

## **Consultation Response to the Welsh Governments Consultation Document Taking Forward Wales' Sustainable Management of Natural Resources**

1. This Consultation Response is the response of the Meeting of Chairs of Welsh Local Access Forums. It deals only with the Local Access Forum section of the Consultation Document.
2. The Chairs of Welsh Access Forums meet two or three times a year to discuss matters of concern to Local Access Forums in Wales. An Annual Conference is organised on matters within the remit of Local Access Forums the last being in October 2016.
3. Through its work the Meeting of Chairs of Welsh Local Access Forums chaired by the elected National Representative, serviced by the NRW, can claim through its members and officers to be of the very few who have a good overview of the performance of Welsh LAFs and their methods of working.
4. This response is structured into three Parts and two Appendices as follows:  
**Part A: a summarised response to Proposal 27**  
**Part B: comments on the changes identified on page 45 of the Consultation Paper**  
**Part C: additional matters not raised on page 45**  
**Appendix 1: a list of proposals arising from Part**  
**Appendix 2: matters for inclusion in a protocol for County Councils and National Park Authorities.**

### **Part A**

#### **A summarised response to Proposal 27 of the Consultation Document**

5. Parts B and C of this Response contains proposals and detailed explanations for consideration. It is envisaged in this document that changes can be made through legislation, including amended Regulations, and through less strictly formal means.
6. The less formal means for changes and improvements are:
  - a. the establishment of a protocol for County Councils and National Park Authorities  
and
  - b. a document for benchmarking recommending 'best practice' procedures for Local Access Forums.
7. These topics are dealt with in Part B. Though they will have less formality than legislation it is nevertheless important that the duties associated with this approach should be defined in legislation, possibly in the Regulations. It is considered that the duty for the development and regular review of the documents 6a and 6b should lie with NRW.

## Part B

### Comments on the Changes Identified on page 45 of the White Paper

#### *'Amendments to enable deputies to represent members .....* '

8. This suggestion is unhelpful to the method of working of Access Forums and is anomalous with respect to the role of Forum members and the appointment procedures of the Appointing Authorities. The following issues are pertinent:
9. . Given the way a Forum work the allowing of deputies would be disruptive to a Forum as there would be difficulties in members keeping up to date with the state of business, contributing to subcommittees and generally making effective contributions. LAF agenda items are commonly items carried over to one or more meetings before matters are concluded. A deputy cannot be expected to be kept up to date or updated on matters of previous meetings in supporting or otherwise a course of action or voting on a matter which may have some public significance.
10. It must also be recognised that Forum members are not appointed as representatives of any organisation. Forum members are there, and are appointed, so that the Forum can benefit from their knowledge of particular subjects when making contributions to Forum discussions. In this circumstance it would only be a Forum member who could appoint her or his deputy. Attendance at a Forum would be, in effect, at a member's personal behest. This is not an acceptable situation for a statutory body such as a Local Access Forum whose members undergo a formal appointment procedure.
11. . The CROW Act and the Welsh Government Regulations govern the appointment of Local Access Forum members by an Appointing Authority. Before considering an appointment an Appointing Authority will request aspiring Forum members to complete a formal application form to indicate relevant interests, geographical situation, gender, language and other criteria. Allowing a member then to arrange a substitute is not compatible with the justifiable formality of this initial appointment procedure.
12. The existing Regulations already provide for the attendance of non-members. A person can attend as a member of the public and there is no reason why such a person cannot report back to a non attending member. In addition, Section 15(8) of the Regulations state:  
*The Chair may invite observers and/or advisers to a meeting, and those invited may, if the person presiding considers it appropriate, contribute to the proceedings of the forum.*

13. These considerations make it inappropriate and unnecessary to allow for deputies to Forum members as proposed in the Consultation Document.

***'Steps to encourage a more representative range of members such as guidance on when and where to hold meetings to allow for those who work and or have caring responsibilities.'***

14. Those familiar with Welsh Local Access Forums will know that these matters are continually in the mind of Forums to the extent that cluttering the Regulations with guidance on the topics is superfluous. Local Access Forums' coverage range from comparatively small urban areas to large rural areas with limited population. It is difficult to envisage sensible practicable guidance being produced by central government for the varied situations, geographical and otherwise, in which Local Access Forums exist. This is especially so for any proposed guidance on 'where and when to hold meetings'.

***'Advertising for members on the internet and social media'***

15. This is one of a number of ways of advertising for members at the time of a Forum's reappointment and it is of course acceptable. It is unlikely to save money as all means of advertising for members need to be adopted including the usual form advertisements in local newspapers.

***'Guidance on how to promote the role s and responsibilities of LAFs to other public bodies. This includes how LAFs can engage more effectively with their Public Service Boards.'***

16. On the topic of guidance the requirement lies more in guidance to the public bodies, with which the LAF is deemed to have a relationship, as to those bodies' responsibilities to the Local Access Forum. Nevertheless Guidance to LAFs on their role with respect to these bodies would not be unhelpful as there are uncertainties in LAFs as to what formal relationships exist with public bodies other than County Councils and National Parks. This topic is considered further in para 25 below.

17. In the context of Public Service Boards the implication within the Consultation Paper is that there is already some level of direct engagement with Boards. This is not the case though it is desirable that there should be some connection. Dealing with this issue should be straight forward. Welsh Government instructions (possibly statutory) lists people who should be invited to participate in PSBs. In this instruction there is the statement

*'PSBs will also be able to invite other public service organisations to participate'*

This offers a convenient way of instructing Public Service Boards to invite a Local Access Forum to nominate a member, probably its Chair, to a Board.

***'Increasing the remit of a LAF from 3 to 4 years'***

18. This proposal is supported
19. For newly appointed LAFs there is a 'bedding in' period when members with different Interests get to know each other, develop an understanding of others' general views on topics and gain a knowledge of how a LAF works together with what it has accomplished or attempted in the past. It takes time for a Local Access Forum to learn to work effectively.
20. With this proposal members' training and members' accumulated experience can Benefit LAFs over a longer period though not long enough for staleness to reduce effectiveness. There are also savings in administrative time and cost in avoiding an over frequent need to organise the appointment of a new LAF.
21. These considerations will benefit by an extension of the term of appointment to 4 years.

## **Part C**

### **Additional Matters (Not Identified on page 45 of the White Paper).**

#### **Relationship with the County Councils and National Parks.**

22. Though it is independent of a County Council or National Park in its decision making a LAF does depend on it for its servicing including its secretariat. At the present time most of the advice given by a Local Access Forum is to a County Council or National Park Authority.
  23. Establishing a satisfactory relationship with a County Council is a concern for many Forums though some have relationships which they regard as good. Nevertheless if the general experience of Forums over the last twenty years or so shows anything then it is the need to establish a protocol for their relationship with County Councils and National Parks. A protocol will be helpful to new Chairs, members and new secretaries who otherwise may have little feel for how they should relate to a County Council or National Park Authority. It also benefits officers and members of a Council and National Park in informing them on the roles and procedures appertaining to Local Access Forums.
  24. NRW is best placed to draft such a protocol with advice from Chairs of Welsh local Access Forums Meeting, from LAFs themselves and County Council sources. The Chairs Meeting has already considered a paper on this topic part of which is included as Appendix 2.
- It is proposed that an addition to existing legislation should place a duty on NRW to draw up and maintain a protocol for the relationship between a LAF and a County Council or National Park.

## **Clarifying and updating the Relationship between NRW, Welsh Government, the National Assembly and Local Access Forums**

25. In Wales the erstwhile Countryside Council for Wales published its Local Access Forums Guidance 2 in 2001 title *the role, duties and functions of Local Access Forums*. . In its paragraph 5.1 it lists the CCW, National Assembly and, in some cases, the Forestry Commission, as a statutory duty, having regard to any relevant advice given to them by a Local Access Forum.
26. The CCW guidance was published 26 years ago and needs updating. The public bodies concerned are now NRW, Welsh Government and the National Assembly for Wales. The responsibilities are not clearly defined in the CCW publication which mainly mentions they cover Part 1 of the Crow Act. Few LAFs are clear as to their relationship with NRW and Welsh Government and, in our view, few Welsh Government and NRW field managers are aware of any relationship their organisation has with LAFs.
27. NRW is much involved with access facilities for the public which are closely related to its recreational activities. The current LAF remit is the proffering of advice on *the improvement of public access to land in that area for the purposes of open-air recreation and the enjoyment of the area, and as to such other matters as may be prescribed*
28. In its nature NRW's planning and management of its recreational activities fall well into this remit of Local Access Forums. The reference to 'CROW Part 1' in the CCW Guidance is too narrow an interpretation of the relationship Forums should have with NRW given the recreational activities that organisation carries out on its managed land. It is also the case that there is little or no local input into NRW's activities within a County. Arising from these considerations is a need to bring up to date the relationship between NRW, in its recreational activities, and LAFs. Thus:
  - It is proposed that the relationship between LAFs and NRW should be clarified to the extent that NRW should 'have regard to' advice provided by a LAF on access and related recreational facilities which are within the statutory remit of LAFs.
29. This proposal can be statutorily implemented under either or both of Section 94(4) d of the CROW Act ('*such other bodies as may be prescribed*') and the Section 94 (4) remit which includes '*and as to such other matters as may be prescribed.*'
30. The CCW Guidance refers to the 'National Assembly'. It needs updating so that, similar to that suggested for NRW. Where in the unusual event whereby the Welsh Government or the Welsh National Assembly plan to implement facilities of a physical kind on the ground for '*public access to land for the purposes of open-air recreation and the enjoyment of the area*' then the Local Access Forum should be

able to provide advice. Thus:

- It is proposed that the relationship between LAFs with Welsh Government and the Welsh National Assembly be clarified to the extent that if these public bodies propose to create facilities within the remit of a LAF then they should have regard to advice provided by a LAF.

31. As with NRW this proposal can be implemented under either or both of Section 94(4) d and the Section 94 (4) remit in the CROW Act.

### **LAF Relationships with Other Bodies.**

32. Whereas the CCW publication gives reasonable scope for LAFs to introduce topics of their own it is always helpful if there is formal support of an official nature.

33. Community Councils have a number of useful statutory powers in relation to public access including their maintenance, the creation of new paths and the ability to raise finance. The Regulations in England have prescribed Parish Councils under section 94(4) d of the Crow Act. Community Councils need to be similarly prescribed in Wales. This will provide Welsh LAFs with a locus for the reviewing, advising and enthusing Community Councils.

- It is proposed that Community Councils be proscribed under Section 94d of the CROW Act
34. Access projects significantly financed from the public purse can arise in a County with little knowledge of the County Council or the LAF. Currently there is no formal opportunity of reviewing what is going on within a County which depends on public finance from outside the County Council or National Park.
- It is proposed that legislation should provide for an LAF to overview publicly financed projects with the organisers needing to 'have regard' to any advice proffered by a LAF.

35. For various reasons it is likely a Forum will need to be selective in the choice of projects.

### **Benchmarking of Best Practices for Local Access Forums**

36. Local Access Forums are varied in their procedures. There are circumstances when a variety of approaches is optimal taking Wales as a whole. What is not desirable is that variety exists because no advice is available on what is considered best practice even if following that best practice is not an obligatory duty of a LAF. New Chairs,

new Forum members and new secretaries should at least have best practice advice available to them. The Chairs Meeting is already starting to work up a series of benchmarks but ultimately the duty should lie with NRW given the current delegation from Welsh Government.

37. The page 45 changes on representation, guidance and advertising suggested in the Consultation Paper are best dealt with by incorporating them into the 'best practice' approach rather Welsh Government adopting a prescriptive approach in any future changes to legislation or the Regulations.

- It is proposed that the Regulations place a duty on NRW to maintain a set of best practice for LAF procedures, revised over time as necessary, with their adoption by individual LAFs being discretionary to allow for the varied circumstances of Welsh LAFs and Local Authorities. This to be in consultation with the Chairs of Welsh Local Access Forums Meetings and other relevant parties.

### **The Rights of Way Improvement Plan**

38. Under the CROW Act Local Access Forums are statutory consultees in respect of the Rights of Way Improvement Plan (ROWIP) CROW Section 61(1) e. Partly because of this and of Welsh Government instructions Forums have been closely involved in the current revision of ROWIPs which is taking place in Wales. Holding this statutory position it makes sense that the monitoring of the progress of a ROWIP should also be a statutory function of a Local Access Forum.

- It is proposed that either in the Regulations or in future legislation the Welsh Government make the monitoring of the progress of a Rights of Way Improvement Plan a statutory function of the LAF.

### **The Appointment of LAF Chairs**

39. The Chair makes a very significant contribution to the success of a LAF. A Chair does more than transact the business of the agenda in a timely fashion. From the Chair there is a need for a degree of executive direction and a controlled enthusiasm for the remit of the LAF. She or he must also have the time for the duties. Impartiality of course is a given but this should not prevent a Chair having a particular interest within the LAF remit.

40. The Regulations currently cover the election of a LAF Chair at the first meeting of a Forum after its appointment. This Consultation Response makes no recommendations on this topic but it is relevant for the Welsh Government to consider what other procedures might be considered given the importance of the role.

- It is proposed that Welsh Government review the options available for the procedure of appointing a LAF Chair.

## **Chairs of Local Access Forum Meetings**

41. Regrettably, the Consultation Paper rules out the possibility of the Chairs of Welsh Local Access Forums Meeting having statutory status. In the context of a consultation this is disappointingly premature.
42. The Chairs Meeting avoids the danger that an LAF exists almost in isolation. Without it LAF Chairs would have little recourse to advice and discussion with their contemporaries on issues, procedures and experiences. There would be no ability to question policy makers in Welsh Government who are occasionally in attendance and little ability to question or influence officers of NRW which has certain delegated responsibilities from Welsh Government in respect of Welsh LAFs. Conversely, without the Meeting NRW and Welsh Government officials have no opportunity of orally discussing possible changes in procedures and policies affecting LAFs with the Chairs who have practical experience of their running. Asking for written LAF contributions is by itself often not enough to reach sensible conclusions on issues.
43. The Chairs meeting is already working towards resolving issues such as a protocol for the LAF relationship with County Councils, It is also moving towards a set of benchmarks for best practice in the working of LAFs including some of the issues raised in the Consultation Document. This work will be a valuable input in respect of documents mentioned in para. 6.
44. It is important to the success of Welsh LAFs that the Chairs Meeting can be supported in its role. In practice the most essential need is for the continuation of a secretariat currently provided for by NRW and that the Meeting itself has some form of official recognition. Thus:
  - It is proposed that the Regulations acknowledge the need for a Meeting of Chairs of Welsh Local Access Forums and place a duty on NRW to provide a secretariat with resources which allows for the administration for up to three Chairs meetings a year and an Annual Conference



## **Appendix 1**

### **List of Proposals Made in Part B.**

- It is proposed that an addition to existing legislation should place a duty on NRW to draw up and maintain a protocol for the relationship between a LAF and a County Council or National Park.
- It is proposed that the relationship between LAFs and NRW should be clarified to the extent that NRW should 'have regard to' advice provided by a LAF on access and related recreational facilities which are within the statutory remit of LAFs.
- It is proposed that the relationship between LAFs with Welsh Government and the Welsh National Assembly be clarified to the extent that if these public bodies propose to create facilities within the remit of a LAF then they should have regard to advice provided by a LAF.
- It is proposed that Community Councils be proscribed under Section 94d of the CROW Act.
- It is proposed that legislation should provide for an LAF to overview publicly financed projects with the organisers needing to 'have regard' to any advice proffered by a LAF.
- It is proposed that the Regulations place a duty on NRW to maintain a set of best practice for LAF procedures, revised over time as necessary, with their adoption by individual LAFs being discretionary to allow for the varied circumstances of Welsh LAFs and Local Authorities. This to be in consultation with the Chairs of Welsh Local Access Forums Meetings and other relevant parties.
- It is proposed that either in the Regulations or in future legislation the Welsh Government make the monitoring of the progress of a Rights of Way Improvement Plan a statutory function of the LAF.
- It is proposed that Welsh Government review the options available for the procedure of appointing a LAF Chair.
- It is proposed that the Regulations acknowledge the need for a Meeting of Chairs of Welsh Local Access Forums and place a duty on NRW to provide a secretariat with resources which allows for the administration for up to three Chairs meetings a year and an Annual Conference

## **Appendix 2:**

### **Topics for Consideration in Developing a Protocol for County Councils and National Park Authorities.**

The topics which could, perhaps should, be covered in any protocol or agreement or less formal discussion include the following:

- a. The need to establish the existence and purpose of the Local Access Forum to all services within a county or national park. This can be done by asking a Council to circulate to all services or divisions the statutory nature and purpose of the LAF and perhaps outlining circumstances in which the LAF can provide advice. Also to provide for further reminders from time to time to cover staff and organisational changes.
- b. In the role of Appointing Authority, when advertising for new members of a Forum applicants should be reminded that they should have time available to contribute not only to what are usually quarterly meetings of a Forum but also to sub committees which may be established for particular purposes.
- c. That a new LAF should be appointed and have its first meeting within four months of the last meeting of the former LAF.
- d. The Secretary should be a comparatively senior person competent in the role of providing guidance and advice to the LAF.
- e. The Chair of the LAF should be consulted where reorganisation, staff changes or budgetary adjustments affect the administrative arrangements and service for the LAF.
- f. It should be enabled that the Chair, Vice Chair and Secretary meet annually with the Council Leader, Chief Executive and appropriate Cabinet Member. This at the request of the Chair each year.
- g. It should be enabled that in the company of the LAF Secretary and Vice Chair, the Chair should be asked to make an annual presentation to a relevant Scrutiny Committee.
- h. To avoid the ambiguity which may arise from the Secretary being a County Council or National Park employee, formal communication between the LAF and the Council or National Park will be by letter addressed to the Chief Executive and signed by the Chair.

The foregoing are the matters viewed as being the most important on which to reach an understanding with a Council or National Park. For those wishing to consider it, Appendix 1 is a suggested template agreement bringing together the topics in a more formal way.

**(End)**