there would also be some benefits in amending sections of the Act to clarify and streamline procedures for long distance routes [National Trails].

Proposal 14: To extend Part 1 of CRoW Act access land provisions to rivers and other inland waters

Key Points

- In preparation for and supporting the implementation of any new access rights, additional effort will be required to consider and balance the benefits of introducing public rights, alongside the potential impacts on fisheries, anglers, other recreational users, and land managers
- There would be greater inclusiveness, diversity of opportunities, clarity and certainty from introducing public rights of access for water related recreation ("WRR") in Wales. However, doing so will also have impacts.

- Any new NRW duties and mechanisms introduced will need to be compatible with NRW's statutory purpose to ensure the sustainable management of natural resources and the principles underlying this purpose.
- NRW has a statutory remit to protect and enhance migratory and non-migratory fisheries, and to promote angling and recreation (including WRR)
- WG should ensure that WRR proposals are properly resourced, and sustain the financial resources for managing fisheries derived from rod licencing, whilst safeguarding equitable access for all users
- Further work is required on the package of proposals that would introduce and manage new WRR rights, including how and when those rights can be restricted
- The CRoW definition of commercial activities would benefit from being clarified
- Clarification of the definition of 'other inland waters' is needed. We suggest the definition includes, with certain caveats, reservoirs and canals
- Adequate provision and ongoing management of access to and from the water will be critical to implementation of new rights
- It will be important to effectively define the boundary of inland waters and excepted waters or structures

We agree that introducing public rights of access for WRR in Wales can give greater certainty and provide clarity for the public, as well as increase inclusiveness and diversity of opportunities for use. However, doing so will also have impacts. A Regulatory Impact Assessment of the proposals (and implementation thereafter) will need to include consideration of: recreational access and its management, the protection and enhancement of migratory and non-migratory fisheries, the sustainable management of natural resources, and the concerns of other interests such as land managers.

(For the purpose of this response we've used 'land manager' to include persons who holds a legal title or responsibility associated with the land or waterbody. This could include landowners, riparian owners, and fisheries rights owners).

Any new NRW duties and mechanisms introduced will need to be compatible with NRW's statutory purpose to ensure the sustainable management of natural resources, and our other existing statutory duties: including for the maintenance, improvement and development of migratory and non-migratory fisheries; in relation to nature conservation, and the promotion of recreation. New responsibilities will also need to be adequately resourced.

As part of an SMNR approach it is important to maintain and enhance the quality of natural resources to realise the benefits for the natural environment and people, including for all recreational users.

The Watersports Participation Survey indicated that 3.49 million people (7% of UK adults) participated in one or more of 12 core boating activities in 2016, with 1.5m UK

residents taking part in 'canoeing'. 5.1m people also enjoyed outdoor swimming (10% of the UK adults), ^{352,000} UK adults participated in freshwater angling³⁵

There are a wide variety of economic interpretations regarding the value of fisheries, and the economic benefits outdoor recreation brings to the Welsh economy. In NRW's response to the Welsh Government consultation on improving opportunities to access the outdoors for responsible recreation in 2015 stated that 'the value of angling on inland waters was estimated in 2005 to be around £74m (£32m Gross Value Added)'³⁶

Value of tourism spend figures released in 2015 by Visit England (in partnership with home nation tourist boards) estimated that attributable spend on domestic holidays and day visits in Wales was £38m for fishing, and £23m for watersports.³⁷ Both activities therefore deliver important tourism, socio-economic, health and wellbeing benefits for Wales.

The Welsh Outdoor Recreation Survey illustrates that participation in angling and watersports has fluctuated little over recent years. In 2014 11% of the population in Wales participated in angling at least once, compared to 10% for watersports³⁸. 7% of the population of Wales suggested that they would like to visit a river more often in the future³⁹ (however the survey did not associate this desire with an activity)

Additional research and evidence will be needed to inform the preparation and implementation of legislation e.g. providing safeguards and measures to avoid impacts on natural heritage, such as the early life stages of fish species, and the maintenance of fishing opportunity. Current evidence of the impacts of WRR on the management and protection of fisheries, and in relation to angling is limited and generally contested.

Most river users agree about the potential damage that could occur to fish spawning success if fish spawning behaviour is disrupted; or if contact is made with spawning gravels/redds, because of inappropriate activities undertaken at the wrong time of year in low water conditions. Conditions where disturbance is likely will vary from river to river. Susceptible stretches should be identified along with 'site specific' suitable safeguards and measures to protect the environment.

³⁵ Arkenford bright minds (2016). [Watersports Participation Survey Summary Report](http://www.rya.org.uk/SiteCollectionDocuments/sportsdevelopment/Watersports_Survey_2016%20-%20Summary.pdf). British Marine, Royal Yachting Association (RYA), Maritime and Coastguard Agency (MCA), Royal National Lifeboat Institution (RNLI), British Canoeing (BC) and the Centre for Environment, Fisheries and Aquaculture Science (Cefas). Page 3

³⁶ Radford, A.F., Riddington, G. and Gibson, H. (2007). Economic evaluation of inland fisheries: The economic impact of freshwater angling in England & Wales. Environment Agency. Bristol. ISBN 978-1-84432-851-2, 165pp

³⁷ Visit England (2015). [New figures reveal the value of tourism spend to the British economy generated by leisure activities](#). Page 2.

³⁸ Natural Resources Wales (2016). [Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report](#). Page 6

³⁹ Natural Resources Wales (2016). [Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report](#). Page 14

These safeguards and measures will include locations of access/egress points, water levels or spate agreements for access, timing of access (whether daily, or seasonal), and provision of exclusions or restrictions for fisheries or nature conservation, management, and protection (see also our response to Proposal 15).

There is little detail provided about how the WRR proposals (as a package) would work in practice, including extending CRoW to linear type access e.g. how the use of discretionary E&Rs provisions would operate in relation to rivers with defined CRoW WRR rights (see also our response to Proposal 17). In developing the WRR proposals, further work will be required to establish how to apply these safeguards and measures to discretionary E&Rs for restricting or excluding public access to protect the environment and other interests.

Some safeguards and measures in the context of WRR will need to be included in the statutory access code [as per Proposal 26], and/or implemented through Voluntary Access Arrangements (VAAs). (See also our response to Proposal 15). The introduction and use of safeguards and measures should be as least restrictive as possible and based on evidence. They will also need to be enforceable.

In 2016, 53,248 rod licences were sold in Wales generating an income of £1,042,520⁴⁰ contributing to the delivery of specific fisheries duties under section 6(6) of the Environment Act 1995 to 'maintain, improve, and develop' freshwater and migratory fisheries in Wales.

There is a risk that WG proposals could reduce the uptake of fishing to the detriment of rod licence revenue and fisheries capital revenue values through a reduction in quality of experience. The proposals should not lead to a reduction in the funding stream for fisheries improvement and enhancements e.g. by affecting the viability of rod licencing in Wales, as the income raised remains important.

While not unusual, introducing public rights of access will result in some recreational users having to directly pay for their recreational access (for example, anglers having to purchase a rod licence) while other recreational users will not.

At the same time, WG will need to consider how to provide sufficient resources to implement and manage for the long term any new access and associated facilities, while (as a minimum) sustaining the resources for fisheries. NRW commented on licencing commercial craft in our response to the Welsh Government consultation on 'Improving Opportunities to access the outdoors for responsible recreation⁴¹' in 2015. Funding mechanisms could include direct funding, or a 'pan-wales' or 'specific river catchment' environmental payment to support improvements to access / egress points, parking facilities etc. This may address concerns regarding potential inequities with how different river user groups contribute to the maintenance of the waterways.

⁴⁰ Natural Resources Wales (2017), NRW Fisheries income and expenditure.

⁴¹ <http://gov.wales/betaconsultations/environmentandcountryside/improving-opportunities-to-access-the-outdoors/?lang=en>

Schedule 2.1 (t) of the CRoW Act restricts any activities carried out 'for any commercial purpose'. A clearer definition of a commercial activity would be welcomed, in particular so as not to prohibit qualified coaches and guides educating and training client's wishing to participate in WRR (or similar activities on other defined CRoW access land) Such a caveat would mean local agreements would be needed to continue to facilitate some commercial activities.

Clarification of the definition of '*other inland waters*' is needed. Including Welsh Water/Dwr Cymru and Severn Trent PLC reservoirs (with appropriate caveats) in the definition of '*other inland waters*' could significantly extend WRR opportunities and better use the resources available. The inclusion of canals should also be considered.

The legitimate liability concerns of the water companies [and other land or water resource owners/managers] should be reduced e.g. via Section 12 & 13 of the CRoW Act, and would be consistent with current CRoW provisions on land. The extension of CRoW Act access rights should *not* include structures such as dams, spillways, and sluices etc., or agricultural irrigation reservoirs.

Subject to available resources, NRW would be well placed to provide opportunities, facilities and access to and from newly designated waters on, adjacent to, or passing through the NRW estate. Clarification from WG is needed on whether by 'mapping' access points the intention is to designate these as CRoW access. Access points should also facilitate different river users, varying abilities, and demonstrate inclusivity where appropriate. Defining responsibilities for the maintenance and keeping open of defined access points and other WRR access infrastructure (such as signage) will also be needed.

For access from NRW managed estate there is a need to clarify The Forestry Commission Byelaws 1982, that state it is illegal to carry a canoe, kayak, or [non-motorised] craft within CRoW dedicated woodland estate. In addition, to enable WRR access using existing PRoW, a redefining of 'usual accompaniments' on a PRoW would be needed to allow the carrying / trolleying of non-motorised craft to access waterbodies. Provisions should also include enabling links from WRR access points to new or existing public access such as carriageways.

Consideration will need to be given to effectively defining the boundary of inland waters and therefore the extent of CRoW access rights. River and lake heights fluctuate and therefore a clear definition will be required to either restrict or enable incidental activities e.g. to rest and gather breath, make emergency repairs, or picnic on gravel shoals when the river or lake is low.

The definition of an 'emergency' will need to make clear when it is permissible to access the river bank to ensure safe and responsible use. E.g. inspection of a rapid, weir or blockage that may or may not require portage.

Further thought will need to be given to those watercourses that form the border between Wales and England and the rights that exist there, and how to provide the clarity WG seeks for different interests. Further work is required to recognise any implications associated with The Wye Navigation Order 2002 regarding CRoW

designation to the Welsh Wye PRoN. CRoW designation should not extinguish an undisputed PRON (for example, relevant sections of the River Wye or River Severn).

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.**

Key Points

- Any appointed Lead Authority will need the appropriate additional resources to fulfil the role;
- NRW currently does not have the resource to effectively discharge tasks listed in Proposal 15
- Local and National Park Authorities could also be considered for the proposed 'Lead Authority' role
- Measures including Voluntary Access Arrangements (VAAs) will be necessary for some Natura 2000 rivers and other rivers to effectively manage access and protect stakeholder, fisheries, nature conservation and other interests.
- VAA's (where required) should be simple and as least restrictive as possible;
- We would expect additional evidence would be needed in preparing for the new rights and for VAAs and E&Rs.

Further work will be needed to assess the resource requirements for NRW and others from new responsibilities put forward in Proposal 15. For example, management of the Wye Navigation has 2.0 FTEs.

NRW has the necessary experience in the management and mapping of rivers in Wales. However, WG should also consider Local Authorities (LAs) for the 'Lead Authority' for some of these responsibilities. Under CRoW, LAs have similar responsibilities around access to access land.

As PRoW surveying authorities, LAs are also well placed to identify (and manage) ingress/egress points. This would also link well with the proposal for LAs to produce integrated access plans (see also our response to Proposal 23) and when involving LAFs, which LAs have responsibilities for. Information about access points should be provided on the integrated access map and linked to water level information.

Though environmental evidence will be crucial in determining safeguards and measures such as water levels (see also our response to Proposal 14), NRW does not currently have sufficient evidence needed to advise on this, either for specific Natura 2000 Rivers, or the many other rivers in Wales. We would also expect a need for additional evidence in other aspects related to appropriate safeguards and measures for inland waters e.g. to inform development of VAAs or restrictions.

While the proposed new statutory access code should cover and apply to rights of access to inland waters, we agree with the inclusion in Proposal 15 of powers to facilitate VAAs e.g. to enable access to the water or provision of additional access facilities. However, VAAs should only be developed where they are necessary and follow a principle of 'least restriction'.

VAAs should be focused on supporting a collaborative approach to recreational use, balancing and protecting the needs and interests of the different stakeholder e.g. in relation to fisheries, fishing, nature conservation, water resource demands and water recreation on the many high value rivers and inland waters in Wales. While they need to be flexible, VAAs should be developed and promoted to give clarity for the public and stakeholders.

Some LAs already have experience of negotiating VAAs for inland waters.

Under this proposal identifying whether there is a need for VAAs should be prioritised for the Natura 2000 Rivers (including the River Dee, Afon Eden, Afon Gwyrfai, Afon Teifi, Afon Tywi, Cleddau Rivers, River Usk, and River Wye). Some sections of the River Dee, Wye and Usk currently have existing non-statutory VAAs - though they are not supported by some river users. Existing VAAs would need to be reviewed. Other rivers may also benefit from VAAs.

It is important that VAAs are simple and follow least restrictive principles; ensure that any introduced environmental safeguards and measures needed are effectively evidenced; that additional controls to manage shared use are equitable and based on consensus wherever possible. VAAs should include simple water level restrictions on the upper reaches of salmonid rivers to protect spawning and nursery areas (e.g. River Greta and Middle Derwent in Cumbria⁴²). Other mechanisms could include time limitations where water recreation is only permitted between specific times of the day.

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.

Key Points

- We generally support the alignment of the right of access with the need for responsible behaviour.
- The caveat should apply equally across all forms of access land and public rights of way and reform all existing exemptions.
- There should be absolute clarity in powers of enforcement.
- Existing statutory duties placed on landowners should also be reformed as part of this process

⁴² <https://f58619eed67ecf47f9c5-69635130c45beb2524d5bafa9c042fe0.ssl.cf3.rackcdn.com/documents/Greta-Access-Arrangement.pdf>

In responding to this question, NRW is working under the assumption that Welsh Government intend the statutory caveat to be aligned to the Statutory Access Code (proposal 26). As the overall approach suggested in this consultation focusses on overhauling existing legislation rather than a total reform of access law, a statutory caveat would be the most sensible approach to creating a Statutory Access Code in Wales. However, for this caveat to be effective, Welsh Government should consider the following points:

The statutory caveat will need to apply equally across all forms of existing and future CRoW land and PRow.

In Scotland, the statutory function of the SOAC applies everywhere, using a statutory caveat as suggested would only apply to land and water that is mapped under CRoW and PRow. If there is inconsistency in how the statutory caveat applies to activities on different types of access (including inland water, air and underground) it will significantly reduce the clarity of the message and its ability to be communicated effectively to the public. The public will also need access to clear and up-to-date information about accessible land to understand where the code applies (links to proposal 19). Welsh Government should be certain that they can achieve absolute clarity in this approach before they commit to altering legislation.

The proposed statutory caveat should reform all behaviour exemptions already outlined in the CRoW Act and PRow laws.

Currently in Wales, there are behavioral exemptions in the existing legislative frameworks (i.e. Schedule 2.1.n of CRoW) that have the same function as the type of statutory caveat that Welsh Government are suggesting. In Scotland, there is a duty under the Land Reform (Scotland) Act for users to '*act responsibly*' while exercising their right of access (section 2.1), which includes not '*disregarding the guidance on responsible conduct set out in the Access Code*' (Section 2.b.i). It is this code that defines what it means to 'act responsibly' and is used as a 'material consideration' in the court of law, making it a form of secondary legislation similar to the Highway Code. If Welsh Government intend the caveat to be lined to at Statutory Access Code in this way, they should carry out a review of all existing statutory behavior related caveats in CRoW and PRow law before developing any new caveats. They should then carry out a complete overhaul of Schedule 2 of the CRoW Act and associated parts of PRow legislation to ensure legal clarity to allow for the creation of a Statutory Access Code.

There should be clarity around the legal powers of enforcement linked to the statutory caveat. Contravening a statutory caveat, such as is outlined in the Land Reform (Scotland) Act 2003, only negates your right of access. To prosecute anyone for breaches of the code would still need to either go through the civil court process or use another legal framework (such as CASB law or Trespass). The status of the Access Code in Scotland has not always been clearly understood and sometimes been discounted completely by sheriffs when trials have gone to court. In a landmark case brought to the Sheriffs Appeal Court on 30th of March 2017, the court found in favour of the Loch Lomond and the Trossachs National Park Authority in their actions to serve a notice on a landowner who was wilfully obstructing access. The significance of this case is that the notice had already been repealed by the local

sheriff. The National Park appealed on the grounds that the sheriff did not recognise the SOAC in their ruling. Here is one extract from the judgment:

“The Access code has statutory effect in the sense that it is expected to be a reference point for determining whether access rights are exercised responsibly and whether land is managed or the ownership of it is conducted responsibly. The court may - indeed must, since “regard is to be had” to the code – consider whether the guidance in the code on responsible conduct has been disregarded”.

“...the sheriff failed to have regard to the terms of the Access Code.”

This is significant as it would require all sheriff courts to have regard the SOAC in their future rulings. This judgment may still be appealed against. Considering that the SOAC first came into effect in 2005, it gives a good indication of the potential limitations of a statutory code as a means of policing responsible behaviour. Welsh Government should carefully review the legal framework through which charges of irresponsible behaviour would be tried, paying heed to the potential costs and attitudes of the courts.

The statutory caveat for responsible behaviour should include duties on Landowners. If Welsh Governments intention is to use the statutory caveat to reform behavioural exemptions in the current legislative framework, they should also include duties placed on Landowners. The statutory function of the Scottish Outdoor Access Code is used more often to bring landowners to court over obstructing access than to bring recreational users to court over acting irresponsibly. Of the eight cases that were brought to trial under the Land Reform (Scotland) Act 2003 between 2005 and 2011, only 1 of them was regarding a claim of irresponsible behaviour on the part of a person exercising their right to recreation, and this was against a commercial activity provider. The remaining seven were against landowners wilfully obstructing recreation. Welsh Government should consider how statutory caveats would apply to both landowners and recreational users to make the creation of a Statutory Access Code more equitable.

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.

Key Point:

- A fundamental review of the legislative mechanisms for excluding or restricting public access rights (E&Rs) should be undertaken to enable a coherent and understandable regime for public access in Wales to be developed, balancing, as far as possible, the needs of all key interests and the sustainable management of natural resources

Consistency of opportunity: We recognise the need to balance the interest of land managers with the interest of users when introducing new access rights. However, seeking such administrative consistency through simply extending current mechanisms could reduce or limit existing and proposed new access rights, particularly if restrictions under CRoW could be applied to the public rights of way network. There are alternative options e.g. legislation for CRoW coastal access land in England did not include provision for E&Rs to be applied.

Being able to apply E&Rs to rights of way would risk a significant reduction in use of PRow, and reduce clarity about where and when people can use public access. It would also impact on the accessibility of the wider access network including high profile, nationally important routes such as National Trails and the Wales Coast Path. Currently users can reasonably expect that the rights of way network is legally available and this proposal would introduce a need to check in advance [on a website] whether any linear routes were affected. Evidence indicates current use of such website information before a visit sources is limited to a minority of users. Compliance would likely be an issue.

In extending where CRoW restrictions can apply, there is also a risk that the exercise of access rights could be frustrated unreasonably. Of concern are the discretionary 28-day restrictions which require little notice to the relevant authority, no justification, with the responsibility of deciding the boundaries of each restriction lying with the tenant or land manager.

In a similar way, if current CRoW E&Rs were applied to restricting the public's access to rivers, there is the potential their use could significantly interrupt the availability of the access to the public. While unlikely perhaps, should a group of individuals so wish, working together they could implement a succession of restrictions which effectively would close the river to water recreation, with no option to deviate from the waterway to make an onward journey. There would be a high potential for conflict between different interests.

Effective safeguards There is a very low level of demand in Wales to restrict access under CRoW as, in most cases, informal on the ground methods are sufficient in managing access. Rights of way across CROW land provide certainty of access, giving a key means of enabling access when surrounding access land is closed and rights of way being exempt from CROW exclusions and restrictions is a helpful factor in deterring applications to exclude wider access. Local authorities already have the power to close rights of way under highways legislation if there is a genuine need although greater flexibility in this area should be considered within any follow up to Proposals 20 and 21.

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.

Key points:

- We support a single, consistent and clearly defined message relating to dog control on CRoW open access land and Public Rights of Way.
- This should be linked to the proposed statutory caveat (Proposal 16) and the Statutory Access Code (Proposal 26)
- Responsible behaviour with dogs should also include safety around livestock.

We support having one position on access with dogs for all CRoW Act accessible land and Public Rights of Way as it will improve clarity with the law and make it easier for the public to understand. Using the term 'effective control' would also bring the law in line with the advice currently given in both the Countryside Code and the Dog Walking Code.

Welsh Government are proposing splitting legal duties around dog walking partly between primary legislation and the proposed Statutory Access Code. We see the potential for confusion and uncertainty in this approach and would suggest that the legal position be aligned with the creation of a statutory caveat (Proposal 16) and the production of a Statutory Access Code (Proposal 26) so that it can be agreed by all stakeholders, carry equal weight to other requirements for responsible behaviour and have clarity in methods of enforcement. We would also suggest that this is part of the wider drive to promote responsible recreation.

Other behaviour issues relating to dog walking need to be considered to ensure the key message aren't lost. We have concern the requirement for 'dogs to be on a short fixed length lead in the vicinity of livestock at all times of the year' may confuse the public around the important safety message to release a dog when there is danger from livestock. There must be clarity in this message and it would need to be outlined clearly in the Statutory Access Code.

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.

Key Points:

- We support this proposal to provide a publicly available 'one -stop -shop' of publicly accessible areas in both urban and rural areas, for the reasons given in the consultation text.
- However, we do not feel it is practical or desirable to include all 'green infrastructure' which refers to all high quality natural and semi natural areas, including trees, road verges and cemeteries.
- It will be important to efficiently produce the map and keep the information up to date. A statutory duty should be placed on a relevant body to do so. If NRW are asked to be responsible for the new map we would need adequate resources to do so.

- NRW already provide access information through a Places to go Map and we are committed to maintaining an all Wales data set of accessible natural green space.

The relationship between the proposed map and existing statutory maps, such as definitive maps of Public Rights of Way, Common Land and Town or Village Green register maps, needs to be clearly defined.

In addition to the layers mentioned in the proposal, we believe that a list of additional layers should be identified at an early stage. This should ideally include all rural and urban access opportunities.

The IAM could also provide for a new statutory designation of ‘Wales Recreational (Regional) Routes’. NRW developed suitable standards for such routes working collaboratively with a cross sectoral group of partners. The development of a range of multi-use Wales Recreational routes will be facilitated by the provisions in Welsh Government’s proposals in Chapter 4 (notably Proposal 10) and would support Government’s well-being objectives

The proposed map of “accessible areas and green infrastructure” should be re-named as “accessible areas”. This is because green infrastructure refers to any space which delivers an ecosystem service, including private land such as gardens. NRW is creating a GIS data set of all green spaces in Wales and it has revealed that over 90% of Wales is “green”, so it might be best for the Welsh Government to concentrate on producing a digital map of “accessible areas” rather than reduce its usefulness by including all the other green spaces.

The types of green space proposed for inclusion in the map should include categories of accessible green space which are likely to be within walking distance of where people live. This would ensure compatibility with other key policies and scientific evidence. Climbing Higher the Welsh Government Strategy for Sport and Physical Activity is still in force and its Target 12 states that No one should live more than a six-minute walk (300m) from their nearest natural green space. This is based on a growing body of research which shows that people are unlikely to use green space each day unless it is within walking distance of home. This is important because research suggests that people are more likely to comply with the Chief Medical Officer’s recommendation of at least 20 minute’s exercise each day if they can use high quality green space rather than an indoor facility such as a gym.

We suggest the types of “accessible area” covered by the map should include:

- Access Land designated under the Countryside and Rights of Way Act;
- Public Rights of Way
- National Trust
- Common Land
- Land subject to an Access Agreement
- Country Parks
- Public Open Space (as defined in Local Development Plans)
- Woodland with statutory access rights, or an access agreement

- Municipal parks and recreation grounds

NRW is currently compiling a GIS data set for Wales which will include these sites. However, we rely on local authority data and do not have that for all local authorities. A standard map covering all these categories of land would enable us and the Welsh Government to monitor changes in accessibility of land which is of the greatest importance for human health.

If the scope of the map in Proposal 19 is enlarged as suggested, it will make it far easier for local authorities to create evidence-based, integrated plans as described in Proposal 23.

An integrated map of this sort could form part of the evidence and delivery mechanisms associated with the Area Statement process and SoNaRR. With this in mind, from the outset, design of the mapping tool should enable straightforward integration with these other spatial data sets.

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

Key points:

- We provided detailed comments relevant to this proposal in our response to *Improving opportunities to access the outdoors for responsible recreation*, specifically in relation to questions 3 & 4 of that consultation
- We support the intention behind this proposal and agree that the Deregulation Act is a good starting point.
- There is a need to amend rights of way law to support the implementation of statutory Shoreline Management Plans
- Local authorities are best placed to respond to this proposal

We refer you to our response to the *Improving opportunities to access the outdoors for responsible recreation*, specifically in relation to our advice in response to questions 3 & 4 of that consultation.

There is a need to amend rights of way law to support the implementation of coastal management e.g. through statutory Shoreline Management Plans. This will facilitate changes to PROW as part of integrated management of coastal change. Provision should be considered whereby authorities have powers, with appropriate strong safeguards for public access to the coast, for such affected highways to be rolled back, diverted or extinguished where it can be shown that sea level rise makes the maintenance of the supporting structures of existing routes or defences unsustainable.

We suggest linking Proposal 13 (extending CRoW access to coastal land) to such coastal PROW provisions as is being used as part of the England Coast Path and coastal access scheme in England.

Local authorities are best placed to provide detailed responses in relation to these mostly technical provisions. However, NRW would expect to contribute to such work if taken forward by Welsh Government.

Variation report process for National Trails where any changes to the approved route have to be prepared in report form by the Trail Officer & NRW then approved by the relevant Minister is relatively time consuming and onerous. The requirement dates from the 1949 Act. Suggest amending the 1949 Act and Highways Act so that when a right of way is legally diverted and it is co-incident with a National Trail, the NT line can be automatically moved with it.

Proposal 21: To introduce provisions to allow flexibility in relation to stock control measures on public rights of way

- We strongly support this proposal to make it easier for local authorities and land managers to remove unnecessary stock control measures, include stiles and gates.
- This will be consistent with principals of Least Restrictive Access and will help facilitate implementation of Proposal 10
- It will be important in to define what constitutes ‘unnecessary’ stock control measures

Proposal 22: To amend the requirement for a decadal review of access maps to a process of continual review. Integrated and up to date systems for recording publicly accessible areas

NRW addressed this issue in our Green Paper response and we would support this proposal as it would enable maps to be updated more frequently and provide a better service to both land managers and access users. The current decadal review system would be difficult to accommodate in future years as the level of resource in terms of staff time available has reduced. Having a continual review system could smooth out the resource requirements for NRW and others as it would encourage applications based on circumstance rather than opportunity. However, further detailed consideration would be needed in developing a continuous review system e.g. to avoid backlogs of applications and repeat applications. There would be some resource implications in moving to a continuous system as more staff time would need to be spent assessing and dealing with any applications as and when they come in.

The conclusive map could also be actively amended as common land boundaries changed by requiring Commons Registration Officers to electronically inform NRW of any changes in common land boundaries. This need should eventually be superseded by the Electronic Registers of Common Land project currently being developed by the Welsh Government. Any changes to the mapping duties would also need detailed consideration in relation to the integrated access map put forward in Proposal 19.

Consideration could also be given to amending regulations relating to the dedication of land as access land to include provision for de-dedication where it can be

retrospectively shown (with information that was not available at the time of dedication) that a dedication made in good faith was made in error.

Proposal 23: To create the requirement for local authorities and National Park authorities to develop integrated access plans to take effect anytime up to the next review in 2027

- We support this proposal and the intention to improve integrated access planning, which builds on and further strengthens the updated WG ROWIP Guidance issued in 2016 and based on NRW advice.
- The evaluation of ROWIPs carried out by NRW in 2013 identified the many strengths and some weaknesses in the ROWIP process and the developed ROWIPs. That learning should be incorporated into integrated access plans if introduced.
- We support including National Park Authorities in this new duty, for which they are well placed to deliver, in consultation with local authorities. However, NPAs have not received funding from WG to carry this out to date, unlike local authorities who received funding now incorporated in the Standard Spending Assessment for new duties under CROW Act 2000.
- We believe that access to water should also be included within the plans.

To strengthen this proposal the Welsh Government should set out clear criteria for judging if there are sufficient access opportunities to meet the needs for physical and mental well-being of local people. This is particularly important in urban areas and could use the existing criteria suggested in section 2.18 of Technical Advice Note 16 of Planning Policy Wales - which cites the NRW (formerly CCW) green space toolkit. The assessments of access opportunities should be comprehensive and should be supported by an assessment of the actual condition of paths and sites (“ground-truthing”), rather than by simply reviewing maps or other “remote sensing” approaches. This is because the condition and accessibility of a site or path may be affected by things which cannot be seen without a visit. The views of visitors and local people on the condition of paths and sites should be used to inform these assessments of the provision and condition of access opportunities.

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.

- We support this proposal. However, some existing cycle tracks by their nature and or location would be suitable for use by horses. Consideration should be given to the potential for the change to cycle paths to allow for this use.
- In most cases, preference should be given to recording routes as bridleways unless there are convincing reasons why horse riders need to be excluded.

This would address the question of equity and consistency sought in the current consultation - as referred to in question 15 of the consultation paper.

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

- We support removing the CRoW Act cut-off date provisions for the reasons given in the consultation document – namely the heavy burden it would place on local authorities and the risk of losing many unrecorded routes.
- In our assessments around the time of the CRoW Act, we found that there is a very limited impact on land managers from the claiming of unrecorded historic PRow in Wales.
- We would need further information on other ‘unwanted provisions’ to enable us to consider the consequences of their repeal.

Proposal 26: To develop a statutory code for access to the outdoors for recreation similar to that already in place in Scotland under the Land Reform (Scotland) Act 2003.

Key Points:

- There is currently a potential contradiction between Proposal 16 and Proposal 26
- We generally support the creation of a Statutory Access Code and it could form part of a basic measures approach (Chapter 8), but, in line with our comments on basic measures in that chapter, success will depend on:
 - Legal clarity on rights of access and powers of enforcement.
 - A well-resourced and transparent engagement and drafting process including behavioural insights factored in from the outset and Assembly assent of the final code
 - Enough flexibility in the approach to allow for supplementary guidance to be created in future
- There should also be a statutory duty for NRW and Local and National Park Authorities to promote the code and sufficient resources to carry this out
- The code could be embedded in the national curriculum.

Qualifying statement Firstly, it is important that Welsh Government are clear of the difference between the code that they are proposing, linked to a statutory caveat inserted into existing Welsh legislation, and the Scottish Outdoor Access Code (SOAC) already in place under the Land Reform (Scotland) Act 2003. The principal difference in approach is that the SOAC is used to describe and define the limits of accessible land in Scotland, whereas in Wales accessible areas is defined by maps as per CRoW and PRow. Suggesting that a similar code to the SOAC be created in Wales might be interpreted as Welsh Government proposing a Scottish style reform to access law, this is in contradiction to the other proposals in this chapter.

In principal, we support the creation of a Statutory Access Code along with a sustained programme of education and promotion. However, there are certain conditions that need to be met for this exercise to be successful:

1. Legal clarity on rights of access

Although proposals reference all accessible land and water, there are currently some significant disagreements amongst user groups as to the way that the law is interpreted in this respect. In the SOAC model, the code was negotiated after the Land Reform Act gave all non-motorised recreation a shared legal right of access. This made it possible for SNH and the SNAF to draft a code that was seen as a ‘social contract’; giving something to everyone to bring them to the table and to make it worthwhile for them to buy in to the idea of responsible recreation. Welsh Government should consider that, ideally, a statutory code needs to be created in a situation where there is no longer any doubt or argument about who has the higher right of access. If an activity is to be included in the code, then it should be clearly agreed by all parties what their rights are in relation to accessing land or water. Uncertainty will make the drafting process difficult at best and potentially impossible.

2. Clarity on the statutory powers of enforcement

As outlined in our response to Proposal 16, breaking a statutory code such as the SOAC is a civil offence and only negates a person’s right of access. To prosecute anyone for breaches of the code would still need to either go through the civil court process or use another legal framework. In the SOAC model, the Code is classed as a ‘material consideration’ and has similar weight to the Highway Code. Welsh Government should be clear on the legal and enforcement framework associated with this Access Code and consider carefully the potential costs to the courts and access authorities of policing it.

3. A well-resourced and transparent drafting process

There are significant resource requirements for developing a co-produced statutory code such as is being proposed by Welsh Government. In Scotland, the process to draft, consult, create and implement the SOAC took 11 years (1994-2005) and 12 dedicated SNH staff spent almost a year working on the consultation process (2003). The SOAC was drafted by a sub group of the Scottish National Access Forum, established with equal membership from the ‘3 pillars’ of access (recreation, landowners and public sector organisations), chaired by an independent party and facilitated by SNH. Welsh Government should consider adopting a similar approach in Wales but including behavioural specialists as an integral part of the ‘Core Working Group’. NRW have produced an outline ‘Drafting Route Map’ for a possible Access Code, this can be made available upon request.

4. Understanding and influencing behaviour integrated from the outset

The most effective way of ensuring compliance with the Code will be through population-level behavioural insights, as discussed in our overarching comments at the beginning of our response. The focus should be on ensuring that

behaviours are appropriate in the first place, rather than an over-emphasis on enforcement or prosecution, as we. For further information, please refer to the report 'EAST: Four Simple Ways to Apply Behavioral Insights'⁴³. Welsh Government should ensure that development of the Code and associated promotion and education should utilise expertise in applied behavioural insights from the outset – inline with our proposed systemic SMNR delivery model.

5. Welsh Assembly assent of the Access Code

Part of the weight that SOAC carries is its parliamentary assent; this was given by Scottish Parliament using a 'negative instrument' process. We would recommend this as the preferred approach to take as it provides an extra layer of validity to the Access Code. However, Welsh Government should be mindful that this makes the reviewing and altering of the Access Code difficult. In Scotland, SNH has been given the duty to carry out a review of the code but no timeframe was given as to when this should be and they have not carried out any changes to date.

6. Flexibility within the structure to create supplementary guidance

The statutory Access Code will most probably be considered as secondary legislation, drafted by committee and given assent by the Welsh Assembly. Therefore, it is unlikely to take the form of a document that will communicate its messages in a way that will suits all its required audiences. There needs to be a mechanism in place from the outset that allows the creation of supplementary 'targeted' guidance linked to the Access Code. In Scotland, SNH use the brand identity and strapline 'Know the code before you go' to give to partner organisations so that they can create issues and audience specific guidance that support the SOAC.

7. Statutory requirement to promote the Access Code.

The Land Reform (Scotland) Act 2003 put a statutory duty on Scottish Natural Heritage to "publicise" the SOAC and "promote understanding" of it. Scottish Access Authorities also have a duty to "publicise" the SOAC as well as being responsible for using it to manage responsible access to the outdoors. Currently in Wales there is only a statutory duty to 'issue' an access code. Welsh Government should consider the ongoing commitment to promote and educate people about the code.

8. Sufficient resources to promote the Access Code.

The Countryside Code is well known in England and Wales. If a new statutory code of conduct is considered, it would be essential to provide sufficient resources to ensure that awareness superseded its predecessor. In Scotland, Scottish Government, through SNH, invested £2,000,000 in the initial promotion of the SOAC (2005-2008) recognising that 'given the complexity and extensive nature of the Code, it is essential that there is consistency, compatibility and

⁴³ http://38r8om2xjhh125mw24492dir.wpengine.netdna-cdn.com/wp-content/uploads/2015/07/BIT-Publication-EAST_FA_WEB.pdf

cohesion in the activities that deliver the messages on responsibilities'. Below are public awareness figures for the SOAC in Scotland and the Countryside Code in Wales.

Awareness of the Scottish Outdoor Access Code								
2005	2006	2007	2008	2009	2010	2011	2012	2013
43%	58%	62%	62%	56%	55%	47%	40%	44%

Awareness of the Countryside Code								
2005	2006	2007	2008	2009	2010	2011	2012	2013
70%	no data	76%	74%	no data				

Welsh Government should be prepared to invest significantly in the promotion of the Access Code, including the creation of a strong independent brand identity that can be used by all partners and a high-profile media campaign. Visit Wales should be brought in as a key advisor in the process and tasked with considering how this message could be integrated into its promotion of Wales. Support should be given to the access authorities to help them promote the Access Code at a local level. Welsh Government should also consider how this awareness is monitored; we would recommend embedding a set of questions in the National Survey for Wales.

9. The Access Code embedded in formal education

A new Access Code for Wales would require a generational shift in perspective, therefore it will be essential to embed the messages into both formal and informal education. In Scandinavian countries, the governments have invested in 'nature kindergartens' to encourage early year learning about the outdoors and their 'everyman's rights'. Welsh Government should consider the importance of including it in the school curriculum so that it became a key part of the education of young people as well as rising awareness of it amongst adults.

Natural Resources Wales have collated a briefing document on the creation and implementation of the Scottish Outdoor Access Code. We can provide a copy of this document to Welsh Government, if required.

Proposal 27: To review the regulations and guidance relating to local access forums with a view to updating and clarifying their role.

Key Points:

- We strongly support this proposal as we believe that it will result in LAFs being more effective.
- The regulations and guidance have not been reviewed since they were initially formed in 2002, changes since then and experience gained, mean that review and update is warranted.
- In addition, we suggest that an independent review is undertaken to consider adherence to current regulations and effectiveness of LAFs, and to consider whether the role of LAFs as set out in the CROW Act 2000 is fit for purpose.
- Our comments to question 6 of the last consultation stand in relation to this proposal.
- There is a need to consider how the existing, and any future regulations could be effectively enforced

Statutory remit for Local Access Forums is currently limited and could be changed by regulation, to deal with the wider range of work expected of them e.g. health & wellbeing, transport. This could help strengthen their standing, their working relationship with local authorities and Public Service Boards noting that the legislative context has changed since their original inception.

We agree that the Guidance to LAFs previously issued by CCW is out of date and needs to be updated in light of experience gained and changes in legislative context.

In addition to reviewing the current regulations (produced in 2001) relating to the establishment, membership and administration etc. of LAFs, we recommend considering, considering legislative and governance changes since CROW, whether to:

- prescribe additional bodies to be advised as provided for in CROW s94(d)
- prescribe additional functions to LAFs as provided for in CROW s94(4)
- produce additional/revised guidance as provided for in CROW s94(6)(c)

We also recommend that consideration should be given as to how regulations will be enforced and how LAFs interact with other bodies, such as Public Service Boards, the National Access Forum for Wales and regional outdoor charter groups.

We would note that many of the issues concerning the operation of LAFs are already set out in regulation, however they are not enforced. For example, with regard to the requirement for each appointing authority to produce an annual report, consideration should be given to how current regulations can be enforced effectively and, in this example, how the opportunity to publicise the work of LAFs taken

We set out detailed points in relation to LAFs and their role and function in our response to the previous consultation, these issues still stand and should be incorporated in any proposals going forward. For example, balance of membership and the need to consider how regulations are implemented to enable LAFs to have a more diverse membership in terms of gender and age and to ensure that LAFs are

the most effective mechanism for local authorities to engage with all the relevant recreational access interests.

Other existing advisory forums This proposal and any review should also consider linkages with other existing non-statutory forums and networks, including the Welsh Government-convened National Access Forum to which NRW is a key delivery partner, and regional outdoor charter groups who work to secure and maintain sustainable access to key recreation sites. Further developing this package of proposals will benefit from wide stakeholder engagement these networks and forums provide, under the leadership provided by Welsh Government.

Chapter 5 - Marine and Fisheries

Opening remarks

NRW support the potential requirement to provide express powers to Welsh Ministers to identify inshore marine plan regions and to produce plans for these regions. However, we note that without a national marine plan yet in place there is no experience in implementation at the national level which would be necessary to fully inform proposals for subnational marine planning.

A key issue not addressed within this consultation is constraints within the current legislation preventing, for example, the production of more detailed marine planning guidance (for example the production of Technical Advisory Notes in the terrestrial planning process) without requiring consultation on the full marine plan. A more flexible arrangement that could allow for the further more detailed guidance and policy for specific issues or spatial areas would be helpful.

NRW will develop Area Statements for all areas of Wales, including the marine area. In developing a marine Area Statement there is an important opportunity to bring together, for example, locally refined evidence and information that informs implementation of national policy set out in the plan. This could go some way to addressing some of the issues set out in this consultation.

We consider that there is likely to be sufficient flexibility within the policies in the draft national marine plan to support decision-making that takes into account local interests and evidence. The draft plan is also expected to explore policies targeting specific areas of Welsh seas for certain uses. It is therefore difficult to establish the level of the need for subnational marine planning when there is not yet any experience in implementing a national plan.

Joining up planning and decision-making over the land-sea interface continues to be a challenge. Marine and Terrestrial planning operates under different legislation and relevant consents and permits are given by a range of authorities. This represents a challenge to integrated management that WG has a key role in resolving through improved connectivity in policy development, the production of relevant guidance and through driving capacity building within individual authorities to ensure an integrated approach.

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?

Welsh Government consulted on its approach to marine planning in 2011. The outcome of this consultation was a decision to develop a national marine plan for Wales. The marine area of Wales is of a similar scale to one of the English marine planning regions and thus the approach in Wales is not inconsistent with that taken across the border. We look forward to a consultation on the first Welsh National Marine Plan this year, and note that without this marine plan yet in place there is no experience in implementation at the national level which would be necessary to fully inform proposals for subnational marine planning.

Nevertheless, we recognise that there may be a need to consider more local planning for the marine area in the future. We consider any legislation that enabled a more flexible system of marine and coastal planning would be useful, such that planning policy and guidance could be developed iteratively, including for specific regions, if appropriate. The current system is particularly challenging as a consequence of the need to consult on the full plan where any changes need to be made. This is likely to be challenging, particularly in these early stages of developing the system, where we anticipate it may be necessary to adapt and refine policy more quickly and easily. Putting in place legislation that allows for more flexibility around the planning process may be helpful.

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 on your interests?

We consider that there is significant opportunity for the policies in the draft Welsh National Marine Plan to support decision-making that takes into account local interests and evidence. For example, the plan can incorporate spatial policies addressing locally relevant issues. In addition, we anticipate that the plan will sign post and take account of a range of relevant plans and processes from a national to local level. Under the Environment Act, NRW will be developing Area Statements for all areas of Wales, including the marine area, over the next few years. In developing a marine Area Statement there is an important opportunity to bring together, for example, locally refined evidence and information that informs implementation of national policy set out in the plan. An Area Statement could also collate evidence at a local/regional level to inform further policy development within marine planning. As such, we consider there are already a range of mechanisms both within and sitting alongside the current marine planning policy framework that could be used to address some of the issues set out in this consultation.

A continuing challenge that would not necessarily be addressed by putting in place regional marine plans developed by Welsh Government relates to improving the integrated management of the land-sea interface. Marine and Terrestrial planning operates under different legislation and relevant consents and permits are given by a range of Welsh and UK authorities – this represents a significant challenge to integrated management, and so to the sustainable management of natural resources at the coast. In Scotland, regional marine plans are developed by local planning partnerships (often local 'ICZM' partnerships) which may in part address this issue. It is unclear if a similar approach would work in Wales but this could usefully be explored. In England, a Coastal Concordat⁴⁴ has been put in place to provide a framework within which the separate processes for the consenting of coastal developments in England can be better coordinated. It aims to benefit to applicants, regulators and advisors by reducing unnecessary regulatory duplication, providing better sign-posting, streamlining assessments and increasing transparency and

⁴⁴ <https://www.gov.uk/government/publications/a-coastal-concordat-for-england>

consistency of advice. There may be value to considering developing a Welsh Coastal Concordat.

Marine planning is at a very early stage in Wales, and across the UK, and as such the limitations to the existing system are yet to be fully explored. In addition, there are a range of legislative and policy mechanisms already available that could be more effectively used to support the sustainable and integrated planning and management of marine and coastal natural resources. We therefore consider that, whilst there may be value to developing more flexible marine planning legislation that includes the ability to produce regional plans, the primary focus at this time should be on finalising and implementing the first Welsh National Marine Plan.

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.

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?

NRW supports Welsh Government's proposal to provide Welsh Ministers with further powers to flexibly manage marine fisheries.

Welsh Government currently have powers to manage marine fisheries adaptively by the creation of, for example; species or activity, related Statutory Instruments with associated permits under sections 189 and 155 of the Marine and Coastal Access Act (MCAA) 2009.

MCAA 2009 provides for the creation of framework type Fishery Orders whereby, the management mechanisms controlling the fishery are defined within the body of the Statutory Instrument and the specific dynamic characteristics of the fishery can be accommodated through variable permit conditions. In effect, the MCAA 2009 is a pre-existing enabling mechanism for an SMNR approach to managing marine fisheries. This mechanism creates administrative flexibility for the Minister including conditions to prohibit, restrict and monitor the exploitation of sea fisheries resources and technical measures relating to gear and vessels, such as:

- Ability to charge fees for permits;
- Enabling conditions to be attached to a permit;
- Limiting the number of permits issued.
- Restricting exploitation in specified areas or during specified periods;
- Limiting the amount of sea fisheries resources a person or vessel may take in a specified period;
- Limiting the amount of time a person or vessel may spend fishing for or taking sea fisheries resources in a specified period.
- Permitting vessels of specified descriptions;
- Defining fishing methods for exploiting sea fisheries resources;

- Possession, use, retention on board, storage or transportation of specified items, or items of a specified description, that are used in the exploitation of sea fisheries resources;
- Requiring vessels to be fitted with specified equipment;
- Requiring vessels to carry on board specified persons, or persons of a specified description, for the purpose of observing activities carried out on those vessels;
- Requiring specified items, or items of a specified description, to be used in the exploitation of sea fisheries resources to be marked in a specified manner.

NRW support Welsh Government's intention to provide the Minister with additional flexible management conditions, such as:

- Defining Total Allowable Catch (TAC)
- Restricting effort control
- Opening and closing fisheries at short notice.

However, it is not clear from the consultation if MCAA 2009 will be the primary legislative vehicle to deliver the proposed additional provisions.

The additional provisions proposed within the consultation for the delivery of an administratively flexible management system would further control marine fisheries catch and effort through a permit system. These mechanisms will contribute to the delivery of the sustainable management of our Welsh marine fisheries resources providing they are informed by robust stock analysis data allied with information from the NRW-led Assessing Welsh Fishing Activities Project. This Project is currently providing the evidence of impacts from fishing gear operations on protected Welsh marine features.

NRW further support the provision of adaptive powers being granted to the Welsh Minister to allow the opening and closure (spatially and temporally) of marine fisheries at short notice and in response to potential unforeseen environmental conditions.

These specific legislative amendments will contribute to the sustainable management of Welsh marine fisheries resources but the effectiveness of the legislation needs to be considered longer term in the context new Welsh sustainability legislation, the UK leaving the European Union and a changing devolved constitutional landscape post Brexit. What will sustainable management of our Welsh marine fisheries resources look like and what powers will the Minister need to deliver that vision?

On leaving Europe in March 2019 the current Common Fishery Policy regulatory framework will be transposed into domestic UK law through the EU (Withdrawal) Bill and a new UK Fisheries Bill. In the short to medium term this will create part of the legislative framework for the delivery of fisheries management throughout the UK, including Wales.

In the medium to long term a new or improved Welsh and/or UK legislative framework to deliver sustainable management of natural resources would recognise that the Welsh marine fisheries sector is unique within the UK and needs to be managed accordingly. The majority of the Welsh fishing fleet is comprised of small inshore vessels targeting non-quota shellfish species. In order to deliver the sustainable management of our Welsh marine fisheries resources a transparent, auditable and evidence led approach to fisheries management is required.

Currently, Wales has full executive powers to manage marine fisheries to the median line but not full legislative powers. To deliver the sustainable management of Welsh marine fisheries resources within the Welsh Zone it is anticipated that Wales will seek to deliver a fit for purpose Welsh marine fisheries legislative framework post Brexit. To do this primary legislative powers may be required by Wales to introduce a new Welsh Fisheries Bill but this would require a new constitutional settlement with Westminster which may take a number of years to complete.

Any new or improved legislative framework should embed the overarching principles for the sustainable management of Welsh marine fisheries resources. Once defined in primary legislation, the appropriate adaptive regulatory mechanisms such as secondary legislation with permits and conditions can be introduced to support and deliver sustainable management of specific fisheries resources or fishing activities.

The basic principles underpinning the sustainable management of Welsh marine fisheries resources (and deriving from the SMNR principles) could include, but not be limited to:

- Fishing all commercial stocks within safe biological limits,
- Measures informed by evidence that are fully transparent and auditable,
- Responsive and adaptive regulatory measures,
- Measures with the ability to restrict fishing effort and resource exploitation,
- Allowing the right fisheries in the right place with the right method,
- Effective and appropriate discard ban,
- Mandatory detailed catch return information from all vessels,
- Approaches that involve co-management and good governance arrangements,
- Effective monitoring and compliance arrangements,
- Utilising iVMS and other technological advancements on all vessels fishing in Wales,
- Sufficient resourcing including the recovery of costs for fisheries management through charging for permits.

Welsh government should make full use of emerging technology to better deliver compliance with possible permit conditions. For example: inshore Vessel Monitoring Systems for position reporting, gear-in gear-out technology for effort reporting, eLog books for catch and effort reporting, on board vessel cameras to sex and measure species including discards etc.

The principal fisheries in Wales are for non-quota shellfish species and stock information on these species is limited through standard resources such as ICES. In

the short to medium term Welsh Government, the fishing industry, Welsh Universities, Seafish, NRW etc. need to coordinate efforts to fill these essential evidence gaps by contributing to a full programme of stock assessments to underpin the sustainable management of our unique marine fisheries resources.

While the management regime needs to be fully transparent and evidence led it also needs to be economically sustainable. Charging for fishing permits will drive innovation within the sector, encourage compliance and stewardship of the fisheries and help make the management of the fishery economically sustainable to the Welsh economy.

Currently, only a small number of fisheries in Wales are managed through permitting regimes and are subsequently assessed under Article 6.3 of the Habitats Directive. By introducing comprehensive restrictive permit schemes for all Welsh fisheries this would require them to be assessed as Plan or Projects under Article 6.3 of the Habitats Directive. While Article 6.3 assessment only concerns the impacts from the proposed fishery on protected features of sites, this is an essential part in assessing the sustainability of the fishery. If the assessment process is allied with thorough and robust stock assessment data, then this provides a transparent and auditable evidence base to deliver the sustainable management of Welsh marine fisheries resources.

Welsh Government should consider producing a transparent and evidence led sustainability assessment that would satisfy the demands of Article 6.3 of the Habitats Directive and any relevant considerations under new Welsh sustainability legislation, The Environment Act 2015 and the Well-being Future Generations Act 2016.

NRW would welcome a more smarter, flexible and less cumbersome legislative regime for the sustainable management of marine fisheries resources also being applied to freshwater and diadromous fisheries, which are notable in their absence from the consultation. Diadromous fishes pose a particular management challenge of great economic value to Wales, as their lifecycles are impacted by both marine and freshwater planning/fisheries regimes.

Proposal 30 - To introduce an improved aquaculture licensing regime.

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.

NRW support the Welsh Government's proposal to introduce an improved aquaculture licensing regime that would contribute to the delivery of the Welsh Minister's target of doubling aquaculture by 2020. This new regime would include the ability to:

- 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 offences e.g. for anyone interfering 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 desire

It is widely acknowledged that the current system of granting Several Orders for certain marine shellfish species under the Sea Fisheries act 1967 is not sustainable as the process is administratively cumbersome and protracted. However, it is by no means guaranteed that the production of Fishery Orders or the granting of licences to cultivate shellfish or fish under sections 189 of the MCAA 2009, will be anymore expedient.

Usually the best places for cultivating shellfish are intertidal areas which often corresponds with a variety of marine protected areas or designations. A common delay in the process of granting Several Orders by Welsh Government has been the resources and tools available to satisfy the necessary environmental assessments required under nature conservation legislation. It should be recognised that these assessments will still be required under a new shellfish licensing regime. However, it is acknowledged that an Order produced under this new flexible MCAA 2009 framework could provide an adaptive response that may provide mitigation for potential impact pathways within the assessment process.

In addition to the current provisions and proposed additional provisions outlined in the response to question 29 sections 156 and 189 of the MCAA 2009 provides specific provisions for shellfish cultivation, including:

- Re-deposition of shellfish in specified localities;
- provision for the protection of culch and other material for the reception of the spat or young of shellfish;
- provision requiring such material to be re-deposited in specified localities;
- provision constituting, a district of oyster cultivation for the purposes of subsection (2)(c) of section 16 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) (which prohibits the sale of oysters between certain dates);

It is not clear from the consultation what the intended delivery mechanism for the new licensing regime would be. The consultation refers to utilising ‘the powers now available under section 189 of the MCAA 2009’, which specifically grants Welsh Ministers the ability to create Orders or subordinate legislation for fisheries management. However, in the consultation it also refers to licences removing ‘the need for such aquaculture operations to be established by subordinate legislation’ and suggests a new aquaculture licensing regime akin to the marine licensing regime within MCAA 2009. If Welsh Government bring forward a new licensing

approach, rather than issuing Orders with permits under section 189 of MCAA 2009, then this would involve substantial resourcing and additions to MCAA 2009.

If Welsh government create Orders with associated permits, then it is unclear if Welsh Government intend to create single species Orders with multiple area specific permits. Or, if each operator would receive their own individual Order with specific permits and associated conditions. If it was latter, this process would be more administratively protracted and need more resourcing.

The granting of Fishery Orders under MCAA 2009 to cultivate shellfish or fish species would have the effect of bringing compliance with permit conditions within the remit of Welsh Government's Marine Enforcement Officers. This would provide greater certainty with respect to Habitats Regulation Assessments, monitoring impacts and reacting to potential unforeseen management and environmental issues.

Proposal 31 - To improve the buyers and seller's regime to include shellfish in intertidal areas.

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?

NRW support the Welsh Government's intention to increase the scope of the Buyers and Sellers Scheme in Wales.

As the manager of two intertidal Cockle Regulating Orders NRW recommend that amendments to the Buyers and Sellers Scheme should apply to all fish and shellfish species, caught over a prescribed maximum amount for personal consumption. The application of this current regime should apply to all fishing activities regardless of the method of capture, this would provide essential information to assess the sustainability of stocks.

The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 was created to deliver Article 22 of the Common Fisheries Policy (Council Regulation (EC) 2371/2002) and Article 9 of the Control Regulation (Council Regulation (EEC) 2847/93). However, the primary legislation only applies to catches from boats and hence the current subordinate legislation only applies to catches from boats. It is unclear from the consultation how the Welsh Government would be able to extend the current Registration of Buyers and Sellers Scheme to all fisheries regardless if they are caught from a boat or from the shore.

NRW recommend that a robust traceability element be introduced within any amendments the Buyers and Sellers Scheme to ensure that shellfish from unregistered or closed beds are not entering the food chain.

Through this consultation, the Welsh Government are starting to create the framework and regulatory tools to be able to assess the sustainability of Welsh marine fisheries resources more accurately. However, it must be recognised that there is a major gap in the information available to managers from the recreational

sea angling sector. Without catch data from this sector it is difficult to assess the impacts on stocks sustainability. Welsh Government should consider methods to gather detailed information from this sector to better understand their impact on fish stocks, at present this is largely unknown and unreported.

Chapter 6 – Water

Opening Remarks

We welcome that the consultation states that we must not reverse progress to improve environmental standards but take the opportunity to build on them. Our current water legislation derives from the EU and has delivered significant benefits. Following the decision to leave the EU, it is vitally important those benefits are not only safeguarded but built upon. They have been important in providing baseline standards which have set a high level of ambition, have driven action and, in the case of WFD, have a clear focus on the underlying ecological status of the aquatic environment.

As SoNaRR explains, although water quality and freshwater habitats remain degraded and a number of significant problems remain, water quality in rivers has improved over the last 25 years. Much of this improvement has been driven by investment from water companies. In turn, the drive for this investment has been the standards and requirements set out in a host of European legislation. These standards are based on a wealth of evidence, some on significant UK research, in some cases European Intercalibration. Whilst extremely challenging, and likely costly to achieve, other standards like those for ‘priority substances’ and ‘priority hazardous substances’ are for substances which present a significant risk to or via the aquatic environment. Microbiological standards within the Bathing Waters Directive are derived from World Health Organisation (WHO) research.

As well as being evidence-based, standards also provide a clear regulatory floor, which is a likely precursor for the success of possible future approaches relying on basic measures and payment for ecosystems services (Chapter 8).

A number of the Water Directives consider cost-effectiveness and the use of costs and benefits to determine whether action should be taken. We should build on these approaches to include consideration of wider benefits.

Amongst other criteria, future international trade deals are likely to be dependent upon environmental standards. For example, the majority of our shellfish are exported to the European market. Whilst there are opportunities for “made in Wales” or “made in UK” solutions to deliver the same protection and outcomes, we may still need to demonstrate equivalence to the objectives and standards set out in European Water and other Directives.

We must guard against perceived opportunities to export water for financial or other benefit. Although Wales is perceived to be water rich, we are facing challenges, with climate change predicted to affect the amount and distribution of rainfall, impacting on flows and water levels, drought and flood events.

There is however opportunity for legislative change in the water sector to facilitate the new integrated approach to managing our natural resources. Set against the above concerns is the considerable opportunity to focus, through streamlining, on outcomes

rather than processes and sometimes overly prescriptive ways of achieving outcomes that some of the current Directives require. Of course, our freedom to do this may, or may not be, constrained by decisions around future trading arrangements. And as above, we must guard against pressure to dilute the standards and objectives that are underpinned by a wealth of evidence and which have driven such improvements in the water environment to date.

Many of the Water Directives have set planning timescales or require cyclical reviews. Sometimes these cyclical planning timescales do not sensibly align. Short deadlines for delivery can drive short term solutions, risk abortive expenditure and drive 'traditional' rather than more innovative solutions, which don't address the root causes of the problem. There is an opportunity to bring forward legislation to support the streamlining of our environmental plans, to free up discussion around the right solutions for a particular place with the knowledge of all the risk, pressures and opportunities in that place, and potentially an opportunity for greater freedom to learn and adapt. However, we must guard against inertia and inaction and retain clear short and medium term goals. Equally, evidence and certainty should not be used to delay required actions.

Stakeholders are currently presented with the objectives of Directives (bathing waters, needs of aquatic species or for WFD) in isolation. This could be improved without legislative change. However, some existing Directives prescribe the way we engage around the standards and objectives we are trying to achieve. An example here is the Water Framework Directive. Inherent in the WFD is the welcome requirement for public participation, but it prescribes a series of Directive specific engagement, with consultations at set points in the prescribed 6 year planning cycles. It also drives us to engage with stakeholders around single Directive requirements, rather than to look in at the range of risks and opportunities in a particular place. This is an obstacle to streamlining and simplifying our environmental plans which is an objective of the Environment (Wales) Act and there is a potential opportunity here to further the new integrated approach to managing our natural resources.

In other cases, Directives prescribe action. Equally, the reporting requirements of individual Directives drives us away from integration of our work and consideration of the needs of a particular place. We believe there is scope here to make regulations to facilitate SMNR and would welcome working further with Welsh Government on this. This might facilitate use of schemes such as PES to secure the health and resilience of ecosystems.

As we outline in our overarching comments, there are several complimentary elements that form part of a systemic approach to SMNR delivery, including regulatory, behavioural and incentive based measures. An integrated approach to SMNR for the water environment could include:

- Ensuring that any future agricultural incentive / support measures are targeted at sustainable natural resource management including protecting water quality and managing quantity; and aiming to achieve good ecological status. As described elsewhere, there are uncertainties over future funding and the

future trading environment which will have a significant impact on rural producers, both of which are likely to increase risks to the water environment. On the other hand, Brexit provides an opportunity to create a new agricultural policy and a new framework for environmental protection. Direct payments and rural development schemes could support delivering of SMNR as well as prosperous farming.

- Development of specific basic measures (Chapter 8) and associated civil sanctions so as to better control diffuse / multi point type pollution controls e.g. for septic tanks, pesticide use, the watering of animals near water courses, slurry management etc. We particularly welcome that Welsh Government's consultation identifies diffuse pollution as a good use of basic measures, as this is an issue where cumulative impact of many low impact events is large.
- Ensure an evidenced-based approach to standard setting and outcomes before determining the requirements to be put in place.
- Currently, only Section 6 of the Environment (Wales) Act applies to water and sewerage undertakers (superseding the previous NERC Biodiversity Duty). In order to further promote sustainable development and "ways of working" within the water industry Welsh Government should consider requiring undertakers to adopt the principles of SMNR delineated in Section 4 of the same Act, and include them on the list of statutory invitees to PSBs.
- Water companies are required to produce twenty five year Water Resource Management Plans. The same requirement does not exist for sewerage and drainage planning. WG should consider requiring companies to develop long term (twenty-five year) sewerage and drainage plans.

Question 23: Do you agree with the approach we are proposing, to introduce abstraction reform on a Wales only basis?

We are pleased to note that Welsh Government are proposing to continue to work with NRW, Defra, and the Environment Agency (EA) to use the powers in the Water Act 2014 to bring water abstraction activities into the Environmental Permitting Regulations. We wish to point out that much of our present response has been rehearsed in previous NRW consultation responses on this topic.

Having a common legislative approach for water abstraction is not essential but it does have benefits, especially for those abstractors who operate in both Wales and England and in the management of the cross-border catchments.

In respect of delivering the legislative changes outlined in this consultation, as there are unlikely to be any opportunities for a joint England and Wales Bill, we believe Welsh Government should continue to explore taking those changes forward on a Wales only basis. We would recommend that Welsh Government continue to work with Defra, NRW and the EA to ensure that any implications for the management of the cross-border catchments are fully considered.

In addition to abstraction reform, it is important that Welsh Government and Defra bring regulations into effect as soon as possible that remove licensing exemptions

for higher risk abstraction and impoundment activities. This would allow us to properly manage water resources on a catchment basis and ensure that all sectors are treated more equitably.

Improvements that can be delivered without legislative change include:

- **Modernising the Water Management ICT system** The current water management system is predominantly paper-based and as such is slow and inefficient. As part of delivering abstraction reform we are modernising our ICT systems to allow for greater flexibility in how we interact and communicate with customers and how they can engage with us. This work will include the digitisation of all existing water licences so that they can, as a minimum, be viewed on-line. Additional functionality will be added over time. We will be developing this new system over the next two years and we will be engaging with abstractors during this time to ensure we understand and capture their needs.
- **Encouraging Water Efficiency** The Welsh Government's Water Strategy⁴⁵ recognises the importance of water efficiency in delivering SMNR. Using water efficiently will make Wales more resilient to future challenges, such as climate change and growth. Resource efficiency requires behaviour change. Resource Efficient Wales⁴⁶ and others such as Waterwise⁴⁷ provide advice and guidance on how to effect change. Waterwise has recently published a water efficiency strategy for the UK for example⁴⁸, which will require a number of organisations across the UK to work together to facilitate change. To deliver the actions, Wales will need to further develop its own evidence base. The Welsh Government should consider who will lead or facilitate the development of this evidence base.
- **Sharing water resources** Where there are pressures on water resources, we expect greater sharing of water resources to help deliver SMNR. Abstraction reform sets out proposals to help improve water trading but this needs legislative change to support it. In addition to this, abstractors should be encouraged to share existing resources and where new resources are planned, that the needs of other abstractors are also considered. Catchment-based abstractor groups can help facilitate this.

Water companies will continue to have an important role to play in sharing resources due to the scale of the resources they manage and the ability to develop strategic resources. Water companies are required to develop water resources management plans every five years. These plans set out how they intend to maintain a secure supply of water over the next 25 years (as a minimum). Abstractors on a number of rivers in Wales already benefit from

⁴⁵ <http://gov.wales/topics/environmentcountryside/epg/waterflooding/publications/water-strategy/?lang=en>

⁴⁶ <http://cymrueffeithlon.llyw.cymru/?lang=en>

⁴⁷ <http://www.waterwise.org.uk>

⁴⁸ <http://www.waterwise.org.uk/pages/a-water-efficiency-strategy-for-the-uk.html>

schemes where water companies release water to support abstraction at low flows. Natural Resources Wales has powers that allow it to promote bulk supplies between water companies or to require abstractors to enter into new operating arrangements. We work with abstractors on a voluntary approach and only use these powers as a last approach.

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?

Note: A separate Welsh Government consultation (*Implementation of Sustainable Drainage Systems on New Developments*⁴⁹) details proposals for urban drainage systems.

Proposal 34: 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.

We have concerns that the proposals may lead to an increase in flood risk in receiving watercourses. Proposal 34 seeks to provide sewerage undertakers with a right to discharge surface water to a watercourse. It is stated that this right would still be subject to volumetric consents from the relevant authority.

There appears to be a misconception that NRW could issue a consent to control the volume of clean, uncontaminated surface water discharged to a main river; at present we have no such permitting power. To introduce this new control over surface water discharges would potentially have large resource implications and increased regulatory burden on other parties. We do not therefore support this proposal.

Proposal 37: 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.

⁴⁹ <https://consultations.gov.wales/consultations/implementation-sustainable-drainage-systems-new-developments>

Proposal 37 seeks to provide sewage undertakers with the right to enter property to maintain watercourses to limit impacts on their assets. This raises concerns regarding the potential repercussions and resource implications on NRW and Lead Local Flood Authorities as regulators being asked to deal with complaints from landowners and any impacts on the environment from works carried out under such a power. A further concern relates to the potential liability that may be imposed on a landowner if a new sewerage asset is installed on their land under existing powers. The proposal would allow the undertaker to then carry out maintenance works to ensure the correct operation of the asset and potentially recharge the landowner. This would mean that a landowner could have a new asset imposed on them and potentially be charged for its ongoing maintenance.

If properly managed, however, it could provide opportunities for work to be undertaken collaboratively, but there would be a need for very clear roles/responsibilities as well as a clear understanding of the environmental considerations required in undertaking such works. We would welcome further discussion regarding this proposal.

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.

We would welcome further discussion around this proposal. Whilst we appreciate the need to act in an emergency, we would need to ensure that this new power does not circumvent the need to notify or where necessary gain the necessary permissions from other bodies, such as NRW, for example where the works may impact upon water quality or involve works in or near a watercourse that may affect flood risk.

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.

We do not support this proposal. This amendment would undermine the intention of Section 106A and therefore is likely to act as an impediment to the adoption of sustainable drainage schemes.

The right of connection under S106A is not unconditional as it requires other approvals to be in place first (as set out in S106A (1) and (2)). It is our understanding that the sewage undertakers in Wales would be able to highlight their concerns through the SuDs approval process, as they are a statutory consultee. They are also a statutory consultee for specific development types under the Town and Country planning legislation.

Proposal 43: Legislate to require cesspits/cesspools to be registered.

NRW has undertaken an exercise to register septic tanks and package treatment works previously.

We agree that cesspools are potentially a problem and, as such, we do not accept the promotion or proliferation of cesspools as a viable long-term sewerage option in anything other than exceptional circumstances. The grounds for this are pollution prevention, environmental protection and sustainability.

However, in order to register cess pools, we would anticipate that significant resource and IT infrastructure would need to be in place. We would welcome further discussion with Welsh Government about the feasibility of this proposal and on the most appropriate body for operating any cesspool registration scheme.

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.

We support the amendment proposed to the Water Industry Act, section 37, to simplify the procedures for preparing draft water resources management and drought plans.

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.

- **Sewage ownership** - Many of the proposals are administrative and although they will assist in working practices the gap remains on tackling historic issues

or infrastructure and drainage. Long term planning for sewerage is required in Wales and legislative changes may be required to enable this to happen.

Welsh Government's Water Strategy recognises the importance of well managed and maintained sewerage and drainage infrastructure for both waste water and surface water, with sufficient capacity to manage the demand placed on it and without causing pollution or sewer flooding of people's homes. It describes WG's commitment to establish a framework to identify any evidence, data or regulatory gaps and consider how these might be addressed to ensure that the sewerage undertakers, regulators and other key stakeholders have the tools to make our sewerage and drainage system fit for purpose for the 21st century and beyond.

We are working collaboratively with the water industry and other UK regulators through the 21st Century Drainage programme. We would like to understand how Welsh Government's plans to deliver any necessary legislative change arising from recommendations from the various workstreams and look forward to working further with you on this.

- Regarding the '**Marine Licensing (Exempted Activities) (Wales) Order 2011**' where Article 4 outlines grounds for exemption from need for marine license and Article 18 relates to maintenance of coast protection, drainage and flood protection works⁵⁰. Exemption under Article 18(1)(b) applies to coastal protection authorities and should be amended to include exemption on grounds of land drainage and flood defence works in accordance with Article 18(1)(a), so that coast protection authorities receive the same exemptions as the Environment Agency (Natural Resources Wales) for undertaking comparable works.

This issue has been raised to Welsh Government Flood Branch via the five Coastal Groups in Wales and the overarching Wales Coastal Group Forum. It is documented through conclusions of the Project 7b report under the Wales Coastal Flooding Review initiative led by Natural Resources Wales available at: <https://naturalresources.wales/media/679733/project-7-report-part-b-recommendation-38.pdf>

- **Drainage rates.** The Land Drainage Act 1991, section 37, sets out how Internal Drainage Boards are to appraise the value of land and property within their drainage districts for the purposes of calculating drainage rates. This is essentially done by fixing rates to old property values which relies on records that are incomplete, and old. This needs to be updated to allow a better way of calculating the rates, which in turn will allow a fairer and more transparent way of applying the legislation to raise the income. We look forward to continuing to work with Welsh Government on these matters.

⁵⁰ <http://www.legislation.gov.uk/wsi/2011/559/article/18/made>

- **Maintenance of flood risk management assets that are in private ownership** Schedule 1 of the Floods and Water Management Act 2010, gives powers to 'designating authorities' (NRW and local authorities) to designate structure or features if they have a flood risk or coastal erosion function. Many flood risk management assets (e.g. flood defences) are in private ownership and Schedule 1 is intended to help to allow the flood Risk Management Authorities (NRW and LAs) to influence the asset owner to maintain the asset in a suitable way. However, there is no obligation on the asset owner to meet any specific standard.

NRW is interested in exploring whether more can be done to require asset owners to undertake appropriate asset maintenance, subject to suitable consultation.

- **Requirements to maintain highways/rights of way.** Our understanding is that under the Highways Act 1980, there are very limited circumstances in which a Public Right of Way can be legally diverted or extinguished. Maintenance costs are irrelevant to the legal situation.

When there are outwardly good reasons for a highway to be rescinded or moved (such as the costs associated with maintaining it), it is extremely difficult to do so, for example, where coastal erosion takes place such that a man-made structure that previously acted as a flood defence is compromised, and from a variety of perspectives we might not want to reinstate it. Or, we might want to actively remove a defence, again for a variety of reasons e.g. to make space for water. If such a structure has a highway on it, there is strong pressure to reinstate the highway and therefore the structure, because the right of way cannot be extinguished. We would like to see more flexibility within the legislation such that the best option in the round in pursuance of SMNR and Well Being objectives is identified and implemented.

Chapter 7- Waste and Local Environment Quality

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?**

We welcome this proposal as the current s108 powers of entry and seizure of evidence have had an impact on the effectiveness of all of our enforcement work and this has been flagged by NRW to WG. We have already provided advice and evidence to WG on why this change is needed, including advice from Counsel on how the change should be made.

Whilst any changes will apply to s108 powers of entry under the Environment Act and the pollution control functions covered by the Act, there are other pieces of legislation which will remain unaffected and 7 days' notice will still be required for some of our enforcement activities. These are the similar existing powers of entry in the Water Resources Act 1991 and the Reservoirs Act 1975. It therefore will result in an inconsistency - flood risk enforcement under the Environmental Permitting Regulations will benefit from the proposed change whereas flood risk enforcement of the byelaws under the WRA would not.

There may be a need to explore from a policy perspective the need to amend those other pieces of environmental legislation so that there is parity. If not, we will need to be mindful of potentially different requirements depending what legislation applies.

There are additional regulatory approaches or powers that NRW believe would improve our ability to undertake waste regulation effectively and encourage the Sustainable Management of Natural Resources (SMNR).

We continue to work with Welsh Government to provide technical information and to advise on the practical implications of new waste legislation being implemented through the Environment (Wales) Act. To ensure that these new requirements are effective it is important that Welsh Government provide adequate funding to the regulator to enable an appropriate compliance and enforcement regime which alongside ensuring regulatory compliance would also provide an increased opportunity to engage and influence waste producers on SMNR.

It is only our compliance monitoring of permitted sites and regulatory regimes that is funded through fees & charges. Enforcement and action against illegal sites is essential to ensure a level playing field across the sector safeguarding the effectiveness of the regulatory regime. Enforcement activity is funded through Grant in Aid and is therefore an activity under pressure. We would welcome additional resources to enable us to tackle waste crime and effectively monitor compliance at poor performing sites.

Looking more broadly, there is currently no provision for NRW to recover costs when investigating incidents involving waste. In our response to the previous Welsh Government Waste Crime Consultation we indicated that we would support widening the scope of our powers to bring cost recovery in line with the water recharge scheme.

We believe adaptation, innovation, and investment could better help tackle waste crime and the Duty of Care. The legislative Duty of Care for waste is important underpinning legislation that places responsibility on waste producers, handlers and manager to ensure that the waste in their control is properly dealt with preventing it causing a problem for our communities now and in the future. The largely paper based duty of care system is particularly hard to police. EDoC, a joint UK wide Government programme has led the way in the development of electronic Duty of Care systems but it needs further development if it is to convincingly replace paper transfer notes. We believe implementing mandatory electronic duty of care systems would greatly improve our ability to trace waste through the system and tackle waste crime.

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?

For local authorities to achieve the more challenging targets set in Towards Zero Waste, they must sustain the momentum of increasing preparation for re-use, recycling and composting, which is difficult because many have already made the necessary physical changes, by providing recycling facilities and offering enhanced waste management services. It follows that persuading more people to take part in current recycling services is essential.

Therefore, in principle we would support the proposal to amend Section 46 to include the option for local authorities to serve Fixed Penalty Notices to provide local authorities with a practical mechanism for improving public participation in recycling services.

This option should only be used by local authorities against repeat offenders and as a last resort. All reasonable efforts to provide clear consistent advice, confront perceptions and address any confusion with the householder/business should be exhausted before the use of Fixed Penalty Notices are considered.

Welsh Government and local authorities should also consider what incentives can be developed to increase participation in recycling services.

Whilst increasing recycling rates is important, Wales must create a circular economy that moves away from the current linear model, where materials are fed in to the economy at the start and discarded at the end. It is essential that mechanisms and drivers are put in place to encourage prevention and re-use of waste as recognised by the Welsh Government waste prevention programme. Manufacturers have a role in assisting householders to prevent waste through designing out waste in products as well as ensuring their products and packaging can be re-used or widely recycled

by householders at the end of their use. Local authorities and other public sector organisations, including NRW, must ensure that they take steps to influence sustainable procurement so that it optimises resource efficiency and waste prevention.

We would support WG undertaking further work to explore what other regulatory measures could be introduced that better deliver the SMNR and would improve material and resource efficiency. For example the introduction of producer responsibility for more waste streams and other mechanisms, such as the plastic bag levy.

Chapter 8 – Smarter Regulation – the Role of Basic Measures

Opening Remarks

Basic measures are potentially one of a number of important enabling mechanisms for the delivery of SMNR, as outlined in our overarching comments at the beginning of the consultation response. Figure 2 (page 8) illustrates the central role of the regulatory floor in integrating the push and pull between regulation and incentives - and by providing a clear regulatory floor across NRW's regulatory remit, basic measures provide a strong foundation on which the rest of the delivery model can be built.

Regulation is only as effective as the penalties and enforcement system that back it up. In this context, we are encouraged to see the discussion around civil sanctions in the consultation. They operate proportionately and synergistically with basic measures to provide an effective regulatory floor, in line with our regulatory principles. Such a use of civil sanctions, would require amendment to the Environmental Civil Sanctions (Wales) Order 2010.

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

NRW support the introduction of basic measures as a mechanism for regulating low risk activities which currently fall outside of an effective regulatory regime. Basic measures can also provide a means to streamline existing regulation, aligning effort on outcomes, rather than process.

The consultation correctly identifies diffuse pollution as a key use of basic measures, as this is an issue where cumulative impact of many low impact events is large. Such issues are at present beyond the scope of the regulatory system. In effect basic measures bring such issues under regulatory control.

Addressing concerns over increasing the overall regulatory burden, there may be other low risk permitted activities that could be instead regulated through basic measures. Basic measures need not be seen as either deregulatory or increasing regulation – rather being a consistent approach to low risk activity across the regulatory spectrum. We look forward to exploring this topic further with Welsh Government.

NRW will support WG in identifying areas where basic measures may be appropriate and what type of activities would benefit from such regulation, coupled with mechanisms to ensure compliance. Both the content and drafting process itself should be informed by and pursuant to the SMNR principles, if the potential of this proposal is to be fully realised.

The Water Strategy committed to review and where appropriate change current practices and regulatory approaches to tackle diffuse pollution. WG have contracted ADAS to carry out a review of basic measures for agriculture. Building on this, we think that the newly established WLMF Sub Group on Agricultural Pollution is a good opportunity to engage with the sector strategically on the development of WG's evidence base.

However, we believe that the scope for basic measures should be broad and not just limited to diffuse pollution or agriculture. Pursuant to this we have highlighted elsewhere in this consultation where opportunities exist for regulatory reform that could employ basic measures. Basic measures are an opportunity to address priorities for water pollution, habitat and soil degradation, access to the outdoors forestry management and physical (morphological) impacts from humans. Stakeholder involvement in the development of basic measures will be a fundamental factor in ensuring their effectiveness.

Basic measures are also a key enabling mechanisms for stimulating markets in Payments for Ecosystem services by providing the basic common standard (regulatory floor) on which PES incentive schemes can be built. Basic measures build confidence with investors that they will see results for the investment over and above the minimum regulatory standard.

Basic measures could also form the basis of a premium Brand Wales that supports the products of Welsh land management, underpinned by the credibility that a reasonable, rational and enforceable regulatory floor will bring.

NRW's early engagement with sectoral representatives suggest that such measures would be welcomed IF delivered as a part of systemic review to rationalise existing regulation in line with SMNR, rather than add further complicating layer. Brexit may facilitate such a systemic review, with the need to consider what may replace direct payments and their supporting cross compliance regime.

Gaps –The use of basic measures in the consultation focusses on diffuse pollution, but we suggests that basic measures as an approach has wide applicability that could be used as an SMNR-enabling mechanism for other sectors covered in this consultation. We suggest potential uses in the following areas:

:

- Post-Brexit scope of cross compliance
- Public rights of way / Statutory Access Codes
- Development / land use change with flood risk implications
- Septic tanks (as per England)
- Buffers, riparian zones and non-cultivation zones
- Crop / livestock nutrient management
- Landscape feature management, e.g. hedgerows, stone walls,
- HRA assessment requirements across land uses.
- Invasive species control

More broadly, and as part of a cross sector regulatory framework as we have indicated above, the consultation makes no mention of the wider use of Civil Sanctions. We consider both basic measures and civil sanctions as essential elements of an enabling regulatory mechanism to deliver SMNR. Comprehensive powers to deploy civil sanctions in combination with basic measures would enable us to maintain a risk-based permitting regime, risk-based compliance assessment/assurance and a risk based approach to enforcement. Their combined effect of a clear resource-efficient approach to regulation backed up by a proportionate enforcement response is also in line with NRW's Regulatory Principles.

In Wales the Environmental Civil Sanctions (Wales) Order 2010 and The Environmental Civil Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010 came into force on 15 July 2010. The Order permits Natural Resources Wales (NRW) as a regulator to impose civil sanctions in relation to offences specified in Schedule 5 of the Order. It sets out the procedure relating to the sanctions such as the provisions for non-compliance, administration costs, appeals and a requirement to provide guidance. The Regulations amend a number of other Statutory Instruments in a way which permits the regulator to impose specified civil sanctions in relation to breaches of those regulations. Civil sanctions are not meant as a substitute for the criminal law but are intended to provide a more proportionate, more effective approach for operators who are generally compliant. Criminal prosecution remains available for the most serious offences.

Although the civil sanctions in the 2010 Order have transferred to NRW, they are not currently available in respect of legislation formerly administered by the Countryside Council for Wales or Forestry Commission Wales.

NRW believes that the use of Civil Sanctions, when available and appropriate, are more aligned with the principles of SMNR. Their use, particularly Enforcement Undertakings, can reduce the legal costs for the offender and avoid any of the other implications that may be attached to a subsequent successful prosecution and possession of a court record.

We seek wider access to Civil Sanctions, in particular, we do not have access to civil sanctions in respect of a wider range of offences within the EPR (as is already the case in England) but also other regimes outside of EPR e.g. Forestry Act, Producer Responsibility (WEEE) and Batteries as well as conservation offences.

In facilitating a basic measures approach a number of immediate opportunities exist:

- Provision of access to Civil Sanctions in respect to a wider range of offences within EPR, as is already the case in England.
- The present agenda of the Wales Land Management Forum Sub Group on Agricultural Pollution could be used to scope out the level at which some of the basic measures might be pitched.
- The present Basic Measures ADAS contract will supply useful contextual information for the development of agricultural basic measures.

Chapter 9 – Agriculture

Opening Remarks

This particular section of the consultation document deals exclusively with issues relating to agricultural tenancies. Many of the other parts of the consultation, in particular those relating to public access to the countryside, basic measures and water have the potential to impact on a much larger number of farmers, including owner occupiers as well as tenants. Where appropriate we have drawn attention to this in each of the other sections.

Question 30 - Should the jurisdiction of the Agricultural Land Tribunal Wales be extended?

We support extending the jurisdiction of the Agricultural Land Tribunal Wales (ALTW) to incorporate those disputes for which arbitration under the Agricultural Holdings Act 1986 (AHA) is the only resolution mechanism currently available. Some 80% of the land in Wales is farmed and a significant proportion of this is managed under some kind of tenancy arrangement⁵¹. The nature of the relationship between landlords and tenants can therefore have a major impact on the management of natural resources. In particular, we are aware from discussions in the Wales Land Management Forum (WLMF) working group on agricultural pollution that existing tenancy arrangements can make it more difficult to agree on who should be responsible for installing and/or modernising infrastructure such as slurry stores. In this context, any measure which improves the capacity to resolve disputes more easily is likely to provide additional benefits in terms of natural resource management.

⁵¹ Preliminary analysis suggests that some 36% of Welsh farms have at least some rented land (covering everything from Full Agricultural Tenancies to Farm Business Tenancies, contract and share farming) although only 7.2% of Welsh farms are wholly rented. Taking into account those farms that have at least some rented land alongside those that are wholly rented, almost 27% of Welsh farmland is managed under some form of rental arrangement. (Estimates from Welsh Agricultural Survey 2015 – personal communication with Welsh Government Knowledge and Analytical Services).

Chapter 10 – Wildlife

Opening Remarks

NRW's remit does not extend to animal welfare, but we are concerned with the conservation of protected species, including the risks of incidental capture and killing. Snares are not used on the NRW estate. The Current Code of Practice has limited effectiveness.

We note that chapter 10 of the consultation document refers to the Law Commission's report on wildlife law.⁵² This report, which was published in 2015, set out to review and reform the current multitude of legislation relating to wildlife protection, which can be confusing and contradictory and is considered to be overly complicated. NRW supports the need to reform wildlife legislation to provide improvements to wildlife management and protection. We acknowledge that some elements of wildlife legislation originate from European directives and that there may be a desire to complete the Brexit negotiations prior to implementing the report's recommendations. However, NRW considers that the current consultation on the regulatory framework to deliver the sustainable management of natural resources (SMNR) presents an opportunity identify other elements of the Law Commission's report that could be implemented to provide a simplified approach which is up-to-date with current environment policies and SMNR, and which would not undermine compliance with current EU obligations, or pre-empt the outcome of Brexit negotiations insofar as they might affect future wildlife law.

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?

NRW welcomes the work of Welsh Government to improve the way in which snares are used. NRW does not have any evidence on the effectiveness of the Code of Best Practice. Neither have we received any reports on the incidental capture of non-target species, including European protected species. However, it is likely that such incidents may go largely unreported.

Question 32 - Do you agree clarification of the term "at least once every day" would be beneficial?

This is an animal welfare matter on which NRW does not take a view.

Question 33 - Do you agree a requirement to remove an animal caught would remove ambiguity in relation to the regular checking of snares?

This is an animal welfare matter on which NRW does not take a view.

⁵² <https://www.lawcom.gov.uk/project/wildlife-law/>

Question 34 - Should there be a requirement not to possess or sell a self-locking snare? Would this result in any disadvantages?

This is an animal welfare matter on which NRW does not take a view.

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?

NRW does not take a view on this matter.

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.

NRW would welcome the opportunity for Welsh Ministers to have powers to regulate the use of snares in the future. In particular, we would welcome the use of training to ensure better awareness of the risks to non-target species. We also welcome proposal 52 in the consultation document to tighten the law around the capture of species listed on schedule 6 of the Wildlife and Countryside Act (1981). Mention is made of badgers in the consultation document, but there are also other species at risk such as otter and pine marten, the latter currently being the subject a population reinforcement conservation programme with numbers increasing across Wales. It is important to ensure such rare species are not at risk from capture in snares.

Gaps: Proposal 52 considers clarification of the offence under WCA re setting snares likely to cause injury to schedule 6 animals. Mention is made of badgers, but not other species at risk particularly otters.

Chapter 11 – Assessment of Policy Proposals

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.

We welcome these proposals and the move to modernise legislation and progress forwards to create a healthier and more equal Wales, in line with the ambition set out in the Wellbeing of Future Generations Act.

Given that the Wellbeing of Future Generations Act provides the context for these reforms we would expect that further progression of them will deliver on human rights, Welsh language and protected characteristics. However, we note that although the statement around the Equality Impact Assessment screening exercise includes particular mention of people of different ages, disabilities and races, access to our outdoor spaces can also be hindered for people with other protected characteristics and consideration should be given to assessing impacts on all protected characteristics groups and those with multiple characteristics as part of this exercise.

By publicising the recently released guidance document ‘By all reasonable means: Least restrictive access to the outdoors’⁵³ to land managers would help share best practice in making our outdoor environment more accessible to everyone regardless of background or protected characteristic.

We also note the proposal as it stands does not mention any opportunities for people to use the Welsh language to reflect a Wales of vibrant culture and thriving Welsh language as one of the 7 goals in the Well-being of Future Generations Act.

Public organisations also have a legal duty under the Welsh Language (Wales) Measure 2011 of ensuring that services are provided to the public in both Welsh and English in line with the Welsh Language Standards. The new Welsh Government Welsh Language Strategy aims to increase the number of Welsh speakers to 1 million by 2050, and increase the opportunity for people to use the language in all areas of their lives.

The Welsh language is thriving and part of the natural environment of some of our communities. Wales is unique, the language is one of the things that makes Wales unique along with its history, culture and landscape. Any economic development from this proposal should ensure that employers follow good practice in recruitment procedures so that services are available to Welsh and English speakers in their

⁵³ <https://naturalresources.wales/media/682050/eng-least-restrictive-access-ogn-45.pdf>

language of choice in those communities and beyond, following the principles of the legislations in place.