



## **Response to the Consultation on Designated Landscapes in Wales**

### **Taking Forward Wales' Sustainable Management of Natural Resources**

#### **Chapter 3**

##### **UK Environmental Law Association's Wales Working Party**

The UK Environmental Law Association (UKELA) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of environmental law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice on proposals of governments and regulators covering a range of environmental law topics, with the help of its specialist working parties. This response has been prepared by its Wales Working Party.

##### Introduction

UKELA made a response to both the first and second stages of the Marsden Review of Landscapes in which we stressed the importance of the natural features of landscape to environmental protection. We also set out in detail the issues at stake in the governance of designated landscapes for these purposes.

UKELA welcomed the opportunity to be a part of the 'Future Landscapes Wales' process as a member of its Working Group. The process had the potential to be truly collaborative, but we have some reservations about the way in which it operated in practice. These reservations relate to the direction of the process, the connections

between the Working Group and other aspects of the process, and the way in which the outcomes of the process were presented in the final report.

We view this consultation as the opportunity to clearly set out our views on the issues that were discussed. Our approach is focused on what is necessary to make the law on designated landscapes in Wales work better for environmental protection.

We conclude that there is a need to enhance the opportunities for designated landscapes to contribute to both Sustainable Management of Natural Resources and the Wellbeing of Future Generations. This could be achieved with legal reform, but it may be more effective to make changes to the policies and processes that underline the current legal framework. Furthermore, Brexit presents a huge challenge to the protection of the 'value' of landscapes everywhere. This is another reason to consider these other options before overhauling the current legal framework.

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

If there is to be a change in the statutory purpose of designated landscapes we need to clearly understand the problem with the current approach. Law is a tool that is used to create frameworks of rules to meet societies objectives. It only requires reform if it is no longer doing so effectively.

The 'problem' with the current legal framework for the designated landscapes, as it has been conveyed to us in the Future Landscapes Wales process, is that the law is 'outdated' and no longer reflects the needs of communities living with designated landscapes. More specifically:

- There is a desire to realign the designated landscapes with the Welsh Government's new legal frameworks for the Well-being of Future Generations and Sustainable Management of Natural Resources (not just the latter).
- There is a perception that there needs to be greater attention the social and economic well-being of the local communities who live and work within the designated landscapes.

- The law needs to also reflect the importance of ‘local landscapes’, beyond the boundaries of those subject to national designation.

In light of these concerns, we believe that the starting point should be the Vision for the designated landscapes in the 21<sup>st</sup> century as set out in the Future Landscapes Wales report:

The Vision - “Wales as a nation values its landscapes for what they provide for the people of Wales and elsewhere. The designated landscapes of Wales deliver both within and beyond their boundaries to enhance their social, economic, environmental and cultural resources; delivering the maximum well-being benefits for present and future generations whilst enhancing the very qualities that make them both distinctive and cherished.”

We need to consider how to create a framework that supports the delivery of this vision. To do so, we need to carefully distinguish between the criteria for the designation of these landscapes and the objectives for the management of these areas. The current debate around the protection of landscapes in Wales is confused by the use of the term ‘purpose’ in relation to both of these. There should be clarity as to what Question 11 in this consultation is referring to in terms of ‘purpose’, i.e., whether it applies to criteria for designation or objectives for the management of designated landscapes. The following discussion provides a clear separation of these issues.

### The Criteria for the Designation of Protected Landscapes

The Vision, set out above, states that the designated landscapes are ‘distinctive and cherished’ because of their ‘special qualities’.

This lies at the heart of the system of designation and we must be clear about what we mean by these ‘special qualities’. Without this clarification, there is a real danger that the very essence of the ‘value’ of a designated landscape, as it is currently understood and supported in international convention, will be lost.

UKELA has previously highlighted the importance of the natural features of landscapes to environmental protection, but we recognise that there are other

important concerns with respect to cultural heritage. International convention refers to the 'special qualities' of landscape in terms of 'natural and cultural heritage'. This includes the European Landscape Convention, the IUCN Protected Areas and the World Heritage Convention. It is also the basis of designation for the National Parks in Scotland.

In England and Wales, the legislation on National Parks refers instead to natural beauty, wildlife and cultural heritage, whilst AONBs are designated only for their natural beauty. These criteria for designation might, therefore, be modified in line with international convention. In particular, the term 'natural heritage' is broad enough to include not just natural beauty and wildlife, but other values such as, wilderness, tranquillity and geological considerations.

### The Objectives for the Management of Designated Landscapes

The Well-Being of Future Generations (Wales) Act 2015 (WFG Act) requires all public bodies across Wales to consider how they can contribute to the social, economic, environmental and cultural well-being of the people of Wales. This applies as much to those bodies operating in the designated landscapes as elsewhere. The Environment (Wales) Act 2016, also requires NRW to adopt the principles of SMNR in their work, whether or not that happens to be within designated landscapes.

In this context, the objective for the management of designated landscapes is as follows:

- To ensure that, in the operation of their functions, (particularly as they relate to the improvement of the Well-being of Future Generations and Sustainable Management of Natural Resources) public bodies in Wales maintain and enhance the 'special qualities' of the designated landscapes (defined in terms of their natural and cultural heritage).

For example, how can we enhance access to the natural and cultural heritage within designated landscapes to make a significant contribution to public health and local business interests.

This objective might be furthered by legislative reform, but it could be more effective to introduce procedural change that does not require new legislation. For example, providing clarity in policy processes on how public bodies will be expected to work within the new structures created under the Well-Being of Future Generations (Wales) Act 2015 and Environment (Wales) Act 2016, i.e., Public Service Boards (PSBs) and Area Management to support the maintenance and enhancement of the 'special qualities' of the designated landscapes. It will also be important to ensure that the frameworks supporting payments under the successor to the Common Agricultural Policy include reference to this objective.

In summary, the statutory purposes of AONB and National Parks should not be aligned with the Sustainable Management of Natural Resources. If they are to be changed at all it should be to ensure clarity with regard to the issues set out here. We are particularly concerned that it is not clear in Question 11 of this consultation whether the reference to the term 'purpose' applies to the criteria for designation or objectives for the management of designated landscapes.

**Question 12: Where the special qualities of each designated area are identified, should this be given greater weight in decision making? In considering this, how should it be done in order to most effectively add value to the governance of those areas and the connection to local communities and businesses?**

The 'special qualities' of designated landscapes must be clearly identified in the legislative framework and compliant with international convention. It is illogical to identify those 'special qualities' and then to create a legal framework that does not support their maintenance and enhancement. Such an approach would undermine the very basis of designation.

The key to balancing the maintenance and enhancement of the 'special qualities' of the designated landscapes and the social and economic well-being of those who live and work within these areas is to enhance the opportunities that those places provide for local communities. This could be made clear in the legal frameworks for

the operation of public bodies working in these areas, but could also be achieved by changes in policy processes.

**Question 13: Should legislation be introduced to recognise a wider range of areas and partnerships involved in driving the sustainable management of natural resources? What approach should be considered?**

The existing structures for PSBs and management plans in National Parks and AONBs, along with the new priorities in the forthcoming Area Statements, should be the driving force behind measures to attain SMNR. PSBs themselves were only introduced on a statutory basis after the emergence of partnership working on a voluntary basis as Local Service Boards. Law is not always the best means of developing partnership approaches.

**Question 14: Are there any other aspects of the Future Landscapes: Delivering for Wales report where you believe a legislative provision is necessary? If so, please explain which and why.**

There are undoubtedly 'local landscapes' lying outside designated areas that are particularly important to local communities, but not recognised in the current legal regime. One way of gaining greater attention to these is formal designation, but a preferred solution is to consider ways of developing an evidential basis focused on a 'local perspective' to be included in the land use planning process.

## **Conclusion**

Law works best where it is framed carefully to help address the challenges faced by society. Lawyers are increasingly recognising that it has, in the past, often been used as a blunt instrument and that more flexible and responsive approaches are necessary to address the complex issues we face. Protecting the values of 'landscape' is clearly one such concern and careful consideration must be given to our approach.

The focus for reform should lie in considering how the new structures in the WFG Act and Environment Act (especially SMNR) can be used to enhance the opportunities

for designated landscapes to contribute to these aims. This might be achieved through legal reform, but equally, and, perhaps more effectively, by changes to the policies and processes that underline the current legal framework.

In light of the huge challenge that Brexit presents to the protection of the 'value' of landscapes everywhere, it may be best to consider these other options before overhauling the current legal framework.