

mae'n wlad i mi  
breathe easier



NATIONAL PARKS WALES  
Britain's breathing spaces

Decisions Branch  
Planning Division  
Welsh Assembly Government  
Cathays Park  
Cardiff CF10 3NQ

By Email

Your Ref:  
Our Ref:

25 September 2008

To Whom It May Concern:

**Re: COMMONS ACT 2006: EXCHANGE OF COMMON LAND AND CONTROL OF WORKS ON COMMON LAND IN WALES**

The three National Park Authorities (NPAs) in Wales – collaborating as the Welsh Association of National Park Authorities (WANPA) - are grateful for this opportunity to respond to the above consultation.

**Background**

WANPA is the collaborative body of the three National Park Authorities in Wales and exists in response to the political and policy divergence bought about by the 1999 devolution settlement.

The National Parks have two statutory purposes in the 1995 Environment Act:-

- Conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park.
- Promote opportunities for the understanding and enjoyment of the special qualities of the Park by the public.

In fulfilling these purposes, the National Park Authority has a duty to :-

- Seek to foster the economic and social well being of the local communities within the National Parks.

Cymdeithas Awdurdodau  
Parciau Cenedlaethol Cymru

Welsh Association of  
National Park Authorities

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The special qualities of the 3 National Parks are recognised and admired both by local residents and external users and the National Park Authorities are rightly regarded as leaders in landscape management.

If you have any further enquiries regarding our response, please feel free to contact me in the first instance.

Yours sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

**Greg Pycroft**  
**Welsh Policy Officer**  
**Welsh Association of National Park Authorities**

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**CONSULTATION ON THE COMMONS ACT 2006:  
EXCHANGE OF COMMON LAND AND CONTROL OF WORKS ON COMMON  
LAND IN WALES**

**A response by WANPA (Welsh Association of National Park Authorities)**

**January 2008**

**General Comments**

We would like to highlight some overall key points. These are:

- a. The document should specify statutory consultees, which should always include:
  - the National Park Authority in cases in National Parks;
  - the Access Authority which is responsible for facilitating CRoW access rights (the Highways Authority, or the NPA within a National Park); and
  - the Local Access Forum.
- b. The final proposals should be scrutinized, monitored and reviewed by the Stakeholder Forum. This will be particularly important in considering issues of charging, and the take-up of exemptions.
- c. A timescale for consultation of 21 days is inadequate to allow written material to be circulated considered and responded to. 28 days should be the minimum consultation period.

**Specific Points**

**Chapter 1 Works on common land**

**Q1 What do you consider to be the most important features?  
Are there any that you would add, change or remove?**

We agree with this assessment.

Section 39 of the Commons Act includes the "protection of public rights of access". We suggest "protection and improvement of public rights of access". The terms 'neighbourhood' and 'key stakeholders' need definition. Stakeholders should include:

- the Access Authority; and
- the Local Access Forum.

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**Q2 Do you agree that 21 working days is the right length of time?**

21 days is insufficient to receive and consider comments, particularly for bodies such as Community Councils. 28 days would, however, align with the consultation period for path orders under the Highways Act 1980 and with planning applications.

**Q3 Do you think that the consent process achieves the right balance between allowing interested parties to make their views known, whilst not unduly prolonging the application?**

The process seems fair. The written representation/hearing/inquiry process can become protracted and onerous for all parties. There should be clear criteria for holding site visits, hearings or local enquiries. Sufficient time for an organisational response should be allowed for consultation with defined key stakeholders at the application stage.

When site visits are arranged, representatives for both applicant and objector should be invited as a matter of course. This should not be at the discretion of the Inspector.

**Q4 We propose to set a time limit of six weeks from granting consent for an application requesting a variation to that consent to be made, but would welcome your view on this?**

We suggest ten weeks would be more reasonable. Six weeks is not sufficient for organisations such as Local Access Forums to be able to request a variation, given that works may not start immediately, or problems may not become apparent until they do.

Sect 1.12

We suggest that an application must be submitted within 28 days of the emergency occurring. We are concerned about granting consent after unforeseen works have been carried out. If the application is subsequently refused, clear and rapid enforcement procedures need to be in place to ensure works are removed. If they are not, the local authority should be empowered to do the work and be able to reclaim the costs.

**Q5: If you disagree with our view and consider that guidance should be issued in respect of works which would be considered not to be caught by section 38, what works do you consider should be covered by the guidance. Also, to what conditions/limitations should they be subject?**

No comment

**Q6 Do you consider that there are works which should be exempt? If so what works and why? To what conditions/limitations should they apply?**

We suggest the chemical, as well as the mechanical treatment of bracken. The control of invasive species and notifiable weeds/scrub should also be considered, for example, in Snowdonia National Park some commons owners are against Rhododendron controls.

**Q7 Do you agree that registering exempt works with the Welsh Ministers will assist in controlling minor works on commons to avoid a number of minor works when added together exceeding the threshold for exemption?**

We agree. Exempt works must be registered with the Welsh Ministers. The registration process should record:

- a) the amount of common being enclosed; and
- b) the expiry date for the temporary time limit

This registrations process can thus be used to calculate the total percentage of the common that has been enclosed. It would also automatically trigger investigations when temporary time limits have expired. It will also be possible to monitor the aggregated effect of cumulative work.

**Q8 Are there any key area that you consider should be covered? What specific issues should be included within this framework?**

Section 1.21 Mediation: Options for dispute resolution should be considered that avoid the likelihood of excessive costs of going to court, for example arbitration and dispute resolution processes used within many tenancy agreements.

**Q9 Can you provide any examples of good or bad enforcement practice that may help to inform our guidance in this area?**

No comment

**Q 10: Where an owner cannot be traced or raises no objection within a set period, regulation may be used to deem consent has been given. We suggest that period should be six weeks and would welcome views on this.**

Reasonable steps must have been taken to trace and contact the owner (for example undertaking searches of the Commons Register and Land Registry)

**Q 11-14: No Comment**

## **Chapter 2 De-registering and exchange applications**

**Q15: We would welcome views on any particular matters to which you think the Welsh Ministers should have regard. It will assist if any suggestions made can be supported with reasons.**

We suggest there must be a presumption that recreational access rights will transfer to release land. The onus should be on the applicant to make a case for the exceptionality of any instance where the rights do not transfer. The Local Access Forum should be consulted on any such application, and the Welsh Ministers should have regard to their opinion. It is also important to consider the overall quality of access provided by the release land, and the strategic importance of any particular piece of common land within the overall access network of an area. To make this consideration, it is essential to have regard to the opinion of the Access Authority and the Local Access Forum.

**Q16: What do you consider to be the most important features? Are there any that you would add, change or remove?**

It is our view that the Welsh Ministers must ensure that there is no net loss of value or quality for the public. Given the undisputable value of common land, we would not, as a matter of principle, like to see any loss of registered common land. For that reason, we think there must be a full and reasoned argument why common land needs to be developed or deregistered, if no replacement land is put forward. To deregister the land because it has an economic development value and the replacement land does not, is not a valid argument in our view.

Where replacement land is proposed, information must be provided which explains how the applicant/community proposes to manage separate areas of common land, which might be geographically remote from each other. If no exchange land is offered or available, it should be demonstrated how it might be possible to enhance the enjoyment and opportunities for enjoyment of the remainder of the current site.

**Q17: Does your experience show that 21 working days is the right length of time?**

As previously mentioned, we suggest 28 days is a more realistic period.

**Q18: In what circumstances should the power not to require replacement land be exercised?**

We suggest there should always be a presumption that replacement land will be required unless agreed by all stakeholders.

**Q19: Do you consider that a site visit will be necessary for every application, or can you envisage circumstances in which a visit would not be necessary?**

We believe a site visit, accompanied by representatives of both the applicants and objectors, will be essential in the majority of cases unless all stakeholders are in agreement with the proposals.

**Q 20:** No comments

**Q 21: We would welcome views on particular circumstances in which it might be appropriate not to transfer recreational rights.**

Protected species might be one reason not to transfer recreational rights provided that stakeholder were in agreement.

**Q 22: We would welcome views on the scope of such regulations.**

If the commons registration data were to be made more available, for example on the web in the manner as increasingly many planning applications are within the planning portal, then this should include any changes that have been made.

**Q22: We would appreciate your views on:**

- **whether imposing charges on applications is likely to discourage people from engaging with the consent process,**
- **whether the cost of making an application should fall to the user or whether it is considered to be securing a public good that merits payment by the general taxpayer,**
- **the feasibility and desirability of charging in a staged approach.**

Imposing charges may well deter some from engaging in the consent process, particularly for works of low economic value. Where works are part of an approved management plan under an agri-environment scheme, the charges should be recovered from the agri-environment scheme. The charging regime imposed should be reviewed by the national stakeholder forum to see if anticipated concerns are realised that charging will lead to fewer applications and more illegal works.

Works that improve public access, as well as those that benefit conservation, need to be eligible for grants. If they are supported by the Rights of Way Improvement Plan, then they should be given a high priority.

We suggest a standard charge for all applicants at less than full cost recovery. There should not be a presumption that site visits and local enquiries will be an additional cost. There should be a clear definition of what constitutes a 'conservation application'. The implication is that this reduction will only be available to applicants of an agri-environment scheme but might also include other works, for example initiated by a landowner such as the National Trust or National Park Authority.

We suggest that where retrospective applications are made, the charge should be higher to reflect the additional work required to process them. For example, the onus will be on the Welsh Assembly Government to carry out stakeholder consultation, not on the applicant.

**Questions 24-25**

No comments

**WANPA January 2007**