Cyswllt Amgylchedd Cymru | Wales Environment Link

Agriculture White Paper

March 2021

Introduction

Wales Environment Link (WEL) strongly supports replacing the Basic Payment Scheme and Glastir with a single Sustainable Farming Scheme based on public money for public goods. We are pleased that the Welsh Government's key strategic objectives for agriculture include sustainable food production, tackling climate change and reversing declines in biodiversity. We also welcome the move away from the traditional agri-environment model based on income foregone and costs incurred.

The new Sustainable Farming Scheme is an opportunity to place a proper value on the environmental outcomes that farms deliver, and to protect farm income from market volatility. There is increasing evidence to show that the single farm payment model has not increased farm income stability[1], so we fully support the direction of travel that this White Paper represents. However, the detail of subordinate legislation and the consultations on this will be important to ensure that the regulatory baseline and the new Sustainable Farming Scheme will deliver for the environment and people of Wales, and ultimately provide a long-term sustainable future for its farmers and land managers.

Consultation Questions

Regulatory Reform

1. What are your views on:
(a) The proposed approach to the creation of the National Minimum Standards?
(b) The need for flexibility to amend the National Minimum Standards where necessary? Are there any further considerations which are needed?
Please provide comments to support your view e.g. potential benefits and impacts.

WEL agrees with the creation of National Minimum Standards to prevent pollution, protect and restore biodiversity and reduce greenhouse gas emissions. National Minimum Standards will be essential to ensure the proper functioning of the sustainable farming scheme, ensuring that public goods payments are for activity that goes beyond the regulatory baseline. We also agree with the specific inclusion of GAECs 4 and 5. Standards should ensure a high level of environmental protection

[1] *Stability of farm income: The role of agricultural diversity and agri-environment scheme payments*, Agricultural Systems Journal 187 (2021) 103009

and be in line with the polluter pays principle, the precautionary principle, the prevention principle and the rectification at source principle.

WEL believes that having all regulatory standards in one place, under the banner of National Minimum Standards, should support farmers and land managers by simplifying the regulatory landscape. The Welsh Government will need to consider a process for resolving any differences between existing regulation and current GAEC standards that are being incorporated into NMS. We agree with the need for flexibility to amend the NMS for the purpose of improving standards or to take account of new scientific evidence. Any amendments to the NMS should be based on robust evidence of the environmental benefit that the changes will bring, and transparent consultation with stakeholders.

We think that NMS should be phased in as soon as possible, ideally at least 3 years before the expected start of the SFS, to ensure that the regulatory baseline is clear before the Scheme starts and to drive environmental and public health improvements as soon as possible. Early action is crucial if the sector is to tackle the nature and climate emergency and the introduction of NMS can play a big part in driving action. Appropriate financial support and advice to enable all farmers and land managers to reach these standards should be made available in the transition period toward the SFS. When the Scheme is launched, the Sustainable Farm Review should identify any areas of non-compliance so that this can be addressed before the farm is accepted into the SFS.

WEL believes that Welsh Government should undertake an audit of current agriculture regulations and identify areas that require strengthening to prevent damage/ destruction to natural resources. We would also support the retention and or/strengthening of existing GAECs and SMRs on:

- Buffer strips (GAEC 4);
- Minimum soil cover (requirement for cover crops) (GAEC 4);
- Minimum land management reflecting site specific condition to limit erosion (GAEC 5) – this could be developed into a more comprehensive set of soil husbandry standards;
- Retention of landscape features (GAEC 7);
- Requirement for landowners to keep paths and access land in a fit and useable condition (GAEC7b);
- Nitrate Vulnerable Zones (SMR1) which needs to be updated to reflect the new Control of Pollution Regulations and we also need standards created to tackle phosphate and ammonia pollution;
- Conservation of wild birds (SMR2) with potential to include other Section 7 species;
- Conservation of flora and fauna (SMR3) – this is currently focused on SACs but could be expanded to take account of all ecologically sensitive sites;
- Restriction on the use of plant protection products (SMR10). This SMR must implement requirements and standards of the Sustainable Use Of Pesticides Directive 2009/128/EC (SUD); and

- Welfare of farmed animals (SMR13) – there are opportunities to consider requirements for more sparing use of veterinary medicines that are currently impacting on valuable insects such as dung beetles.

We would particularly like to see new or strengthened standards which target pesticide use, phosphate and ammonia pollution, soil husbandry, burning of peatlands and biodiversity loss beyond designated sites. We support the view that at least 10% of farmed land should be well managed for nature (following the Fair to Nature standard) to be a mandatory requirement of a future Sustainable Farming Scheme. National Minimum Standards that tackle biodiversity loss will help move farmers and land managers towards achieving this goal.

2. What are your views on:

(a) How advice and guidance can effectively support farmers to understand the National Minimum Standards; and
(b) The further considerations needed for advice and guidance? For example, what form guidance should take, who should provide it, the scope of guidance and how farm advisory services may support farmers.
Please provide comments to support your view, e.g. potential benefits and impacts associated with the considerations.

WEL is pleased to see that advice and guidance is recognised within the White Paper as an important investment to ensure the success of a new SFS. Advice and guidance should be provided in a wide variety of media, both printed (e.g. pocket-sized field guides) and web-based, and should be as clear and simple as possible, avoiding the need to cross-refer to too many different documents. Initial farm reviews will need contact from expert individuals who are able to visit farms and provide personal contact and location specific advice. These individuals will need to be experienced, trusted and able to build a rapport with farmers and land managers. Investment in training and peer to peer learning is also crucial.

Scotland's experience of rolling out General Binding Rules has shown how important it will be to publicise the National Minimum Standards widely, explain them clearly, and involve agricultural colleges, consultants and advisers to ensure that farmers are getting the right advice. Compliance will be low if NMS are not publicised widely and clearly explained.

We would suggest that the Welsh Government provides both agronomic and environmental advice, and would recommend the creation of an industry standard with an approved accreditation to ensure that land managers are receiving the best advice possible. A criticism of Farming Connect is that it is too focused on maximising the productive area of a farm, even if this is at the expense of ecological or environmental outcomes. However, Farming Connect could provide quick, accessible advice on how to comply with NMS if advisers receive appropriate ecological training.

WEL believes that guidance should be produced in collaboration with NRW, the Farming Unions, eNGOs, the Soil Association, Food, Farming and Countryside Commission, and other qualified agro-ecology professionals to ensure the greatest buy-in. NRW's role in signposting and providing advice should be carefully considered and designed.

3. What are your views on the proposals for civil sanctions to enable proportionate enforcement of regulations? Are there any further considerations which are needed?
Please provide comments to support your view, e.g. potential benefits and impacts associated with the considerations.

WEL welcomes the proposals for civil sanctions and agree that the proposed hierarchy of options for dealing with low-level offences seems proportionate. However, enforcement must also be a sufficient deterrent to ensure it does not become an accepted element of business costs, or viewed as less costly than improvements to infrastructure or practice. Our members have also noted that the current appeals process is too slow and would like to see proposals to improve this.

One area that members feel could be a cause for concern is the option to provide equivalent environmental benefit, which could take the form of a donation to an environmental cause, if irreversible damage has taken place. We feel that this is a dangerous principle that may fail to deter the wrong behaviours. Irreversible damage caused by intentional action or wilful neglect should instead result in criminal prosecution. We look forward to further consultation on this, including on proposals for addressing intermediate levels of damage.

SLM – Future support

4. What are your views on the proposed purposes for funding in support of the delivery of SLM? Are there other purposes which you feel should be considered?
Please provide comments to support your view e.g. potential benefits and impacts.

WEL strongly supports the principle of public money for public goods as the key principle of the new Sustainable Farming Scheme. We note the definition of Sustainable Land Management is not fully aligned to SMNR which already has agreed principles and a legal definition. We think that introducing a new definition is more likely to cause confusion about the objectives of the Scheme.

We believe there is a risk that, if the proposed definition of SLM were to become a legal definition, it could cause some confusion because it looks to adopt concepts from SMNR while missing key elements. SMNR is defined as;

(a) using natural resources in a way and at a rate that promotes achievement of the objective (maintain and enhance the resilience of ecosystems and the benefits they provide);

(b) taking other action that promotes achievement of that objective; and
(c) not taking action that hinders achievement of that objective.

Whereas the SMNR objective is to 'maintain and enhance the resilience of ecosystems and the benefits they provide', the SLM definition appears to focus on the resilience of the listed 'land resources' and their 'environmental benefits'. The purpose of SMNR is to encourage a holistic ecosystem approach – we need healthy ecosystems that will continue to provide ecosystem services; if this is reduced down to focusing on individual resources and their environmental benefits we risk losing the whole systems element, potentially resulting in the wrong outcomes e.g. establishing a stand of non-native conifer plantation for its carbon benefit as opposed to other approaches that would do more to enhance ecosystem resilience as well as providing a carbon benefit. Ecosystem resilience should be central to the SFS, measured through five ecosystem attributes: Diversity, Extent, Condition, Connectivity and Adaptability (DECCA).

The SLM definition focuses on the use of land resources and omits the term management. In focusing on the use element there's a risk that wider management (b) & (c) – *taking action, not taking action* – is not captured by the definition, whereas that is what the White Paper indicates payments should be made for, or for payments to be contingent on. This overly utilitarian focus also ignores the need to manage land to restore and maintain nature for its intrinsic value. The proposed definition could also have eligibility implications in terms of excluding land managers who are not farmers, but who can contribute to delivering public goods. We believe that this would be a missed opportunity.

We also believe that the UN's 10 elements of agroecology are useful approaches on which to base the Sustainable Farming Scheme, as these not only include the sustainable management of natural resources, but address the food system holistically, supporting fairness, responsible governance and circular economy objectives across the food system.

The Sustainable Farming Scheme's efficacy will be dependent on the Farm Sustainability Review and much resource will be needed to make this work well, but we think this proposal is positive and worth investing in. We look forward to further detail on how future farm payments will work. However, references in the consultation to "direct support" are confusing. We assume that this does not signal a continuation of the Basic Payment or a move away from the public goods model. We would appreciate more clarity on this.

We are pleased to see that biodiversity, decarbonisation, access and agro-forestry are all included in the funding purposes for the Scheme. We note that there is considerable emphasis on decarbonisation and carbon sequestration and would like to highlight that, although tackling climate change is very important, this should not be at the expense of biodiversity. Activities, outcomes and land management practices need to be designed to tackle the nature and climate emergency together. We are disappointed that woodland management is not mentioned in detail, beyond the welcome reference to agro-forestry.

We note that the consultation's tone is positive towards facilitating agroecology, promoting low input farming and encouraging farmers to operate within the natural productive capacity of their land. This is a positive step which could have a stronger and more ambitious focus. Farm sustainability should aim to achieve net Zero and aim for no loss of nutrients.

We expect sustainability to drive landscape-scale change as we will see increased woodland cover, the restoration of species-rich grasslands and a possible increase in arable or horticultural production. It is crucial that these changes are managed in the right way to maximise their positive environmental benefits, and should not result in negative outcomes, such as increased pesticide/herbicide use or increased soil erosion.

We believe that there is one important funding purpose missing: the maintenance and enhancement of the character, beauty and distinctive qualities of our landscapes. They are important, not just for their own sake, but for their environmental linkages, and are fundamental to the enjoyment and appreciation of Wales. They play a unique part in understanding the ecology, environment and culture of Wales. All these roles would stand to be enhanced under the new regime being proposed. Given their manifold importance it is essential that the protection and enhancement of landscape character and components is one of the outcomes for which farmers and land managers are incentivised and rewarded.

The opportunity should be taken to enable management of landscape character and components at both farm-scale and wider collaborative levels and to ensure that impacts from land use change are beneficial. LANDMAP can provide a basic tool in this process, but it needs to be modifiable for use at both a specific and a context level to fit the individual farm-based and wider area-based aims of the scheme.

Designated landscapes, such as the National Parks and AONBs are described in the Welsh Government's "*Valued and Resilient*" report as 'strategic national assets' and 'a key delivery mechanism for the Welsh Government's environmental, social and economic ambitions.' This demonstrates the necessity of ensuring that any changes introduced in these areas provide strong support for the maintenance and enhancement of landscape character and natural beauty as well as biodiversity.

Biodiversity Targets

This year will see the CBD COP15 meeting set out global targets on biodiversity for the next decade. In the absence of a domestic framework of nature recovery targets, Wales has to date failed to deliver against international biodiversity commitments. The outlook – in Wales and globally – is stark, and another decade of failure is simply not an option. Securing the transformation required to restore nature requires a framework of legally binding targets (both long term and interim targets/ milestones) and accountability – in the same way as our long-term net zero target and regular carbon

budgets focus scrutiny and government action for climate change. We note that the Minister has recently expressed her personal support for nature recovery targets, and suggested that environmental governance legislation would provide a suitable vehicle for them. This idea is also gaining cross-party support, as evidenced by statements made by all candidates at WEL's environment hustings on 22nd March.

The Sustainable Farming Scheme should play a central role in driving action to meet these targets. The CCERA Committee has recognised this as a "once in a generation opportunity" to leverage funding and resources for biodiversity, and advised that "a future monitoring regime should include specific targets linked to biodiversity and its restoration." A target-focused approach will provide a framework to reward farmers who look after the most valuable places for nature, including the designated sites network, as well as ensuring that public money is delivering the intended benefits for biodiversity across the wider landscape.

We therefore welcome that Welsh Government proposes establishing long term targets for each outcome and developing a monitoring and evaluation approach that will establish the amount of each outcome delivered each year, where necessary developing credible proxy measures in order to do so. However, the paper lacks the detail e.g. what are the targets? What are the proxy measures? It is not clear how these are going to be developed or consulted on, and within what time frames. We would urge a delivery plan / road map to accompany the draft legislation.

New long-term legally binding commitments for the environment should be set, including quantitative targets where appropriate and these should be linked to agriculture policy, given that nature friendly farming is a key means of achieving the outcomes required. Where legally binding targets for environmental objectives, necessary to achieve ecosystem resilience, don't exist, e.g. restoring biodiversity, they should be established and used to inform future policy design and delivery. We believe targets should incorporate all key aspects of ecosystem resilience, including habitats, species and condition of protected sites (including scale and connectivity). We note that targets already exist for woodland creation, and propose targets should be set for other habitats such as hay meadows (where 90% of the habitat has been lost since the 1930s). Targets should be set at both strategic and farm level to measure achievement against desired outcomes.

Monitoring outcomes will be important to evidence the Wales' Sustainable Brand Values proposed in the White Paper.

Industry and Supply Chain

5. What are your views on the proposed priorities for industry and supply chain support? Please provide comments to support your view e.g. potential benefits and impacts.

WEL broadly welcomes the proposed priorities for industry and supply chain support, however, agriculture policy needs to be clearly aligned with wider food policies – aligning production, supply, consumption and health. Support needs to be targeted to ensure that it does not regress into general support without clear public goods outcomes. We believe that there should be clearly evidenced links to SMNR, and nature and climate benefits. Support for industry change that indirectly drives public goods should be considered, e.g. support for organic conversion or shorter supply chains. WEL is supportive of the aims of the Food Policy Alliance Cymru.

Specifically noting the proposal in relation to interventions in times of exceptional market volatility, this could potentially be a constant in the years ahead (as a result of Brexit and/ or Covid 19 for example). We believe that paying farmers for the environmental public goods associated with agroecological farming principles (adopting the Less is More principle) is the best way of managing volatility and ensuring stable income for farmers.

Collection and sharing of data

6. What are your views on the proposed purposes for collecting, sharing and linking data? Please provide comments to support your view e.g. potential benefits and impacts.

WEL agrees with proposals for streamlining collection and sharing of data, which we believe will provide the following important benefits:

- Assist with monitoring of compliance with environmental regulations;
- Support the evidence base for effective land management practices and the outcomes of the Sustainable Farming Scheme;
- Potentially assist LPAs and applicants with more informed decisions on agricultural planning applications; and
- Reduce administration for farmers and land managers.

We note that remote monitoring and data collection for farms that are not part of EU farming schemes currently makes monitoring and data availability unequal across Wales. Monitoring of compliance with the proposed National Minimum Standards, which will apply to all farms, will be important to redress the balance and allow on-site inspections to be targeted to farms that are regularly non-compliant.

7. What are your views on the establishment of a national database for farms and livestock? Please provide comments to support your view e.g. potential benefits and impacts.

This is a positive step which could pave the way for both focussed and wider-scale initiatives consistent with the scheme's intentions. An acceptable way should be found to prevent it being constrained by the confidentiality and data agglomeration constraints which hamper the usefulness of the present agricultural census.

Thinking about the SFS:

8. In terms of the future scheme, what are your views on the proposals to enable the data we collect on a farm to be used by farmers to track progress and demonstrate their sustainability credentials?

Please provide comments to support your view e.g. potential benefits and impacts.

We agree with these proposals. We would encourage using this data to benchmark the environmental performance of farms (e.g. biodiversity audits or carbon footprint) in addition to the traditional approach of comparing productivity, efficiency and production output. Tracking environmental progress and demonstrating sustainability credentials will be an important element of evidencing Sustainable Brand Values.

Thinking about regulatory compliance:

9. What are your views on the proposals for improving the monitoring of regulatory compliance?

Please provide comments to support your view e.g. potential benefits and impacts.

There is much evidence to show that there has been insufficient monitoring of regulatory compliance on farms – particularly in relation to agricultural pollution. Inspections have shown widespread non-compliance with SSAFO regulations and NRW has reported a substantiated 3 pollution incidents per week in recent years. In addition to this, it took a serious public outcry for additional phosphate monitoring of river SACs to be undertaken, concluding that 60% were failing on phosphate loading.

NRW is clearly under-resourced in terms of its ability to respond to pollution reports. There are not enough inspection staff to investigate and build credible cases in any but the most serious cases of pollution. Our members report that they have noted a lack of experience and expertise in relation to farm inspections, perceived to be due to the high turnover of staff in these roles, meaning that crucial evidence of non-compliance is being missed. Investment in skills for farm inspection staff is important to ensure good relationships with farmers as well as the ability to spot compliance issues.

Whilst we would support the proposals to improve the use of new remote technology for monitoring, particularly for the opportunities this could bring for more widespread, consistent monitoring and even the potential for real-time data, inspections are still going to be important and worth investing resource in. Remote monitoring must provide confidence that it can alert inspectors to issues in time to investigate on the ground. In the long-term, a comprehensive, reliable system of remote monitoring could reduce the need for on-site inspections, but we are currently a long way from this situation.

10. What do you think needs to be considered in future to enable regulators to effectively monitor regulations?

WEL believes that more resources for NRW and Local Planning Authorities will be needed so that they can recruit and retain appropriate numbers of skilled and experienced staff to be able identify compliance breaches and build cases where required. Planning condition compliance needs to be monitored and enforced as well as compliance with environmental regulations. There is also a serious responsibility gap in relation to monitoring of manure management plans. NRW says that these should be monitored by LPAs as part of planning conditions, but LPAs do not currently have the right expertise or resources to do this.

We believe that for regulators to effectively monitor regulations there needs to be:

- clear and fair division of responsibility so that regulators know which bits they are responsible for, and cannot pass the buck;
- sufficient resources to allow enough skilled staff to be recruited and retained; and
- more widespread and regular monitoring that combines technology and human resources effectively.

A single set of National Minimum Standards which cover all aspects of farm regulation should also help regulators to manage their workload and be clear on the things they need to monitor.

Forestry and woodland

11. What are your views on the proposed amendments to forestry legislation?
Please provide comments to support your view e.g. potential benefits and impacts.

WEL supports payments in the Sustainable Farming Scheme for woodland creation and management for purposes of carbon sequestration, habitat resilience and amenity. We look forward to further consultation on how the right outcomes can be achieved for this part of the Scheme.

The Forestry Act 1967 was established to regulate the commercial forestry industry and whilst there have been several amendments over the years, the principal purpose of the Act is still to regulate commercial forestry activity. The Act has not been updated to either reflect the Conservation of Habitats and Species Regulations 2017 (as amended) or indeed the Environment (Wales) Act 2016. As a result of this, NRW has advised that they are unable to consider the potential impacts of forestry applications affecting woodlands, even those notified as Special Areas of Conservation for species such as bats, and neither can they apply conditions to licenses for tree felling to protect key wildlife. There is therefore an urgent need to amend and update the Forestry Act and make it a relevant consideration. We would very much welcome and support amendments to allow NRW to add conditions to licenses for tree felling, including to protect ancient trees, and ensure effective deterrents are in place to prevent illegal felling.

WEL supports the proposal to increase woodland creation to tackle the climate emergency through carbon sequestration and to help bring about long-term biodiversity benefits. Whilst we support this

general principle, woodland creation must not come at the expense of the ecological resilience of other important key habitats, such as species-rich grasslands, especially where this may reduce the quality of habitat that non-woodland specialist fauna relies on. We welcome the commitment earlier in the consultation to restore peatland and salt marsh alongside woodland creation as part of action to sequester carbon. There are opportunities to align woodland creation with the Welsh Government's peatland mapping, for example, to ensure that peatland is not affected by inappropriate planting.

Woodland creation must (a) look to create resilient connected woodland ecosystems across Wales and (b) only use appropriate tree species in the right place, without adversely impacting on other key habitats. We note that the proposals may also make it easier to fell trees for biodiversity benefits e.g. on peatland and for ground nesting birds, which we would support subject to provision of robust evidence of the intended benefit. We also note the intention to bring more woodland into management. It is crucial that forest specialist species which rely on areas of minimum intervention in the woodland interior are considered and provided for, or our rare forest species will continue to decline.

WEL members are clear that there needs to be a sustainable balance between commercial forestry operations and broadleaved woodland creation to tackle the nature and climate crises together. Siting will ultimately need to be considered on a case by case basis to ensure commercial operations are not damaging to native woodlands or other sensitive areas. Commercial operations, whilst they can be improved in biodiversity terms, currently cannot provide an effective integrated response to the nature and climate emergency for the reasons outlined above. We would also like to see more recognition of the benefits of natural regeneration rather than focusing mainly on tree planting.

We support the proposal for powers in the Bill for Ministers to review and amend EIA thresholds but WEL members do not support raising thresholds, so we are pleased the Welsh Government has stated there is no intention to do this. However, intentions can change with successive governments, so we would like to see a robust evidence-based process in place for reviewing and amending thresholds to guard against adverse environmental consequences.

12. What are your views on how the Welsh Government can support landowners in Wales to benefit from carbon markets for planting trees?

WEL would like to see the Woodland Carbon Code widened to include other habitats that are important for carbon sequestration as well as biodiversity. Habitats such as peatland and species rich grasslands can also play their part, and this would also provide balance, so that private investors have a wider variety of options, reducing the focus on investment in commercial timber plantations. WEL also believes that Welsh Government should support eNGOs to help deliver in partnership on woodland creation and other habitat restoration with carbon sequestration potential, with

preference for habitat creation that provides multi-benefit outcomes e.g. tackling flooding and providing important habitat.

Funding streams should be developed to recognise this multi-benefit layering, with higher funding where, for example, habitat creation, regeneration or protection not only delivers carbon sequestration but also intercepts flowlines, providing natural flood management, or where additional biodiversity benefits are evident. This should be taken into account on smaller parcels of land as well as large woodland areas, for example, riparian planting to tackle flood risk and water quality.

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

We note the various proposed duties for Ministers to report on the budget and impacts/outcomes for both farming and rural development expenditure. We believe that there should also be a duty on Ministers to report against Well-being of Future Generations and Environment Act goals that the Scheme and wider rural development spending is contributing to, to ensure that it is delivering for nature and climate. Specifically, they should report on how the Scheme;

- Contributes towards the objective of SMNR and the delivery of the Natural Resources Policy
- Embeds the 9 principles of SMNR
- Meets the 5 ways of working within the WBFG Act
- Contributes towards achieving specific wider environmental targets/commitments e.g. good ecological status under the Water Framework Directive; good environmental status under the Marine Strategy Framework Directive; air quality standards under the proposed Clean Air (Wales) Bill; favourable conservation status of SACs and SPAs; favourable condition of SSSIs.

Common land proposals

WEL is pleased that Welsh Government recognises the role of common land in supporting agricultural production, but it must also recognise the multiple public benefits provided by commons—for their natural beauty, wildlife habitats, and historic and cultural interest, and for public access. We note with surprise that there were no questions relating to the common land proposals and hope that comments on these will be taken into account before proposals are adopted.

We do not consider that the process under section 38 of the Commons Act 2006 should be combined with the planning legislation process. Reference is made to 'duplication' of consents, but the tests are different, and section 38 recognises the special character and features of common land. In the same way, there are parallel consent regimes (in addition to planning permission) for, for example, listed buildings, highways, maritime structures. Some works carried out on common land do not

require planning permission, or benefit from planning permission as permitted development: for example, stock control fencing, utility installations or boundaries to dwellings.

Planning permission is consent granted for the purposes of controlling development. A grant of planning permission resolves the requirement for obtaining planning permission before development proceeds, and no more. It is not, and never has been, a mechanism to abrogate third-party rights in the land (such as easements or rights to light). Moreover, much common land is subject to rights of common, which are property rights protected by article 1 of protocol 1 to the European Convention on Human Rights. Whereas a consent to works granted by the Welsh Ministers, taking account of all interests, may (according to case law) facilitate lawful interference in, or deprivation of, the exercise of rights of common, it would be unprecedented for a planning permission to have such effect on third party property rights. Thus, either such consent would have no impact on commoners' rights, so that (for example), any commoner would be able to act at common law to prevent interference with his or her rights notwithstanding any planning permission, or there would be an unwarranted interference with the commoners' property rights which would demand provision for an entitlement to compensation. In view of the national importance, character and complex status of commons it is important that such consents continue to be determined by the Welsh Ministers, not by the local planning authority.

We welcome the proposal to revise the enforcement responsibility and urge the Welsh Government to strengthen this considerably by imposing on county and county borough councils a duty to take enforcement action against unlawful works on commons, in line with the legal duty under section 130 of the Highways Act 1980 to remove obstructions from the public highway. At present it is too easy for the various parties with a power to enforce to pass the responsibility on to someone else, so that nothing is done.

The power to create commons councils is in part 2 of the Commons Act 2006 but requires the endorsement of the Environment Minister. Because this is not a priority for government, there are no commons councils in Wales (and only two in England)—14 years after the provision came into force. We also question the consultation's assumption that restricting a council's powers to manage 'agriculture, vegetation and rights' prevents a holistic approach to management. The consultation fails to explain what powers could usefully be conferred on a council which cannot be done under part 2 of the 2006 Act? For example, is it suggested that the council—constituted to represent commoners and landowners—should have a power to restrict or exclude access under part 1 of the Countryside and Rights of Way Act 2000? Or that it should be empowered to authorise restricted works such as fencing? If so, such proposals would be entirely contrary to the ethos of commons councils, which comprise a statutory association of those engaged in the agricultural management of the common, to enable better such management in the interests of the commoners, owners and other agricultural interests. If a commons council is to be granted wider powers encroaching on the public interest in a common, it should be constituted as a body representing that wider interest,

including representatives of local and national park authorities and community councils, recreational users and conservation interests.

Consequently, WEL does not support the proposal for wider powers for commons councils, and we believe the priority should instead be for the Welsh Government to promote and facilitate their establishment where they would be useful.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

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