

To: naturalresourcemanagement@wales.gsi.gov.uk Your Ref:

Cc: Our Ref:

From: Date: September 2017

Location: Tel: 01982 554200
Email: Rachel.lewis-davies@nfu.org.uk

Welsh Government Consultation – Taking Forward Wales' Sustainable Management of Natural Resources

Introduction

NFU Cymru welcomes the opportunity to respond to the Welsh Government Consultation '*Taking Forward Wales' Sustainable Management of Natural Resources*'.

NFU Cymru champions Welsh farming and represents farmers throughout Wales and across all sectors. Our vision is for a productive, profitable and progressive Welsh agricultural industry delivering jobs, growth and investment for Wales. Our aim is to establish the background conditions in which farm businesses can be profitable and develop.

The importance of the farming industry in rural Wales cannot be over-stated. Welsh farming businesses are the backbone of the Welsh rural economy, the axis around which rural communities turn. The raw ingredients that we produce form the cornerstone of the multi million pound Welsh food and drink industry which is Wales' largest employer employing over 222,400 people. We are part of a UK food and drink industry worth £108bn to the economy.

Welsh farmers also play a key role maintaining and enhancing our natural environment – Wales' key asset. Farming activity across over 80% of the land area of Wales supports a diverse range of species, habitats and ecosystems; provides a range of ecosystem services including flood alleviation, carbon sequestration, climate change mitigation; and delivers the spectacular backdrop for Wales' tourism and recreation sector worth an estimated £2.5bn annually.

Overall Welsh farming makes a unique and unparalleled contribution to the economic, environmental, social and cultural well-being of Wales. The contribution of the sector to the Well-Being of Future Generations Act and the seven well-being goals is summarised in Annex 1 for information.

We emphasise that agriculture is, by far, the largest land-use activity in Wales. As such the views put forward within this response should be adequately 'weighted' to reflect the fact that it is farmers who actively manage much of the Welsh environment on a day-to-day basis and who will be most affected by many of the proposals. Indeed, referring to the title of this consultation '*Taking Forward Wales' Sustainable Management of Natural Resources*', it is clear that farmers in Wales are Welsh Government's primary delivery partner as it is they who manage the greatest proportion of Wales' land area.

The consultation process

NFU Cymru would place on record the following concerns with the consultation process:

- We have long emphasised that the Environment (Wales) Act 2016 which establishes the framework for the sustainable management of natural resources (SMNR) is not well

understood by farmers. There is a completely new vocabulary accompanying this Act and at first glance the consultation would appear to have no relevance to farmers whatsoever, severely limiting engagement with the proposals from our sector.

- The consultation has been arranged around ten chapters, many of which are highly significant to farm businesses in Wales. Each of the chapters merit separate consultation in their own right so that the proposals can be properly considered by the businesses that will be most affected. It is simply impossible to go through all of the proposals in sufficient detail in one meeting as the Welsh Government has discovered through the running of their own consultation workshops.
- The 'bundling up' of proposals has resulted in an extremely lengthy consultation document. Whilst this has presented challenges in summarising proposals to our members, in some of the chapters there has been a clear failure on the part of Welsh Government to present the context or evidence driving the proposals. We highlight that a proper consultation should include sufficient reasons for proposals to allow consultees to give intelligent consideration and intelligent responses. We do not believe this has been the case throughout this consultation.
- A number of the consultation questions have been framed in such a way as to 'lead' responses. In some instances the questions also fail to seek feedback on specific proposals.
- The consultation process has been further hindered by the timing over the summer months when farmers tend to be unavailable to attend meetings due to heavier seasonal workload on farms as a result of harvesting, shearing etc. The fact that the consultation was issued by Welsh Government without prior warning was also unhelpful. The consultation was also issued just before the National Assembly for Wales went into summer recess with the result that Assembly Members have not had sufficient opportunity to give meaningful consideration or scrutiny to many of the proposals in the Senedd, in Plenary, or through the NAFW Committee structure.
- The consultation was launched prior to the publication of the Natural Resources Policy. This Policy should have driven progress towards sustainable management of natural resources in line with the Act. As a result we are unclear of the drivers behind the diverse suite of proposals contained within this consultation.

In summary, NFU Cymru believe the consultation process to be flawed and it is most concerning to us that proposals which will have significant impacts on farm businesses across Wales will be taken forward on the basis of such inadequate consultation. We express regret that the goodwill of the farming sector – upon which the sustainable management of natural resources approach will ultimately depend – has been undermined through this process.

Without prejudice to our stated position above with respect to the consultation process, NFU Cymru responses to Chapters 1, 2, 3, 4, 6, 8, 9, 10 and 11 of the Welsh Government Consultation are presented below. We request that due consideration of the above section of the NFU Cymru response is included in the Welsh Government analysis of each of the chapters and analysis to be presented to Welsh Ministers.

Chapter 1 – Towards the Sustainable Management of Natural Resources

NFU Cymru welcomes the opportunity to respond to Chapter 1 of the Welsh Government consultation entitled 'Towards the Sustainable Management of Natural Resources'. We note Welsh Government, through this chapter, is seeking general views on whether there are opportunities to further develop the regulatory framework to:

- Promote a circular economy;
- Deliver nature-based solutions; and
- Support new markets and innovative approaches

NFU Cymru would start by emphasising that agriculture is, by far, the largest land-use activity in Wales with the result that farmers will be a most significant 'delivery partner' in achieving the sustainable management of natural resources and implementation of the Natural Resources Policy.

In discussions with our members as part of this consultation process, it is clear that the new legislative framework and the sustainable management of natural resources approach and what this will mean in practice is not at all understood by farmers. There remains a lack of clarity and this is a key challenge as we move from concept to implementation phase. It is now time for Welsh Government to provide more detailed information on how it views sustainable management approaches working in reality.

This chapter seeks views on whether there are opportunities to further develop the regulatory framework to deliver the sustainable management of natural resources.

The NFU Cymru principles for designing a better regulatory environment have been set out in our recent publication 'Vision for the future of farming – A regulatory regime that's fit for purpose', available on our website [here](#).

Fundamentally, we emphasise that there are a spectrum of approaches available to deliver the desired outcomes for the environment and society. This chimes with the ways of working enshrined in the Environment Act which actively encourage approaches that look beyond formal regulation.

We are concerned, as a result, that the first manifestation of the new Act from Welsh Government – even before the publication of the Natural Resources Policy – is this consultation which puts forward ideas for further regulatory responses as a 'first-stop' rather than a 'back-stop'. Welsh Government through this consultation appears fixed on achieving SMNR objectives via regulatory approaches.

We are clear, regulation and legislation that makes farmers and landowners provide 'for free' a range of goods and services valued by society actively undermines the pursuit of sustainable management of natural resources goals. The ambition for Welsh Government should be the development of an 'enabling framework' that facilitates and values SMNR.

Q1 – Do you consider there are further opportunities for integration of circular economic approaches? If so, please provide examples of where there are regulatory obstacles to achieving integration.

Q2 – Are there any regulatory barriers to introducing nature-based solutions? Please provide information.

Q3 – Are there potential opportunities for market mechanisms or innovative regulatory approaches? Are there any legislative barriers to their implementation?

Turning specifically to the consultation questions we identify the following regulatory and wider barriers to progress:

- Planning system – As outlined in the introduction to this consultation, Welsh farming makes a unique and unparalleled contribution to the economic, environmental, social and cultural well-being of Wales. The continued delivery of public benefits, goods and services by farmers is reliant upon viable farm businesses; in the longer term building business resilience should be a central aim by actively supporting farmers to modernise and invest in the latest farming systems and technologies; harness natural resources for renewable energy generation; and diversify their income. This requires a planning system that delivers national, local and community objectives by supporting appropriate development and that demonstrates a

thorough understanding and appreciation of the role of agriculture, not only from the perspective of farmers as food producers and principle land managers, but also having due regard to the critical economic relationship between the appearance of the countryside and the need for profitable businesses to sustain it.

- Permitting regime – allied to the above point, the cost and complexity of the permitting regime is often cited by our members as a barrier to developing sustainable rural businesses and enhancing business resilience. There is a lack of clear guidance and support for farm businesses available through NRW currently
- Nutrient management – At farm level, nutrient management is a key aspect to circular economy approaches that use resources more efficiently in a loop. Current proposals to designate Wales as NVZ - which will establish open and closed periods for the application of slurry - severely restrict farming operations and hinder farmers ability to apply nutrients when ground and weather conditions are optimal, undermining their ability to maximise the value of nutrients applied. This is a key example where regulatory approaches actively impede efficient resource use.
- Renewable energy - we highlight that farmers in Wales have a significant interest in land-based renewable energy production and more acknowledgement should be given for agriculture's potential to decarbonise the rest of the economy through land-based renewables. However, many barriers remain to the implementation of renewable technologies at farm level including the planning and permitting systems (above) as well as establishing grid connections for export. This opportunity also has to be considered in the context of reducing certainty over public support via the Feed in Tariffs and the Renewable Heat Incentive which challenges the viability of many farm scale projects. NFU Cymru would conclude that Welsh Government must take action if the potential opportunities are to be fully realised in line with its ambition.
- Public procurement - the share of Welsh produce in public procurement contracts remains low with considerable room for improvement. EU legislation has often been cited as one of the reasons why Welsh Government and public bodies cannot support Welsh producers through public procurement contracts. There are regulatory and other obstacles that need to be addressed so that Welsh Ministers are able to ensure Welsh resources remain within Wales and deliver benefit to the people of Wales through its procurement policies. Welsh Government must make this a priority.
- Carbon budgets - we are aware that Welsh Ministers are currently establishing carbon targets and budgets under Part 2 of the Environment Act. It is vital that future regulation in this area does not put Welsh agriculture at a disadvantage compared with some of its competitors. Welsh emissions targets should not be achieved through reduced production in Wales and increased reliance on imports, which would be to effectively 'export' production related emissions. We note that the Cabinet Secretary has decided to allow for a limited amount of international off-setting within the accounting framework. Welsh Government should actively explore the regulatory barriers to establishing off-setting schemes within Wales and within sectors as a means to fund efforts to reduce emissions, increase carbon sequestration and incentivise behavioural change. Such an approach, if allowed through the regulations, may also serve to attract inward investment from multi-national corporations into Wales who are seeking to off-set the carbon emissions of their operations.
- Valuing public goods and services - Many of the goods and services delivered by farmers remain largely unrewarded through conventional markets. It is important to recognise that whilst some nature-based solutions at scale potentially contribute and enhance existing farming activity, there should be no doubt that others will severely impede on the day-to-day running of farm businesses and overall food security. They have the potential to reduce productivity and competitiveness and hinder the ability of farmers to earn a living through conventional markets. As such it will be necessary to ensure that farmers involved in the delivery of these benefits are both compensated and rewarded through the public and private purse. Such schemes must be developed in collaboration and must work for farmers.

- **Cost incurred calculations** - In the past, efforts to value the delivery of goods and services, through, for example, agri-environment schemes have been constrained by the need to cost goods and services on the basis of costs incurred, income foregone calculations in line with WTO rules. Income foregone calculations provide a crude measure of public value and do not properly compensate for primary and secondary goods and services provided by farmers. We identify that this is a key barrier to the development of sustainable management of natural resources approaches going forward.
- **Payment for Ecosystem Services** - In terms of the development of new markets, NFU Cymru supports the development of new markets through innovative, collaborative approaches that seek to recognise and value the full range of goods and services provided by farmers alongside their core food production role. We identify farmers in Wales would be keen to explore options to attract private funding to secure and enhance the ecosystem services they provide through a Payment for Ecosystem Services (PES) approach. However, the experiences of our members to date, suggest that there are significant obstacles to overcome in making such approaches become a reality. Whilst PES has been increasingly emphasised in recent years as a model for contributing to sustainable management of natural resources objectives, the extent to which 'pure' markets can be established remains questionable and the evidence, thus far, suggests that connecting beneficiaries and providers is far from straightforward with private investors disinclined to engage. In terms of managing a catchment for water, for example, there appear to be demands from water companies for enhanced standards of regulation and enforcement of the farming sector before they are prepared to 'come to the table'. Farmers in Wales cannot accept ever increasing levels of regulation, undermining competitiveness, on the vague promise that it would possibly lead to a PES approach for some. Much clearer signals and support for the 'beneficiaries pays' principle from Welsh Government is now needed if progress is to be made.
- **Sustainable Management Scheme** - The RDP funded Sustainable Management Scheme (SMS) has been developed by Welsh Government as a mechanism for delivering landscape scale support. Farmers have made considerable efforts to develop bids for funding to undertake the delivery of environmental actions collectively. However, so far, there have been low rates of success within farming circles compared to other groups, perhaps exemplifying a lack of trust in the ability of farmers to develop and deliver and engage in new markets. Overall the perception is building that such approaches are not targeted at farmers and they are not being empowered via this mechanism to take the lead. We further highlight that since this mechanism is funded via the RDP it is now time-limited and members engaged in the progress are highly concerned at the complexity and time taken to go through the application process and to the implementation stage. This is an area where Welsh Government should take action immediately.
- **Thinking long-term** – so far approaches and mechanisms to support the sustainable management of natural resources do not align with the ways of working enshrined in the Environment in that they fail to address the long-term. This 'start-stop' approach to project funding also runs counter to the evidence that emphasises the need for a long-term commitment if the full benefits for biodiversity are to be realised. There is also often a substantial delay, potentially several years and decades between the adoption of changes in land management practices and the delivery of desired environmental outcomes. We highlight that, in the context of Brexit, sustainable management of natural resources currently secured via agri-environment schemes face an uncertain future and there is a need to embed long-term thinking into policy delivery.
- **Innovative approaches** – our experience suggests that Natural Resources Wales remain risk adverse when it comes to the deployment of their experimental powers and powers to suspend regulation. NFU Cymru has identified a number of opportunities when such powers could have been deployed since April 2016. For example, exploring options to develop an alternative approach to NVZ designation as well as the use of constructed wetlands as a means to manage lightly soiled yard run-off. We ask Welsh Government and NRW to adopt a far more pro-active approach to trialling innovation.

We would highlight that farmers in Wales are operating in a period of profound uncertainty brought about by the decision to withdraw from the EU. This has resulted in uncertainty in terms of the future of CAP, future trading arrangements and also in the area of regulation. Whilst the period of negotiations to decide the terms of our withdrawal has commenced, the outcome cannot be predicted at this stage. It is vital that Welsh Government recognises that predicting the future will be difficult and acts to provide certainty to business where it can. We are clear that additional, unnecessary regulation as proposed throughout the remainder of this consultation weakens business confidence and undermines progress towards the sustainable management of natural resources. It also undermines Wales' competitive position.

Overall, we are clear that the new legislative framework presents the opportunity for the industry to work with Welsh Government and NRW on the development of voluntary, partnership approaches that deliver better outcomes for farming, the environment and society in line with the principles enshrined in the Act. It is regrettable that Welsh Government actions have fallen short and do not currently align with the rhetoric or, indeed, the ambition of the new legislative framework.

Chapter 2 - Forestry

NFU Cymru welcomes the opportunity to respond to Chapter 2 of the consultation which sets out proposals relating to forestry legislation.

NFU Cymru would express concern about the content of this chapter in that changes are being proposed, but there is little detail and evidence provided that things are not working now and little information, where changes are proposed, on how they would actually work in practice. As a result it is difficult to give a detailed fully meaningful response to this part of the consultation which does affect most landowners in Wales to a greater or lesser extent.

We look now at some of the proposals in more detail.

Proposal 1 – To amend NRW's general duties under the Forestry Act 1967 to align more fully with the sustainable management of natural resources.

Our concern in this proposal relates to the term sustainable management. Although it is included in Section 4 Environment Wales Act 2016 it is unfortunately not clear in relation to farm woodland and forested areas on farms and the term is open to interpretation.

As an example, the consultation mentions balancing the duty between forestry and nature conservation. This document does not go anywhere near looking at a bigger picture the Environment Act 2016 was intended to introduce. What would be the impact of woodland management on adjoining land and in particular farmland? This is very relevant to us as farmer representatives and this is an issue that members have brought up. This is particularly relevant to felling periods, for example, as is the need for effective pest control and long term stock proof boundary obligations. Concerns have also been raised relating to achieving the right balance between conifer trees and broadleaved woodlands. Conifers do and will continue to have a commercial value and would be important where the primary objective is farm shelterbelts.

Therefore continuation of general duties under the Forestry Act would concern us without adequate safeguards for commercial tree plantings and impact assessments on other sectors particularly on neighbouring land.

Proposal 2 – extending the powers of NRW to delegate certain functions under the Forestry Act 1967, to enable greater collaboration and involvement of local people and communities.

Our immediate concern with this proposal as written relates to the lack of detail as to whom and under what circumstances would the delegation of function occur. Would this be a matter for Ministers, Welsh Government or NRW's Board? This is a classic example of the lack of detail that we have encountered throughout the consultation.

If powers were delegated, who, for example, would be responsible for the maintenance of boundaries? We would also suggest that the proposals' wording should specifically refer to adjoining landowners and occupancies as well as local people and communities. A good neighbour policy backed in workable legislation will be paramount if Welsh Government decides to implement this proposal.

Proposal 3 – new approaches to felling licences requirements, including opportunities for alternatives (via a management plan) and aligning conditions with the sustainable management of natural resources and its supporting principles.

We would generally welcome the flexibility this proposal brings. In a totally sustainable approach it would be appropriate in some cases to bring land back into agricultural production where circumstances are right. This needs to be built into this proposal. It may not be used often but never the less should be part of any proposed change given the predicted challenges to our global food production system. This is because legislation is long term and land use circumstances change over the years.

We do recognise the benefit for management plans but the level of detail in these needs to be proportionate to the actual area and type of woodland.

We note the reference to woodland carbon projects but would also point out that there are also other ways of carbon sequestration which would mitigate carbon losses and exchange between them which should be considered where equivalents can be demonstrated.

Proposal 4 – amending the governance requirement to maintain a Regional Advisory Committee as it is no longer relevant and other stakeholder fora can provide consultation and advisory support.

We note the intention to revoke the Regional Advisory Committee, and replace it with a Wales Land Management Forum. In general we would have no issues with this provided there is fair farmer representation that actually reflects land use with 80% of Welsh land managed by farmers.

We would point out that the Forum has a very wide remit covering not just forestry issues and there could be a case for sub or task and finish groups. It will also need to take account of specific local issues and be prepared to use local expertise and knowledge. A comparison would be the Flood Defence Committee which was an all Wales body but proved less effective than Local Flood Defence Committees largely because it did not have local knowledge to come up with the best local solutions.

We believe that the forum needs to be chaired independently with Welsh Government providing the secretariat.

Proposal 5 – refining the existing statutory frameworks for ancient, veteran and heritage trees, to improve the protection they are afforded.

It is our strong belief that the existing legislation is more than adequate and there is no need to refine the very strong existing statutory frameworks which are on the whole well understood. The solution is not further legislation but clear guidance on existing legislation. In fact the legislative protection offered to trees in Wales is amongst the most stringent in the whole of Europe. Breaches not only face prosecution in the courts but stringent reductions in Basic Payments under cross compliance

rules for breaches listed in <http://gov.wales/docs/drah/publications/161222-gaec-7-maintenance-landscape-features-en.pdf>

Briefly we will address the specific questions asked in this section of the consultation.

Q4 - 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?

This is covered in our reply to proposal 1 and we would have concerns that balancing duties are too narrowly defined in overall land use terms thereby failing to look at the bigger picture that the Environment Act allows.

Q5 - 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.

No, NFU Cymru would not agree with this. We have concerns as there are no details or safeguards written in the consultation on terms of reference and delegated responsibilities. Forestry and woodland is long term and does not readily allow meaningful safeguards to be built in protecting neighbours rights in generations to come.

Q6 - 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?

Yes we would agree but a long term forest management plan needs to be proportionate to the size of the woodland block and have in built flexibility with commercial considerations given equal weighting in coming to decisions.

Q7- 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?

Yes but with the proviso that farming is fairly considered as a sustainable use of land and that in the right circumstances afforested land could be converted into agriculture land. Felling licences issued should also consider the effects on land and businesses adjoining woodland and afforested blocks.

Q8 - Do you agree that NRW should be able to revoke or amend felling licenses or forest management plan approvals? Please indicate if you foresee any difficulties amendment or revocation might cause.

Yes as this is all about the best long term management and must have in built flexibilities as circumstances do and will change in the plans' lifetime.

Q9 - Do you agree with the proposals relating to the repeal of the requirement of the RAC?

Our points under proposal 4 specifically refer to our views on this.

Q10 - 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?

No the current legislation is adequate. The duty to maintain these trees will add a significant financial burden on farm business where these trees are located particularly for those businesses who have

an area TPO or several individual TPOs. Specialist tree surgeon work has significant cost involved particularly bearing in mind the difficult locations where these trees are often located.

Chapter 3 – Designated Landscapes

NFU Cymru welcomes the opportunity to respond to Chapter 3 of the Welsh Government consultation which sets out proposals relating to designated landscapes including:

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

Proposal 6 – Aligning the statutory functions of designated landscapes more clearly with the sustainable management of natural resources

NFU Cymru is pleased to have contributed to the Marsden Review and has also been an active participant in the Future Landscapes work led by Lord Dafydd Elis-Thomas, AM. This forum has explored the case for reform in the light of the new legislative framework provided by the Well-Being of Future Generations Act and the Environment (Wales) Act 2016.

The Well-Being of Future Generations Act places a duty on public bodies to work to improve the economic, environmental, social and cultural well-being of Wales. The Environment (Wales) Act puts in place the framework for a more integrated approach to manage Wales' natural resources to achieve long-term sustainability. The Act is clear that the sustainable management of natural resources must contribute to the achievement of the well-being goals – so economic, social, cultural as well as environmental considerations.

In this context, reforms to the statutory functions of designations would appear necessary. NFU Cymru would support this. We have long expressed concern that the purposes of National Parks, as defined in the 1948 Act, are increasingly outdated and not capable of addressing future challenges. NFU Cymru has long argued for a revised definition to the purposes of both National Parks and AONBs that takes into account and embraces equally the economic, social, cultural and environmental aspects of sustainability. Hitherto, National Parks in particular, have de-emphasised the socio-economic consideration, prioritising landscape conservation above all else with inadequate regard given to the social and economic well-being of those living and working in these areas. Reform is required to address this.

As well as recognising equally economic, social, cultural and environmental aspects, reforms should take account of the fact that designated landscapes and those businesses operating within them need to be allowed to adapt and change over time to remain viable and fit for purpose without unfair, costly and burdensome limitations and restrictions placed on them. In line with the aspiration of the Acts and thinking long-term, reforms must also take account of future challenges, including those to our global food production system.

Overall the aim should be to achieve a truly sustainable vision for designated landscapes that does not just seek to balance or compromise a number of seemingly competing objectives, but rather aims to develop a vision that pro-actively seeks to realise the benefits of integrating these aims.

Proposal 7 & Q11 – Establishing a clear formal relationship between special qualities of a designated area and the partnerships, powers and policies that drive its sustainable management.

We note that areas were originally designated as National Parks and AONBs because of the quality of the landscape. We would agree a more contemporary interpretation of the qualities of landscape extends beyond its visual amenity to include biodiversity and cultural heritage. Designated landscapes also provide a range of goods and services such as carbon, water, flood alleviation as well as food valued by society.

The key aspect understated in the discourse of special qualities of designated landscapes currently is the fact that the Welsh landscape both within National Parks, AONBs and more widely are not 'natural' *per se*. The intrinsic beauty of our designated landscapes is the result of centuries of farming and other activities by man. It is also important to recognise that agricultural land – created, shaped and maintained by farmers – makes up by far the largest proportion of the land area within the designated landscapes.

It is our view that the most important 'special qualities' of designated areas are the people and communities who live and work within them, particularly, in the land-based sectors who play a critical role in shaping our landscape. We would further highlight that these individuals and businesses provide a cultural dimension to the visitor experience as well as the economic rationale underpinning landscape quality.

Overall it is vital to recognise that without sustainable agriculture these landscapes and what makes them special and distinctive would not be maintained. Any reference to special qualities that does not, therefore, place farming central is incomplete. As a result, recognition of farming's special role in the sustainable management of designated landscapes should be formally acknowledged in reforms.

Specifically responding to question 12 and the matter of where special qualities of each designated area are identified, whether these should be given greater weight in decision making. We would emphasise that the process for identifying special qualities must recognise the points made above and the central economic, environmental, social and cultural contribution of farming to the designated landscapes. Where this is the case, we would support greater weight to the special qualities in decision making.

Proposal 8 – Enabling governance arrangements to evolve to reflect local circumstances including a wider range of delivery models such as partnerships or delegated responsibilities.

NFU Cymru has long highlighted the huge variation and inconsistencies in performance across the National Parks at present which has led to significant tensions in some areas. In some Parks, our members report issues relating to the lack of accountability of officers and members (some of which reside outside park boundaries) together with a feeling of being powerless to influence or change policy across a range of areas.

We identify a key challenge remains how to effectively engage and respond to the needs of the people and businesses within designated landscapes. Performance appears to vary widely across national parks and AONBs.

It is our view that any reforms to the legislative framework governing designated landscapes must seek to address this issue. NFU Cymru would, therefore, support changes to governance arrangements and the strengthening of performance management to offer consistency across all the designations. Moving forward, reforms should facilitate the appointment of some directly elected members to 'National Park' committees as at the moment there is no one accountable to businesses/residents who live and work within designated landscapes.

In our view this starts with the development of a shared vision which takes into account all those with an interest in designated landscapes including farmers and land managers and those who make a living within their boundaries. This needs to be followed by the development of an organisational culture which actively seeks to foster an enabling framework which is accountable, transparent and easy to engage with at all levels. We would not be in favour, however, of reforms that result in significant extra costs, particularly, during this period of austerity.

We note that the consultation is silent on the matter of planning function. We would place on record that this is an area where members express concern and frustration in the approach adopted by some National Parks. There is a need to recognise that modernisation and investment in the latest technologies in farming will be essential in future; farms are well placed and should be actively supported through the planning process to harness natural resources available to generate renewable energy; developments that allow farmers to diversify their income and increase business resilience to allow them to continue to perform their important function both as food producers and landscape managers should also be actively supported and not stifled within designated landscapes.

We further highlight the consultation proposals lack clarity on governance arrangements of designated landscapes which will need to evolve in the context of area statements and the well-being plans. Our concern at this stage is that both Acts remain to some extent conceptual and there is limited understanding of how they will operate in practice beyond the formal processes established through the acts.

Proposal 9 & Q13 – Refreshing the way new areas can be recognised for their special qualities and their sustainable management, including whether there should be an agreed standard for the level of community consultation and representation.

We note that ongoing calls exist for areas beyond the current designated landscapes to be recognised by some form of designation. Currently only NRW can make an order to designate a National Park or Area of Outstanding Natural Beauty in line with statutory tests.

This aspect of proposals requires very careful consideration. Some NFU Cymru members have expressed concern that further designations may undermine the 'specialness' of the existing designated areas (which already extend to 25% of the land area of Wales) arguing that if an ever increasing area of Wales is designated what makes those existing areas special?

In addition, members have expressed concern that safeguards need to be incorporated into standards so that designations could not be taken forward without full participation and support of the farming community who are likely to be central in making such areas 'special' given that they manage 80% of the land area of Wales.

Chapter 4 – Access to the Outdoors

NFU Cymru welcomes the opportunity to respond to Chapter 4 of the Welsh Government consultation which sets out proposals relating to access to the countryside aimed at achieving:

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

The NFU Cymru response is framed around the specific proposals contained within the consultation and not questions 15-17 which are too generic and do not adequately reflect proposals.

NFU Cymru Principles for Access and Recreation

NFU Cymru would start by highlighting that 80% of the land area of Wales is agricultural land and under the ownership and management of farmers. As such, farmers are key providers of the landscape and countryside upon which many access and recreational activities depend. The 'offer' is significant – in Wales, we have the greatest length of rights of way per square km of any nation in the UK as well as significant access land (in excess of 460,000 hectares, or over 20%) for the purpose of outdoor recreation. The area of land accessible by right has increased threefold since devolution.

NFU Cymru has always been a strong advocate of measures that improve public understanding and appreciation of farming. We are clear that public access to the countryside is a key opportunity to achieve this aim. We want the public to access and enjoy our countryside. We understand the important contribution that this can make to the health and well-being of the people of Wales as well as the economic contribution of those visiting as tourists but this needs to be managed to ensure they have the best possible experience.

Access recreation has to be in the right place and at the right time and there is a need to recognise that any changes to access legislation impact disproportionately on the farming community. The NFU Cymru response to this consultation reflects extensive consultation with members across Wales and should be adequately 'weighted' to reflect the fact that it is our members who are the key access providers.

In our response to the Welsh Government Green Paper on Responsible Recreation (September 2015), NFU Cymru established a number of principles to guide the development of approaches to access and outdoor recreation provision in Wales. This included:

- Risk minimisation – improved access should not result in more accidents and there is a need to recognise that there are substantial issues of public safety that have to be considered. The countryside is not risk-free and the health and safety of access users must be safeguarded in any reforms. We emphasise that it is not the role of farmers to advise access users about particular hazards which include farm animals, crops and agricultural chemicals and specific farming operations. Nor do farmers have the time. As a result access users must take responsibility for their own safety by assessing potential risks. From the experiences of our members it is clear that the general public are not, on the whole, well-informed about risks currently.
- Cost, burden and liability – improved access should not result in increased costs, burden and liabilities being placed on farmers in Wales. There are many examples of actions by access users that could lead to increased costs and economic impacts on agricultural businesses. This includes damage to crops, mixing of livestock management groups due to gates being left open or disturbance by dogs. Increased burden could be placed on farmers as a result of having to manage risks associated with livestock such as cows and calves – keeping them housed over the calving period, for instance. Whilst changes to access legislation could see increased public liability placed on farmers where higher access rights are placed on the existing network or where access rights are broadened. There is also a need to recognise that farmers have significant regulatory obligations through, for example, the cross compliance regime which could be directly and negatively impacted by proposals leaving farmers in breach and subject to heavy penalties through no fault of their own.

These principles remain highly relevant to the current consultation. Welsh Government has a duty to act responsibly and protect the public. A comprehensive risk assessment that fully evaluates levels of risk and current levels of public understanding must be undertaken to properly inform decision

making. Welsh Government also needs to undertake a full impact assessment of proposals with specific focus on costs, burdens and liabilities on farmers and landowners as access providers.

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.

NFU Cymru does not support proposals to remove restrictions on the range of activities that can take place on public rights of way to allow cycling and horse riding. We make the following points:

- Practical considerations - many footpaths are simply not suitable or wide enough to accommodate multiple users and pre-existing rights of way furniture including kissing gates and stiles which currently exist on footpaths do not facilitate access by horses and cyclists. Kissing gates and stiles are very important features on rights of way currently as they reduce the risk of livestock escaping into other fields; restrict non-legal visitors from accessing land, for example, illegal access by motorcycles which is an increasing problem in Wales; reduce risks of rural crime such as thefts and fly-tipping; they provide clear markers ensuring that members of the public know the route of the footpath across a field.
- Landowner/farmer burden and liability - Higher access rights will mean higher risks and impacts and the burden and increased liability will fall on farmers and landowners. Elevated levels of risks associated with accommodating a range of uses will inevitably place farmers in a position of increased liability leading to increased costs of insurance premiums. Whilst Local Authorities will face no additional burden of maintenance or liability to allow for cycling and horse riding no such assurances have been offered to farmers and landowners. This is unacceptable when we know higher access rights will lead to deterioration in footpath quality
- Public safety – higher access rights will lead to a situation where access users are contesting for the same space, travelling at different speeds, ultimately leading to conflict. There can be no assumption that recreational access will be responsible and potentially dangerous situations arising such as collisions, spooked horses.
- Assessing risk – as above, we have no confidence that access users will have the knowledge and expertise to be able to appropriately assess risk, particularly where risks in the farmed environment are present.
- Conflict resolution - No indication has been provided of how conflict between users will be managed and resolved and how irresponsible use will be enforced and penalised. We highlight there is currently very little support available from the authorities where problems exist.
- Accessibility issues – use by horses and cyclists will result in increased poaching, rutting and slumping of public rights of way making them less accessible for all rights of way users, particularly walkers and reducing opportunities for users with limited mobility. Proposals effectively diminish access for walkers whose confidence would be undermined if they were to meet cyclists travelling at high speed or are expected to share footpaths of 1m wide with horses.
- Environmental impacts – this includes poaching due to over use or riding or cycling in inappropriate weather and ground conditions leading to soil compaction and erosion. There are also issues of erosion where waterways are unbridged with impacts to water quality. Public rights of way pass through areas under designation such as SSSI and SAC valued for their priority habitats and species. We stress that the farmer's ability to meet their regulatory and contractual requirements such as cross compliance which sets standards for

environmental conditions will be challenged. Environmental impacts are particularly concerning in key honeypot areas and there are no safeguards in place to mitigate the risks

- Economic impacts – no consideration has been made to potential impacts to existing legitimate businesses if a wider range of activities is permitted. The business case for existing cycle tracks would be undermined if cycle access was provided for free on all public rights of way. Some access users may also view higher access rights as the ‘green light’ to run large commercial events across private land for which the access provider receives no benefit whatsoever and all the inconvenience.
- Co-operation – The relatively good levels of co-operation that exist between Local Authorities and landowners currently which has resulted in partnership working to upgrade rights of way furniture from stiles to gates to facilitate more inclusive access for a wider diversity of people would cease. The move from stiles to gates to facilitate horses and cyclists would also facilitate entry for non-legal activities such as trail bikes and fly-tipping. It would also increase the opportunity and risk for rural crime and theft.
- Future demands - The provision of access rights allowing cycling and horse riders on public rights of way will be followed very rapidly by pressures from user groups for upgrades to surfaces and furniture as well as ongoing maintenance. No information has been provided on how this work will be funded and how they will be maintained – higher access rights will inevitably mean more rapid deterioration in condition.
- New access rights – we query the long-term status of public rights of way should higher access rights be introduced. Would, for example, a public right of way become a bridleway after 20 years (or after a set period of time) leading to an increase on the burden of landowners? A footpath is required to be 1m wide whereas a bridleway has to be 2m.
- Coastal Path – we seek clarification on whether higher access rights will also include the Wales Coastal Path. There are clearly some substantive risks to human safety associated with such a move and it would be highly irresponsible.
- Funding - proposals effectively raise public expectations without providing the funding to deliver.

Overall NFU Cymru rejects the proposal for blanket changes granting higher access rights on public rights of way.

Whilst there may be scope to increase the range of activities on some public rights of way to allow cycling and horse-riding (for example to join up two bridle paths) these should be identified through the work of the Local Access Forums and only taken forward on the basis of full permission and compensation of the landowner.

We very much want the public to enjoy the countryside, created, managed and cared for by farmers and we want them to have the best experience possible. We believe that this can best be achieved by targeting resources in targeted paths in specific locations where it is appropriate and where risk of harm can be minimised.

Proposal 11 – To amend or revoke the following list of restrictions on access, provided in Schedule 2 (1) of the CRow Act 2000:

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

NFU Cymru is not supportive of removing restrictions on the range of activities that can take place on CRow access land. We would express concern at the lack of detail provided in proposals. We make the following points:

- Vessel or sailboards on any non-tidal water – clarification is sought on what is meant by ‘vessel’, for example does this include motorised vessels?
- Any animal other than a dog – a further explanation of ‘any animal other than a dog’ is required. Our members identified a number of issues here including biosecurity. For example, there has been an increase in the number of ‘pet pigs’ kept in the UK. Granting open access to the countryside poses a very significant disease risk for a number of notifiable diseases such as Foot and Mouth and Swine Vesicular Fever. We ask will owners of ‘pet pigs’ be subject to the same livestock movement and quarantine restrictions together with an appropriate system of sanction as livestock keepers? A further issue relates to the provision of access and egress points for horses to gain entry to CRow access land and how this would be taken forward.
- Bathing in any non-tidal water – A clear definition of what is meant by non-tidal water should be provided and a number of exemptions such as farm ponds, reservoirs and lagoons should be included. Our members identified very significant health and safety risks associated with the removal of this restriction.
- Organised games – a definition of organised games should be provided. It is wholly wrong that such events could be taken forward without the permission of the landowner and commoners (where this is common land) and the local authority. CRow access land is already subject to events such as illegal raves which result in anti-social behaviour. There is an absence of information on what constitutes ‘commercial’ activity in the current Act and these proposals only perpetuate ambiguity in this area. It is unacceptable that event organisers can generate profits from events whilst farmers and landowners pick up all the inconvenience and costs.
- Camping - camping on CRow access land has the potential to cause numerous issues including disturbance to livestock including separating ewes and lambs, damage to biodiversity including key habitats and species, fire risks, as well as anti-social behaviour such as littering. It is very concerning that no safeguards are provided within proposals nor limits to this provision, for example, limits to the size of a gathering, establishing times when access users can set camp and clear the site the following morning, duration of stay etc. We are clear that simply lifting the current restriction would be disastrous and we are wholly opposed to this proposal. We highlight that many of our members have applied for planning permission to establish legitimate camping businesses – indeed, some of our members have had proposals refused by Local Planning and National Park Authorities – lifting this restriction will challenge the viability of existing businesses by providing for camping for free.
- Hang-gliding and para-gliding – proposals lack clarity on where hang-gliders and para-gliders will be able to take off and where they can land. Our members experience very significant localised issues currently such as the spooking of livestock. Again there is no recognition of the need for safeguards within the proposals.

Further changes to CRow access land will only add to the confusion that already exists about so-called right to roam and cumulatively, proposals will result in significant environmental impact undermining the resilience of our most ecological fragile areas in Wales. Proposals also lack safeguards to protect existing commercial activities developed by our members and undermine their capacity to develop diversified recreation and tourism businesses for the future, impacting on the ability of farmers to make a living. This is grossly unfair given that farm diversification has been actively encouraged by government and farmers have invested over several decades. The assumption that public access of this sort should always be free at the point of use undermines ‘green growth’ and the development of markets for the full range of goods and services provided by farmers.

Proposal 12 – To allow, with appropriate authority, organised cycle racing on bridleways in order to bring rules relating to bridleways into line with footpaths.

More information is required on what is meant by organised cycle racing, who the organisers are required to contact, what assessments of risk organisers are required to undertake and other event management to ensure safety, protection of the environment and local businesses and communities. Insufficient information has been provided on how conflict between access users will be addressed and enforced. At the very minimum organised events should attract a fee to those who bear the costs, burden and liability (i.e the landowner and the local authority) of access provision and not be provided free of charge.

Proposal 13 – To extend CRoW Act access land to the coast and cliffs.

NFU Cymru does not support the extension of CRoW access land to include coast and cliffs, current opportunities exist through the Wales Coastal Path provisions and these are more than adequate. We make the following points:

- Defining coast and cliffs – we express concern at the lack of detail behind proposals and we ask does CRoW access to coast and cliffs include the width of the footpath only or also include a broader area of land around the path, if so how much land is proposed and how will it be mapped.
- Higher access rights – we seek clarification that the lifting of restrictions on CRoW access land (as per proposal 11 above) will also apply to coast and cliffs CRoW land. We identify profound issues of public safety should these restrictions be lifted.
- Economic impacts - Proposals have the potential to impact negatively on those diversified tourism and recreation businesses that have developed in coastal areas. The cumulative impact of this proposal and proposal 11 is potentially devastating. We could see legitimate tourism businesses established over decades undermined if camping is allowed for free on CRoW access land in coastal and cliff areas.
- Environmental impacts - proposals do not recognise the potential damage to the environment and biodiversity or the increased risks that would result from proposals to lift the list of restrictions on CRoW access land identified under Proposal 11. We stress that these areas are often fragile and support a number of priority species and habitats and their ecological resilience will be undermined
- Dog worrying - our members report serious issues already occurring along the coastal path with dogs chasing sheep of cliff edges. Farmers are now being placed in an impossible position, naturally wanting to protect their livestock from harm they are reluctant to graze these areas. As a result they have subsequently been found to be in breach of pre-existing agri-environment scheme requirements and subject to penalty.

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

NFU Cymru does not support proposals to extend CRoW access land provisions to rivers and other inland waters. Access to inland water in Wales must be achieved through sensible managed voluntary agreement only. This is the only route through which adequate attention can be given to seasonal considerations, prevailing weather conditions, locations for launching and landing, appropriate parking, changing and toilet facilities, safety, and importantly protection of the river environment. We make the following comments:

- Definition of rivers – no definition of rivers and inland waters has been provided
- Public safety – issues of public safety and public health have not been addressed. Access to emergency services can be difficult to contact and are limited in remote locations and there are a number of infections such as E-Coli and Cryptosporidium that can cause serious illness.
- Biosecurity and animal health - NFU Cymru identify that proposals severely undermine farm biosecurity and animal health. Rivers and streams often form boundaries between farms with barriers in place across rivers to stop livestock mixing and travelling the watercourse. These are vitally important for good livestock husbandry and also to reduce the risk of spread of

numerous notifiable and endemic livestock diseases such as bovine TB, BVD, sheep scab etc and cannot be removed

- Environmental impact – the impacts of unrestricted access such as erosion to river banks and damage to riparian habitats, some of which will be under SSSI designation has not been considered within proposals. The mechanism by which activities can be restricted where environmental damage is occurring is unclear, we are concerned that unrestricted access by right has the potential to greatly increase pressures and undermine the resilience of these ecosystems. What assessment has been undertaken of proposals and Wales' ability to meet its commitments under the EU Water Framework Directive?
- Regulatory requirements - We highlight that farmers are required and are under significant pressure to meet a number of statutory responsibilities and regulatory obligations including the requirements of the Water Framework Directive. In recent years farmers have made significant efforts to improve water quality and enhance riparian habitats. Changes that allow right of access to rivers and inland waters over which farmers will have no control greatly reduces the farmers' ability to manage the environment to meet these requirements.
- Economic impacts – we highlight that letting of fishing rights is an important source of income to many farmers and landowners, the value of which will decline significantly if proposals go ahead. We also foresee large-scale commercial activities developing in key 'honeypot' areas for which landowners will receive no benefit but significant impacts to the running of their businesses.

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**

A key factor for improving opportunities for responsible access on inland waters has to be how access across land is provided for. NFU Cymru notes proposals to establish NRW as the authority responsible for identifying appropriate access and egress points and we make the following points:

- Lack of clarity - Welsh Government has provided no information or reassurances to landowners and farmers with respect to the process that will be followed for identifying appropriate access and egress points. For example, how points will be identified, how will the process involve landowners, what level of access will be created, for example will access be on foot or does it include access for motorised vehicles?
- Landowner liability – we seek clarity over landowner liability. Where permissive paths are created, any users of the paths become lawful visitors meaning that landowners owe a higher duty of care towards people using that route. This is not acceptable.
- Crossing land - no assessment has been made of risks associated with inland water access users crossing land to access inland water with bulky equipment, potentially limited mobility and visibility.
- Responsible use - In terms of implementing measures to promote responsible use, we would emphasise that there cannot be an assumption that access to inland waters will be responsible. Ensuring adequate information is available to facilitate responsible use is not straightforward and exacerbated by factors such as rapidly changing water levels, water currents, weather conditions etc.
- Funding - no reference been made to the need for additional public funds to support the development of appropriate infrastructure at the access and egress points in the locations including signage and car parking, toilets and changing facilities. It is completely unacceptable to expect landowners and farmers to bear the cost and burden of access to rivers and other inland waters. Farmers would also need to receive extra support where access and egress routes are created for maintenance as they would be used by those who

drag or carry heavy equipment leading to damage to swards, soil compaction and soil erosion.

- Mediation - it is wholly inaccurate to refer to NRW having a role mediating between different users interests to facilitate user access agreements. The result of mediation could not establish access agreements as access would be by right.

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.

With respect to the 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, we make the following points:

- Responsible recreation – no definition of responsible recreation has been provided
- Enforcement – there is a lack of information throughout the consultation on what safeguards will be established to ensure recreation is responsible and what body will be responsible for enforcing this; and whether the statutory caveat will be accompanied by legal or civil sanctions for those access users who do not behave responsibly.
- Education - NFU Cymru believes there is a significant requirement for a sustained education programme for access users. However, proposals on the delivery and funding of this aspect are very much absent in the consultation.

Overall, whilst we are broadly supportive of the proposal to establish a statutory caveat to behave responsibly, we do not agree with the creation of this provision being used as a justification for the wide-scale increase in access provisions in Wales.

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.

Whilst flexibility 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 has been considered is broadly welcomed, the consultation is silent on whether proposals will also apply to Public Rights of Way. In the context of wider proposals on access we would express profound concerns at this omission.

We ask for further information on the process by which such temporary diversions and exclusions could be applied for and who would be the decision maker; how would such diversions and exclusions be publicised?

NFU Cymru would welcome the ability for temporary diversions to be put in place, and aware of circumstances where they have been successfully implemented elsewhere in the UK to give rights of way users the choice to use a temporary diversion to avoid going through fields with livestock. To improve this provision it would be beneficial if:

- It was also possible to temporarily close the current route of a right of way, to restrict rights of way users from walking through fields where livestock are turned out. This would better achieve the aim of reducing risks to members of the public
- Change the legal definition of the general public when using temporary footpaths so that they are not lawful visitors but rights of way users like in other circumstances. Whilst farmers and landowners take the safety of rights of way users very seriously, this would reduce legal liability which landowners owe to rights of way users enabling more temporary diversions to be put in place

That said, Welsh Government must recognise that it is not the role of farmers and nor do they have the time to assess risks to access users of hazards of a permanent or temporary nature and go through the process of continually applying for temporary diversions and exclusions. We have doubts that, in reality, any mechanism for restricting access on a temporary basis can be sufficiently flexible to take into account the nature of farming operations in Wales, seasonality and the weather at the scale of the field parcel.

Again we express concerns that the burden of responsibility of increased access will fall to landowners and farmers. As a result the process needs to be very straightforward and completely free of charge and it should fall to the Local Authority to make information available on temporary diversions and exclusions (including on the statutory digitised map) and enforce them once they have been agreed.

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.

We note proposals to introduce rules relating to dogs within legislative proposals. The issue of access with dogs is one that is continually raised by members with a range of concerns expressed. Dog-worrying is a key issue and many personal safety, biosecurity and food safety issues also centre on access with dogs. Dogs carry the Neospora – a coccidian parasite – for example, which can cause spontaneous abortion in infected livestock.

NFU Cymru is concerned that currently few members of the public with dogs have sufficient experience to recognise the higher risks around livestock. We are aware of instances of cattle-trampling on farms in Wales and these are extremely stressful for farming families and they exemplify a lack of knowledge amongst access users. More protection should be afforded to farmers who are, after all, running legitimate businesses on their land.

NFU Cymru believes that proposals that dogs should be on a short fixed length lead in the vicinity of livestock at all times of the year should go further. Dogs should be on a short fixed length lead at all times in the countryside except where personal safety is threatened.

Whilst our members identify that this will require massive behaviour change and it is rare in the extreme to see dogs on short fixed length leads currently, only this level of clarity will alleviate some of the issues encountered currently.

For example, we foresee confusion emerging around the term ‘vicinity’. This is likely to be open to interpretation and will vary considerably depending on where the access is taking place – enclosed or unenclosed land, for instance. The term ‘effective control’ is also open to interpretation and it is important to note that dogs respond very differently under different conditions and there can be no guarantee a dog will return on command if distracted by new surroundings or experiences.

Rules should also be introduced to address dog fouling to ensure that access users clear up after their dogs and do not leave dog faeces in the countryside. This should be a legal requirement and fully enforced.

Our members also proposed the introduction of a statutory requirement for access users with dogs to hold a certificate of competence with the onus placed on them to demonstrate they are insured, competent and also able to provide evidence that their dogs have been regularly wormed etc. This should be backed up by enforcement through Fixed Penalty Notice.

Finally, rules changes should exempt farm and working dogs where being in close proximity to livestock is an essential part of farming practice.

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.

NFU Cymru supports the development of one statutory map of accessible areas. This should be definitive and available electronically. There should be a duty to provide access to this information online and there should be a single pan-Wales data source for all types of access including footpaths, bridleways, CRoW access land etc. This needs to contain 'real-time' changes such as temporary closures and diversions to prevent conflict and confusion in the ground.

Before the process commences it would need to be agreed what data sources would be used to create the national map. We would not want rights of way added where there is not definitive evidence that a right of way existed in this location.

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.

NFU Cymru acknowledges the need for reforms that allow for modernisation of the public rights of way network through a process of prioritisation and rationalisation. This needs to be considered in the context of a modern agricultural industry recognising the very significant health and safety hazards that exist on farmyards for example. The current regime has a high cost of administration and complexity and we are, therefore, in favour of making improvements to the administration of current access legislation.

NFU Cymru would support changes to the current rights of way regime which facilitate the simplification of procedures for creating, diverting and closing rights of way. Simplification of procedures would allow for sensible rationalisation of the right of way network based on an agreed system of prioritisation in line with the overall aim of utilising better the existing resource. This could include creating paths to join up the existing network where farmers agree and are adequately compensated; diverting routes for practical reasons including safety and security and closing rights of way where there is a sensible case to do so. NFU Cymru is clear that no new rights or higher access rights should be established without full consent and compensation of landowners.

Such amendments should be mutually advantageous from the perspective of the local authority, the local access forum, and the landowner and should be permitted after a pre-defined period of say 12 months. We have long expressed concerns that the process of diversion is lengthy and complicated and often subject to spurious objections made by members of the public who make it their business to routinely object despite never having visited the site to which the proposed changes relate. It is completely unacceptable that currently cases that receive just one objection are required to be referred to the Planning Inspectorate. This is completely disproportionate.

Local authorities should be able to divert a route with landowner consent if an alternative route can be found which is more suitable for users, for example, a footpath across a large open field could potentially be re-routed round the edge to allow users to feel more comfortable around any livestock and this may also offer protection from the weather and provide a firmer footing.

We would emphasise that value for money needs to be considered in the decision-making process, it is vital that this process is made affordable for farmers and we would reiterate no additional costs, burden and liability should fall on farmers as a result of reforms.

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

No information has been provided within the consultation on this provision. We are unable to comment as a result.

Proposal 22 – To amend the requirement for a decadal review of access maps to a process of continual review.

Whilst removing the requirement for a decadal review may reduce workload pressures, we are clear that this should not result in authorities 'washing their hands' of the review process; continuous should mean continuous and landowners should have easy access to the review process.

Proposal 23 – To create a requirement on local authorities and National Park Authorities to develop integrated access plans to take effect anytime up to the date of the next review in 2027.

The development of integrated access plans should facilitate Local Authorities and National Park Authorities in conjunction with the Local Access Forums and landowners to establish a system of prioritisation for the rights of way network under their jurisdiction. Some consideration is required of the current duty to maintain and its application to routes that are not currently, and are not likely to be active, at any point in the future. It is vital that Government recognises through this process that it is simply not possible to do everything, everywhere and funding is required for implementation. There is little point developing a plan without having the funding to deliver.

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.

There is potential for significant ambiguity if a new type of Public Right of Way is created prioritising cycling and walking. There is sufficient complexity already.

Proposal 25 – To repeal unwanted provisions in the CRow Act. In particular, those relating to the 2026 cut-off date for historical routes under section 53-56 of the CRow Act.

NFU Cymru believes this is a very concerning proposal. Whilst it is acknowledged that the deadline of 2026 could lead to an increased (and possibly unsustainable) number of applications forward to register historical routes, the counter to this is that repealing this provision could lead to claims being made indefinitely.

Without this provision within the CRow Act being retained then there is the very real possibility of new rights of way legally having to be added to the definitive map which are intrusive, dangerous (in terms of being created through farmyards or along busy highways) or environmentally undesirable (removal of vegetation in sensitive habitats to reinstate rights of way that have not been physically on the ground for over 70 years).

For these reasons, NFU Cymru is against any proposals to repeal this provision within the CRow Act. It is not consistent with achieving transparency in the opportunities available for participation and outdoor recreation since no stakeholder or access user will ever be clear on what the true right of way network is in Wales. It will also increase complexity to the procedures for designating and recording public access through the continuing risk of finding evidence of a right of way prior to 1949 for which there is no need from an access perspective but which could have significant impacts on

current farm businesses. This is a very undesirable situation as there is no clarity for all involved as to what the true right of way network is.

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.

A key concern we have about the development of a statutory code for access to the outdoors for recreation is that there can be no assumption that such a code would be read or followed by access users

Enforcement efforts are likely to be severely hampered by limited resources within key organisations such as Police, Natural Resources Wales, local authorities and national park authorities and also by the rural and extensive nature of the terrain rendering it almost impossible to identify culprits and build evidence.

We would highlight our members regularly contact us with access related issues which are all too often ignored by authorities as there are insufficient resources available to properly enforce legislation. We are aware that at the time of the introduction of the CRoW Act that additional countryside wardens were deployed and numbers have subsequently reduced due to budgetary cuts. This is a significant barrier to educating the public and ensuring that access users behave responsibly.

In taking forward the development of a statutory code, the aim should be to address the central issue that the public in general have very limited understanding of how to behave responsibly in the Welsh countryside. The consequence of free access provision often results in this not being valued. A key priority should be educating people about recreational access and how irresponsible behaviour can impact negatively on other countryside and farming activities. Whilst it is our desire that the public should understand more about agricultural production and the custodianship role that farmers have which contributes so significantly to our landscape and wildlife, there is a need to recognise that this needs to be done safely.

Key considerations within the Code include:

- Defining responsible access
- Assessing and minimising risk
- Access to the countryside with dogs and behaviour around livestock
- Biosecurity and public and animal health information
- Biodiversity and taking or disturbing of plants
- Emergency situations

The key challenge will be providing enough information with sufficient clarity in an accessible form. There is a need to remember the full range of access users including those from elsewhere in the UK and overseas and establish mechanisms to disseminate information.

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

NFU Cymru is aware of a huge variation in performance across Local Access Forums currently. Reforms to regulation and guidance should incorporate a mechanism to allow best practice to be shared among the groups.

Whilst we note that accountability for rights of way currently lies with the Local Authority, the Local Access Forums have the role of providing advice on which to base decisions. For this reason, it is vital that the Local Access Forums have adequate landowner representation with a minimum 50% farmer interest and that they are fully engaged in the decision-making process.

Local Access Forums must give equal focus to what is practical and achievable from the landowner perspective as well as the user requirements which seem to be prioritised at present. Where user rights dominate, discussions become polarised and farmers are less inclined to be involved.

In addition, we would highlight that Local Access Forums appear to work best where there is a clear purpose. In our view this underlines the need for adequate funding to be allocated to allow for continual improvements to be identified and funded via the prioritisation process.

Conclusions

Overall, NFU Cymru wants the public to access and enjoy our countryside but recognise that this needs to be managed to ensure they have the best possible experience. Given that Wales has the greatest length of rights of way per square km in the UK as well as significant access land (in excess of 460,000 hectares) for the purpose of outdoor recreation, it is our view that the aim should be to better promote and resource improvements to existing access opportunities rather than creating more.

NFU Cymru is concerned about the cumulative impact of proposals which will impose severe limitations on the day to day running of farm businesses. This will include the ability to manage their livestock and cropping effectively, as well as meeting their regulatory requirements. Farmers will inevitably face increased liabilities in terms of public protection and also higher costs and reduced income through a range of impacts.

Proposals undermine the ability of farm businesses to enhance business resilience through diversified business activity in line with SMNR objectives. This is particularly important in the context of Brexit and our transition out of the EU. Throughout the consultation process, significant concerns have been expressed about providing ever increasing levels of access for free. Where this is the case there is little respect for access as a public good.

Overall there are insufficient safeguards in place to either minimise the risk to the public, safeguard the environment or limit costs, burdens and liabilities falling on farmers and landowners.

Chapter 6 - Water

NFU Cymru welcomes the opportunity to respond to Welsh Government proposals relating to the abstraction of water in Wales and some minor amendments to drainage.

Abstraction Reform

We note that Welsh Government proposes the following key legislative changes:

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

Q23 – Do we agree with the approach we are proposing, to introduce abstraction reform on a Wales only basis?

The principle of reforming the way that water is licensed and managed in both Wales and England is broadly supported by the Union because some of our most water stressed catchments face increasing pressures from the combination of climate change and population growth. NFU Cymru would highlight that since a number of river catchments span the Wales/England border an element

of consistency with respect to reform will be necessary whilst at the same time recognising the significant variations in terms of abstractions and water availability. We, therefore, feel that there needs to be a consistent approach for Wales and England.

It is our understanding that reform via primary legislation in England is not being taken forward at this time. Progress on abstraction there, we understand, will focus on voluntary rather than regulatory approaches to water governance in the most water stressed catchments only.

There is a need to recognise that a very different situation exists with respect to water availability in Wales. Our members will inevitably be surprised (to say the least) if they are asked to deal with the administrative burden that reforms will entail long before their English counterparts.

We are pleased to rehearse and further develop our position on abstraction reform as explained in our response to the 2014 consultation 'Making the most of every drop' which we simultaneously delivered to Welsh Government (by NFU Cymru) and Defra (by NFU).

We continue to support the principles of abstraction reform, particularly as a way of improving the management of water-stressed catchments in the longer term. However we question the need for changing water management rules in catchments where water is in surplus and where current arrangements work well.

Therefore, whilst broadly supporting the principle of reform we are not convinced that a case has been made for typical Welsh catchments within the consultation document. In addition we are unclear that the benefits will be greater than the administrative costs borne by abstractors.

Linking surface water allocation to availability

Where the case can be made for abstraction reform in particular catchments, we believe that any new system would need to allocate a fair share of water to farmers and growers to grow our food.

We would expect any new regulatory system to:

- Be underpinned by government policies that recognise and promote the link between food and water security
- Recognise that farmers and growers need secure access to water to make long-term business investment in future food production
- Safeguard against significant water export from agriculture and horticulture in future trading regimes
- Proceed at a measured pace to allow businesses sufficient time to adjust and invest in water security and efficiency
- Deliver a system that is simple, flexible, and cost effective to administer

Charging for abstraction

We are concerned that the introduction of a new system could result in additional administration costs for farm businesses; a situation we are keen to avoid. We believe that future abstraction charges should be based on a mechanism that limits charges to the recovery of costs incurred in administering the system – charging must not become a tax raising measure

Trading

Trading has been promoted as a key advantage for abstractors resulting from abstraction reform, but whilst it may have merit in water-stressed catchments we doubt that NFU Cymru members will benefit from it.

Transition to a new system

We would need reassurance that our members' overall rights to water would not be diminished during any transition period from the existing regime to a new system.

Cross border issues

The River Wye is an important source of water for agriculture and horticulture in Wales and England, particularly for the production of high value fruit and vegetables. It will be essential for growers on both sides of the border (and for those who farm on both sides of the river) to be subject to a consistent regulatory regime.

The bottled water sector

Bottled spring water is a niche market but an important part of the food and drink sector in Wales. It will be important to understand and account for the licensing needs of operators.

Drainage Reform**Q24 – Do you agree with the proposals presented by Welsh Government?****Q25 – Do you believe there are additional proposals which could improve the current legislative/regulatory landscape in the short-term?**

NFU Cymru notes Welsh Government proposals to amend current legislation. We note that these proposals are the result of engagement with water and sewage undertakers, NRW, developers, the Welsh Local Government Association and local authorities with the aim of identifying relatively straightforward amendments to legislation to improve the regulation of sewage and drainage. NFU Cymru would place on record our concerns that the interests of farmers have not been represented in discussions and the development of these proposals. We are also concerned that very little information has been presented providing evidence of the need for change within the consultation document.

With respect, under proposal 34, *to provide sewage undertakers with the right to discharge into watercourses anything which is not foul sewage*, it should be ensured that these new rights do not lead to the exacerbation of flooding up or downstream caused by the discharge of any substance at too high a volume into a particular waterbody.

We note proposal 37 *will provide appropriate powers to undertakers for the purposes of limiting impact on the performance of sewerage assets including powers to clear watercourses and also repair watercourses including a power to recharge costs to the riparian owner if required*. NFU Cymru seeks clarification on this proposal as insufficient information has been provided. We seek urgent assurances from Welsh Government that changes to legislation would not result in riparian landowners being recharged for works which benefit adjacent sewerage works rather than their own land. It is vital that these provisions are not allowed to be used in these circumstances. An understanding of the possible costs that could be recharged should also be provided.

To conclude it is vital that Welsh Government provide this information so the implications and consequences of legislative changes can be properly understood.

Chapter 8 – Smarter Regulation – the Role of Basic Measures

NFU Cymru welcomes the opportunity to respond to Chapter 8 of the Welsh Government consultation which includes proposals to introduce basic measures to provide direct conditions or minimum standards for undertaking specified, low-risk activities. The consultation identifies the following activities maybe suitable for basic measures:

- Water quality and the introduction of basic measures for land management in the context of reducing agricultural pollution, which links to the delivery of tackling diffuse pollution provided in the Water Strategy

- A risk based approach enabling flexibility in land management whilst ensuring environmental protection is maintained could be an alternative in certain circumstances to the requirements of the current felling licence regime that requires an express licence to fell growing trees in all but limited instances.
- Agriculture for the protection of water, air and soil quality.

The NFU Cymru response will relate to the proposals for agriculture.

Q29 - 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?

NFU Cymru does not support proposals to introduce Basic Measures for agriculture for the protection of water, air and soil quality. We believe proposals are completely at odds to the new legislative framework for the sustainable management of natural resources enshrined in the Environment (Wales) Act 2016.

This Act establishes a number of principles to underpin the way Welsh Government and NRW operate including:

- Working together – co-operating and collaborating at the local, regional and national level;
- Being adaptable – planning, monitoring, reviewing and changing as a better understanding is gained through improved evidence and experience;
- Considering the full range of evidence not only environmental but also cultural, social and economic evidence from experts, stakeholders and local communities.

In addition, we remind Welsh Government, the Well-Being of Future Generations (Wales) Act 2015 places a duty on all public bodies to protect and enhance the economic, environmental, social and cultural well-being of Wales.

We are disappointed that Welsh Government, through these proposals, has disregarded the principles of working established in the Act. Proposals to introduce an entirely new regulatory framework for farming in Wales have been made in the absence of collaboration with the agricultural sector and on the basis of a two page consultation which sets no context, presents no evidence or justification and makes no consideration of costs and impacts to the sector being regulated.

The approach adopted by Welsh Government at this time has put us, as stakeholders representing thousands of farm businesses across Wales, in an invidious position - having to respond to proposals in the context of very significant unknowns. We refer to the profound uncertainty that exists around EU withdrawal; the lack of information currently available about the UK Agricultural Bill or, indeed, the thinking around the development of a future domestic agricultural policy for Wales.

We highlight that much ambiguity has emerged in discussions with our members through the consultation process. For example, no information has been provided around whether basic measures would replace pre-existing regulated activity such as SSAFO or NVZs or permitted activities such as EPR Intensive Farming. In such instances, it is possible that the introduction of basic measures would be viewed as potentially beneficial given the complexity and severity of the current regulatory and enforcement regimes. Conversely, the introduction of a further tier of regulation in addition to what already exists would significantly increase cost and complexity for farm businesses. Our member's ability to assess has been limited based on the information provided and the consultation process is fundamentally flawed as a result.

NFU Cymru is most concerned that the lack of information provided within the consultation together with the uncertainty outlined above severely hinder our ability to respond properly to proposals. Our response, therefore, draws on long-standing principles relating to regulation and delivering environmental outcomes.

NFU Cymru is clear that the delivery of the sustainable management of natural resources or the Natural Resources Policy should not be achieved through additional regulation of farm businesses.

In the context of Brexit, NFU Cymru has recently published its position paper on 'A Regulatory Regime that's fit for purpose'. This document can be accessed [here](#) and establishes a number of principles for taking forward the development of a new regulatory regime to deliver the outcomes society wants and expects. The proposals are at odds with a number of our key principles.

Overall we would emphasise that regulation adds cost and complexity and hinders business confidence and economic growth undermining the vital economic, environmental, social and cultural contribution that farm businesses make in rural Wales.

We are concerned that the cumulative effect of proposals will result in farmers in Wales being placed at a competitive disadvantage to their counterparts in the UK and EU. Welsh Government has made no effort to understand costs and impacts and this is borne out by the failure to undertake and publish a regulatory impact assessment.

It is also appropriate to refer to the June 2016 Referendum and the decision to exit the European Union. There is a need to recognise that one of the principle reasons that some farmers voted to leave the European Union was over-burdensome regulation. The vigour with which Welsh Government appears to be pursuing further regulation at this point in time remains a key concern to our members as is the need for a level playing field of regulation across the UK.

NFU Cymru has long-argued that a 'sustainable management of natural resources' approach would provide an 'enabling framework' to help and support farmers make informed choices about environmental management. Whilst we are strong advocates of appropriate interventions where poor practices are at fault, we are also clear that better environmental outcomes are delivered via a non-regulatory and advice led approach supported by investment grant that can help farmers to make improvements in areas where these are required rather than simply penalising them. This is much more likely to result in the behavioural change needed.

Such an approach would examine all the sources of diffuse pollution at a catchment level and seek to address Water Framework Directive failures 'in the round' using collaborative approaches developed in partnership.

Through the lens of SMNR principles, it is clear that there are fundamental weaknesses with the case for Basic Measures presented by Welsh Government. Firstly, the consultation inaccurately refers to agriculture as a key source of diffuse pollution. This is a gross misrepresentation. We refer you to the Water Framework Directive data which is unequivocal. This shows that there are a range of issues and sectors influencing water quality in Wales and Water Framework Directive Failures attributable to agricultural pollution are shown to be between 14-15%.

As a result, a focus which imposes costly regulation on the agricultural sector, as is proposed here, will not, on its own, deliver good chemical or ecological status in line with WFD. There is a complete lack of integration and the lack of fairness and balance within proposals. No effort has been made to address other factors influencing water quality in Wales. NFU Cymru is dismayed that the consultation does not refer to other drivers of WFD failures or say what steps will be taken to address these. This is completely unacceptable and at odds with the integrated approach enshrined in the Environment Act.

We would further highlight that, whilst in some instances, establishing Basic Measures for activities could be simple and straightforward this will not be the case in all the instances suggested. Far more detailed information on proposals is required to understand whether they could be an effective tool

and we would suggest that significant gaps in the evidence base remain with NRW data not sufficiently detailed to show the practices that are known to contribute to diffuse pollution, only the sector. The risk here is that rules are developed but they do not tackle the problem.

Further, the proposed catch-all regulatory approach takes no consideration of the intensity of farming activity and location or indeed water quality data for the catchment; therefore, Basic Measures are a disproportionate and unjust response particularly where water quality is good or improving as a result of the significant work of farmers in those areas.

There is a risk that beneficial practices undertaken currently could be replaced with 'untested' one-sized-fits-all approach adopted by basic measures. Welsh Government rightly acknowledges that the complexity and geographical variability of, for example, catchments across the country means no single set of measures will be universally applicable. Overall the implementation of a blanket tool for dealing with site specific issues is wholly inappropriate and not in line with the place-based approach advocated in the Natural Resources Policy or the 'area statements' which will be taken forward in the coming months.

In addition, NFU Cymru would highlight that farmers are already operating in an extremely complex regulatory environment and no reference is made within the consultation to the current regulatory regime. We do not believe new rules are justified as the regulator already has access to a range of powers and duties that it could use to address diffuse pollution, without adding to the legislative array.

Farmers in Wales are already governed by a raft of regulations together with cross compliance that deliver baseline standards. Those participating in agri-environment schemes also have to adhere to the Whole Farm Code. We believe that the introduction of Basic Measures would effectively result in the introduction of another layer of regulation which would add bureaucracy and administrative burden. The proposals are not in the spirit of Working Smarter aims.

We foresee much scope for misinterpretation by both land owner and regulator should an entirely new tier of regulation be introduced. Clarity of rules and understanding is essential for all concerned. Government and regulator have a duty to ensure that information and guidance on regulation is available and understood by those who are regulated. We are disappointed that this is not achieved currently and the situation will not be improved with yet another tier of regulation.

The key challenge remains how to engage with 18,000 small rural businesses managing 80% of the land area in Wales. NFU Cymru has long expressed concerns about the ability and capacity of the regulator, Natural Resources Wales. It is disappointing that the provision of information on regulation to the farming sector is inadequate and in some instances misleading with regulatory requirements listed under the 'guidance and advice section' of the NRW website for example. In addition, NFU Cymru has long advocated the introduction of a Farm Liaison Team within NRW, along similar lines to that established within Welsh Government, to ensure there is a network of staff on the ground with appropriate skills to provide advice and guidance to the sector on what are highly complex issues.

NFU Cymru would express concern that no information has been provided on how the system would be monitored or verified. Nor is there any detail provided on the additional paperwork burden that would be placed on farm businesses as a consequence of Basic Measures. We are concerned that proposals are likely to place a disproportionate burden on farm businesses even where no issues exist.

Whilst the consultation proposes civil sanctions or fixed or variable penalty notices no information has been provided on how enforcement will be pursued. Nor has any information been provided on how enforcement of Basic Measures will interplay with the penalty regime of existing regulation such as Cross Compliance. Farmers could fall foul of 'double jeopardy' and this is most concerning to us.

NFU Cymru is clear there are a spectrum of approaches to deliver positive outcomes for nature and the environment. This should start with advice and guidance together with appropriate incentives alongside other mechanisms such as assurance and earned recognition. In addition, innovative approaches such as trading, off-setting and payment for ecosystem services have an increasing role to play.

Our preferred approach would be the implementation of site specific voluntary measures which tackle identified problems through advice, land management schemes and capital grants reflecting knowledge built up over many years through Catchment Sensitive Farming initiatives, agri-environment schemes, water company catchment management projects and NGO led catchment initiatives.

Many farmers have a limited amount of time and many rural areas lack adequate broadband provision for a modern business making it difficult to keep up to date with regulatory changes and requirements. Therefore, proactive initiatives to engage and inform farmers are welcomed, especially if it focuses on the farming benefits of best practise which result from some of the measures. This evidence led, place-based, collaborative approach is supported by the Natural Resource Policy and the area statements and reflects the fact that no set of measures will be universally applicable.

Finally, NFU Cymru would emphasise that it is naïve in the extreme to think that the introduction of basic measures will be a facilitative mechanism for the development of Payment of Ecosystem Services schemes with water companies for example. In terms of farmers managing a catchment for water, for example, from our discussions with water companies we are clear they will require enhanced standards of regulation and enforcement of the farming sector before they are prepared to 'come to the table'. We simply cannot accept regulation of the whole sector in this indiscriminate and disproportionate way simply to secure PES scheme for a very small number of farmers operating within a targeted catchment. The very important 'beneficiary pays' principle has long been overlooked in this debate.

We would highlight that farmers recognise the role they have to play in maintaining and enhancing the quality of their environment and improving water quality. Farmers take their environmental responsibilities seriously. NFU Cymru has been very pleased to actively participate in the NRW Land Management Forum Sub-Group to explore how the sector can contribute to improvements in water quality through reduced point source and diffuse pollution. We are very keen to work with NRW and other stakeholders in line with the ways of working enshrined in the Act to develop alternative approaches to regulation.

Overall, insufficient information and detail has been provided on what Basic Measures will look like. NFU Cymru cannot accept such profound changes on the basis of such inadequate consultation. Proposals severely undermine the efforts of industry stakeholders to work with Government and Regulator on the issue of agri-pollution to put in place measures to deliver meaningful solutions where these are needed. This consultation was issued without prior warning, hidden amongst a raft of other wide-ranging proposals and without adequate information to inform discussion and secure feedback from our members. No commitment to further detailed consultation has been provided, nor has a Regulatory Impact Assessment been included. On this basis NFU Cymru remain strongly opposed to the introduction of Basic Measures.

Chapter 9 – Agriculture

NFU Cymru welcomes the opportunity to respond to Chapter 9 of the Welsh Government consultation which is seeking views on whether the jurisdiction of the Agricultural Land Tribunal Wales (ALTW) should be extended to incorporate disputes currently specified as referable for arbitration under the Agricultural Holdings Act 1986 (AHA).

NFU Cymru would be supportive of extending the jurisdiction of the panel in Wales. The panel is held in high regard within the agricultural industry and contains a wealth of experience and expertise but currently its jurisdiction is limited and has not evolved to take account of changes in legislation since its jurisdiction was originally established in the late 1940s.

Specifically we would be supportive of proposals for parties to a dispute under section 2 of the Agricultural Holdings Act 1996 to have the option of being able to refer the following categories of dispute to the tribunal:-

- Disputes relating to the terms of a written tenancy agreement; disputes concerning varying or modifying repairing obligations, rent, damage by game, notices to remedy; notices to quit, and all claims arising out of the termination of a tenancy.

Currently these disputes go to arbitration, which can, on occasion, be a costly avenue to go down and there is concern that the cost and the complexity involved in arbitration could be a barrier to tenants, and in some cases, to landlords from engaging in the arbitration process. It seems sensible that, if both parties agree, then the option of the ALTW should be available as an alternative dispute resolution mechanism.

As part of this reform process it would be important to consider the range of expertise on the Tribunal panel to deal with the extended jurisdiction of the Tribunal. In particular we would stress the need to ensure there is a sufficient number of chartered surveyors to deal with hearings where the specific expertise and knowledge of a chartered surveyor would be beneficial. We would consider that this could involve making use of the knowledge and expertise of RICS approved arbitrators located in Wales. It may also be worth considering how other Tribunals in Wales operate e.g. the Valuation Tribunal for Wales to consider if there is best practice that could be shared. However we would point out that the current panel approach made up of a legally qualified chair and two members from the sector have proved to work well and this type of format should continue for the ALTW.

The consultation highlights under the section 'evidence for change' the importance of ensuring all citizens in Wales have access to justice as being a priority for the Welsh Government. NFU Cymru would support this aim; we would also highlight the importance of all citizens having the opportunity, if they so wish, for their tribunal panel to be conducted through the medium of Welsh.

We would also highlight that if the ALTW jurisdiction is extended it is important that this is not seen as an opportunity to increase the cost of accessing the ALTW. One of the key reasons behind this proposal is to reduce cost for tenants and landlords. This is therefore likely to increase the number of Tribunal panel hearings that need to be held annually and therefore increase workload for both Tribunal members and perhaps more importantly the secretariat to the panel. Prior to taking this proposal forward we would want confirmation that this would not result in increased costs for tenants and landlords participating in a Tribunal hearing.

We are supportive of the bullet point within Proposal 48 that states that the proposal will result in a quicker resolution of disputes related to agricultural tenancy agreements. Disputes between tenant and landlord will, in all likelihood, be resulting in significant strain on one or both parties both in terms of financial matters and in many cases additional stress and anxiety, it is therefore important that they are completed without undue delay.

Whilst supporting the extension of the jurisdiction of the ALT in Wales we do respect that on occasion one or both parties will wish to make use of the Arbitration process or Third party Determination. Third party determination, as an alternative form of dispute resolution was introduced by the Deregulation Act 2015. Whilst supportive of this change the use of Third Party Determination has been limited by the drafting of the regulation that requires the parties to appoint a third party more

than 12 months before the review date, at this point they may not even know that they have a dispute. We believe that changes that would allow the parties to appoint a third party at any date prior to the review date would be much more practical as a means of dispute resolution. It is important to note that Third Party Determination is also subject to mutual agreement of the parties so it should run simultaneous to the extension of the Tribunal jurisdiction.

In conclusion NFU Cymru supports the proposal to extend the Jurisdiction of the ALTW in Wales on the basis that the Tribunal is a low cost and timely mechanism for tenants and landlords to resolve disputes. Tenants and Landlords should have the option of making use of the Tribunal but if either or both parties disagree then the option of Arbitration or Third Party Determination should remain. We believe that the membership of the panel needs to be reviewed to ensure that it has the necessary range of skills to deal with its extended remit.

Chapter 10 – Wildlife

NFU Cymru welcomes the opportunity to respond to Chapter 10 of the Welsh Government consultation which seeks views on whether the current Welsh Government Code of Practice is an effective method of controlling the regulation of snares.

We highlight that effective pest control measures are a necessity for livestock production in Wales. NFU Cymru fully concur with the necessity to comply with animal welfare regulation in undertaking control measures which is why we were active participants in the group that developed the Code of Good practice on the use of snares in fox control.

Following its publication in 2015, we have actively promoted the Code to our members at our meetings and on our website.

We are therefore somewhat surprised that this Chapter has appeared within the overall SMNR consultation less than two years after the Code's publication. As far as we are aware no analysis has been undertaken to assess its effective and we would make the following points about the consultation proposals:

Proposal 49

Welsh Government has produced no evidence that the 24 hour inspection requirement is not being implemented. The term 'at least once every day' is clear, unambiguous and well understood by operators. It is highly unlikely that snares would be inspected during the hours of darkness and therefore the 48 hour between inspections argument is not a legitimate one.

Proposal 50

Animals are removed from snares at every inspection after the dispatch of target animals or the release of non-target species. This is good practice

Proposal 51

This is already fully covered in the Code of Practice on compliance

Proposal 52

NFU Cymru has a concern that the proposals seek to alter the *mens rea* (mental element) of the offence. At present the prosecution has to demonstrate that the snare etc. was set in a position which was *calculated* by the defendant to cause injury to other animals. This requires some foresight and an element of planning on the part of the individual to positively set the trap to capture such animals. The inclusion of '*likely*' in the place of '*calculated*' could in NFU Cymru's view include accidental trapping of such animals. It assumes that in setting the snare the individual has to satisfy themselves that there is no risk whatsoever of a non-target species being caught by the trap. Clearly here we are

focusing on wild animals, which by their very nature could become restrained through no fault or intention of the individual setting the snare.

Proposal 53

NFU Cymru questions whether there is any evidence of any need for this additional offence? Is there evidence that individuals are being caught in possession of self- locking snares and will the Police prosecute should this situation arise?

Proposal 54

The proposal potentially creates yet another poaching offence in what is already a confusing area of law, with offences spread over various pieces of legislation. NFU Cymru believes there a danger of creating yet another offence for no purpose which may not be enforced by the Police due to the complex landscape of poaching offences. However we would agree that managers of land need protection from uncontrolled and unknown intrusions on their land.

Proposal 55

NFU Cymru believes the Code is sufficient in terms of outlining snare specifications. Order making powers would be too draconian here, potentially using legislative powers to address issues which may only arise on very few occasions, for example certain specifications. In terms of powers to require labelling, placement etc. these issues are sufficiently addressed in the Code.

Q31 - 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?

Yes the contents of the Code ensure that animal welfare standards are improving. The code is in our view effective and provides the right balance between the need to control foxes, their welfare and the welfare of non-target species.

Q32 - Do you agree clarification of the term “at least once every day” would be beneficial?

The term is already clear and unambiguous to operators.

Q33 - Do you agree a requirement to remove an animal caught would remove ambiguity in relation to the regular checking of snares?

Yes as this is good practice and Code compliant

Q34 - Should there be a requirement not to possess or sell a self-locking snare? Would this result in any disadvantages?

Self-locking snares are now confined to history and modern Code compliant snares do the job they are designed to do. There is now no reason to possess or sell self-locking snares. Government could consider an amnesty period which would give operators an opportunity to hand in self-locking snares still in their possession.

Q35 - 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?

As stated previously poaching law is very complex but anything that protects and safeguards landowners or occupiers is to be welcomed.

Q36 - 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.

The Code is barely two years old and must be given sufficient opportunity to demonstrate it is working. We would encourage good practice courses to be made readily available to operators but would not agree with the need for further order making powers as there is no evidence that further regulation or specification of requirements is necessary. The message must be to follow the Code of Practice.

Chapter 11 – Assessment of Policy Proposals

NFU Cymru has set out its concerns with the consultation process at the introduction to our response. Overall we believe the consultation process to be flawed and it is most concerning to us that proposals which will have significant impacts on farm businesses in Wales will be taken forward on the basis of such inadequate consultation.

We do not agree that Welsh Government has presented initial evidence to support the case for reform throughout the consultation document and we are disappointed that Welsh Government will only seek to understand the costs and impacts of legislation via the Regulatory Impact Assessment process once it has been determined that legislative reform is required, such an approach is flawed and leads to poor policy making and poor law making.

NFU Cymru contends that this analysis needed to be completed at the pre-consultation stage and prior to the development of proposals we are considering here. We ask what is the point of doing this later in the process when the decisions have been taken in a vacuum of knowledge and understanding? At that late stage individual businesses are limited in their ability to influence the course of action being proposed.

Welsh Government appears to be developing an unfortunate track record in this area. NFU Cymru concerns with respect to the failure to publish a Regulatory Impact Assessment to accompany NVZ proposals were conveyed to the Legal Services Department of Welsh Government on 6th December 2016. In our view this failure amounted to a serious procedural defect in the consultation process as it greatly diminished the ability of our members to assess the proposals within the consultation and respond to them. Once again, the fact that the RIA does not exist is extremely worrying indeed as it can only be concluded that Welsh Government is consulting on proposals in respect of which it has no idea of the likely costs and impacts for those affected.

We refer to the Welsh Ministers' Regulatory Impact Code for Subordinate Legislation and stress the need for Welsh Government to undertake and publish a Regulatory Impact Assessment which considers the costs and impacts of each of the proposals on individual businesses, sectors, specific regions and the economy of rural Wales as well as its social and cultural well-being.

At the bare minimum, Welsh Government should have published the Sustainability Assessment that was prepared to accompany the Natural Resources Policy, given the alignment between that policy and this consultation. Despite requests, this document is still not in the public domain as far as we are aware.

In respect of useful information on the costs and benefits in relation to any of the proposals in this consultation (Q37), we note that whilst many areas within the body of the consultation document are both explicit and elaborate outlining the perceived benefits, they are inadequate in relation to the presentation of their costs and associated responsibilities. For example, with the access proposals,

whilst proposing the upgrading of footpaths to bridleways and cycle paths the document is explicit in outlining perceived benefits together with exonerating local authority from any responsibility, Welsh Government falls short of setting out who will be attributable for future maintenance and costs. It is the overall obfuscation that is our principal concern.

NFU Cymru would highlight that in previous consultations such as the Nitrates Review (2016) we have pro-actively gathered evidence via member surveys to understand the likely impact of proposals and this information has been included in our consultation response. In this instance the breadth of proposals and time available to consider them has made this detailed data gathering impossible.

With respect to the Welsh language, we would highlight that throughout Wales, those who speak Welsh within the agricultural industry make an essential contribution to the preservation of the language in terms of numbers, and in particular in terms of the proportion within the category who speak Welsh (29.5%), which is higher than in any other employment category.

Whilst Welsh Government has opted not to provide a Regulatory Impact Assessment alongside this consultation, we are clear that a number of proposals including those under Chapter 4 – Access proposals; and Chapter 8 – Basic Measures have the potential to undermine the economic viability of farm businesses and the wider rural community. It is reasonable to assume that this has the potential to negatively impact the essential contribution of agriculture to the preservation of the Welsh language outlined above.

This is evidenced in Welsh Government paper ‘Farming in Wales and the Welsh Language’, August 2016 which states that *‘moves that undermine with viability of Welsh agriculture are likely to represent a significant threat to the Welsh language, particularly in communities where the overall proportion of the population who speak Welsh is low or intermediate’*.

We highlight the Well-Being of Future Generations Act 2015 establishes as one of its seven Well-Being Goals ‘A Wales of vibrant culture and thriving Welsh Language’. The Act makes it clear that public bodies must work to achieve all of the goals. Further effort through RIA is urgently required to understand the impact of proposals to the Welsh language.

We further note that Welsh Government has undertaken an initial Equality Impact Assessment screening exercise to determine how relevant the proposals are in relation to equalities and human rights. This should have been published alongside the consultation. We ask if Welsh Government have considered the Human Rights Act 1998, specifically Chapter 42, Part II, First Protocol, Article 1, Protection of Property which states ‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions’. This is particular relevant where the significant changes to access legislation are proposed under Chapter 4.

To conclude, NFU Cymru has welcomed the opportunity to respond to the Welsh Government consultation entitled ‘Taking Forward Wales’ Sustainable Management of Natural Resources’. This consultation contains a number of proposals that are highly relevant to our members and it is vital that this response is adequately weighted to reflect the fact that it is farmers who manage 80% of the land area of Wales and who will be impacted most.

Moving forward we hope that Welsh Government will start to embed the ways of working enshrined in the Environment Act including adaptive management, evidence based decision making together with collaboration and engagement which will be important if we are to secure the best outcomes for Wales.

Annex 1 - The Contribution of Agriculture to the Well-Being of Wales

The Welsh Government Well-Being of Future Generations (Wales) Act 2015 is designed to improve the social, economic, environmental and cultural well-being of Wales. The Act establishes seven goals that all public bodies, including Welsh Ministers, must work to achieve. The contribution that farming makes to achievement of all seven goals is unparalleled by any other industry, as highlighted in the following below:

Well Being of Future Generations Act:	NFU Cymru: Agriculture is the Answer
Well-being Goals	
A prosperous Wales	<ul style="list-style-type: none"> • 60,000 employed full or part time in farming in Wales • £1.5bn Gross Output • Farming underpins a food supply chain worth over £6bn • Over 220, 000 people in Wales are employed in the agri-food sectors – that's 17% of the workforce and Wales's biggest employer • The Welsh countryside managed by farmers provides the backdrop for the tourism industry worth over £2.5bn • The Welsh agricultural industry is a key generator of wealth and employment for the people of Wales
A resilient Wales	<ul style="list-style-type: none"> • Farmers care for 81% of total land area of Wales – that's over 1.84m hectares • 600,000 ha of environmentally designated areas • Almost 560,000 ha managed under Glastir Entry Sustainable Land Management Scheme designed to combat climate change, improve water management and maintain and enhance biodiversity • Farming supports a diverse range of species, habitats and ecosystems • Farmers provide a range of ecosystem services including carbon sequestration and management, water quality and water quantity management for flood alleviation • Low carbon, local energy installations have the potential to meet 57% of Wales's electricity consumption and the evidence shows a large proportion of projects are located within Wales's rural local authorities • GHG emissions from agriculture have declined by 20% since 1990 and further decreases are being achieved through production efficiency measures • Welsh farmers play a key role maintaining and enhancing our natural environment and supporting the provision of a full range of ecosystem services
A healthier Wales	<ul style="list-style-type: none"> • Welsh agriculture is a key provider of safe, nutritious, high quality Welsh food which plays a fundamental contribution in supporting the physical and mental well-being of the people of Wales • Welsh farmers are known to operate to some of the highest standards of welfare and production in the whole world • Welsh farming also delivers a significant proportion of Wales's access provision which includes 16000 miles of footpaths, 3000 miles bridleways, 1200 miles of cycle network, and 460,000 ha of open access land • Welsh farming makes a key contribution to the physical and mental well-being of the people of Wales
A more equal Wales	<ul style="list-style-type: none"> • Rural Wales is home to 33% of the Welsh population. • The vitality and potential of rural areas is closely linked to the

	<p>presence of a competitive and dynamic farming sector. The NFU Cymru 'Why farming Matters to the Welsh Economy' shows that each family farm is typically economically linked to some 40-80 other businesses in the region</p> <ul style="list-style-type: none"> • Through direct and indirect employment in rural communities, Welsh farming underpins the rural economy and contributes to a more equal Wales
A Wales of cohesive communities	<ul style="list-style-type: none"> • Local communities in rural Wales are heavily dependent on agriculture for financial and social prosperity. • Leadership and voluntary roles in rural communities • Welsh farmers make a key contribution towards the provision of attractive, viable, safe communities in rural areas
A Wales of vibrant culture and thriving Welsh language	<ul style="list-style-type: none"> • Agriculture has the highest proportion of Welsh speakers of any sector. • Farming is the bedrock of rural communities across Wales which have been shaped by farming activity spanning hundreds of years. Farmers continue to maintain these traditions, preserving rural culture and sense of place • Welsh farmers are key promoters and protectors of our culture, heritage and the Welsh language
A globally responsible Wales	<ul style="list-style-type: none"> • Current levels of self-sufficiency at a UK level are at 62% • Future challenges to our global food production system include climate change, a growing UK and global population, water scarcity. Given its climate and rainfall, Wales is predicted to be an area of favoured production in the future • Welsh farmers have a key role to play feeding the people of Wales and in contributing to global food security now and in the future.