

Guidance for assessing landscapes for designation as National Park or Area of Outstanding Natural Beauty in England

This document contains guidance on the relevant legislation and its application in practice, sets out Natural England's general approach to designation and summarises the relevant governance and statutory procedures. It also contains a suggested method for applying the legislation to the practical assessment of landscapes in designation decision-making.

Contents

- **1. Introduction**
- **2. Legal Framework** page 2
- **3. Application of the legislation** page 3
- **4. Method for applying the designation criteria in practice** page 4
- **5. Consideration of Desirability of Designation** page 11
- **6. Definition of a Detailed Boundary**
page 13
- **7. Formal Designation Procedures**
page 13
- **8. Further Information** page 14
-
- **Appendix 1:** Evaluation Framework for Natural Beauty Criterion
- **Appendix 2:** Evaluation Framework for Recreation Criterion
- **Appendix 3:** National Park and AONB Mechanisms, Powers and Duties
- **Appendix 4:** Boundary Setting Considerations
- **Appendix 5:** Statutory Provisions

1. Introduction

1.1. This document explains how Natural England normally expects to:

- assess landscapes against the statutory designation criteria for National Park or Area of Outstanding Natural Beauty (AONB) designation;

- identify detailed boundaries for any areas that are considered to meet these criteria; and
- implement any Designation or Variation Orders necessary to give effect to this.

1.2. This guidance updates and supersedes previous approaches developed by the former Countryside Agency for National Park and AONB assessment and boundary definition. It takes account of recent changes in the legislative framework relating to landscape designations as well as the outcome of the South Downs National Park Public Inquiry.

1.3. Although written for use by Natural England officers and their advisers, the document is also intended to be available to assist local authorities, landowners and other stakeholders when considering issues relating to the inclusion of land in a National Park or AONB.

1.4. Most of the conclusions which need to be drawn during an assessment following this guidance, and any decision-making on landscape designation, rely on expert, professional judgements and the weighing of considerations, depending on the particular circumstances of each case. Moreover, Natural England has a wide discretion in deciding what land should be designated, subject to review by the Secretary of State. This discretion is conferred upon it by statute. These matters are not readily

Guidance for assessing landscapes for designation

susceptible to detailed guidance. This document can therefore only go part of the way towards seeking to offer guidance to those involved in the assessment of landscapes for designation. It is not intended to be complete or exhaustive guidance, and it will be possible to depart from this guidance where the circumstances demand it. Above all, it is the actual words of the relevant statutory provisions which need to be applied in decision-making on designations.

2. Legal Framework

2.1. The statutory framework for protected landscapes in England was first established in the National Parks and Access to the Countryside Act 1949. The legislation has been amended and added to many times since then. Today, land to be included in a National Park or AONB must meet the statutory designation criteria that are set out in the National Parks and Access to the Countryside Act 1949 (for National Parks) or the Countryside and Rights of Way Act 2000 (for AONBs). These are set out in Appendix 1 and summarised below. They apply whether a new designation is made, or the boundaries of an existing National Park or AONB are varied.

National Park

2.2. Section 5(2) of the National Parks and Access to the Countryside Act 1949 defines a **National Park** as an extensive tract of country in England which it appears to Natural England that, by reason of its:

- **natural beauty** and
- the opportunities it affords for **open-air recreation**, having regard to both its character and its position in relation to centres of population,

it is especially desirable that it is designated for National Park purposes.

2.3. The purposes of a National Park are set out in section 5(1) as follows:

- conserving and enhancing its natural beauty, wildlife and cultural heritage, and
- promoting understanding and enjoyment of its special qualities by the public.

2.4. Some further clarification is provided in the legislation:

- Reference to conservation of natural beauty includes conservation of its flora, fauna and geological and physiographical features (s.114(2) of the 1949 Act; this provision applies to National Park purposes and not the assessment of natural beauty as such).
- When considering the natural beauty of an area, account may be taken of its wildlife and cultural heritage (s.59(1)) of NERC inserting a new s.5(2A)(a) into the 1949 Act).
- Land is not prevented from being treated as of natural beauty by the fact that it is used for agriculture, or woodlands, or as a park, or that its physiographical features are partly the product of human intervention in the landscape (s.99 of NERC Act).
- When considering opportunities afforded for open-air recreation, account may be taken of the extent to which it is possible to promote opportunities for the understanding and enjoyment of an area's special qualities by the public (s.59(2A)(b) into the 1949 Act).

Area of Outstanding Natural Beauty (AONB)

2.5. Section 82(1) of the Countryside and Rights of Way Act 2000 defines an AONB in England as an area that is not in a National Park but which appears to Natural England to be of such outstanding **natural beauty** that it is desirable that the protective provisions of Part IV of the Countryside and Rights of Way Act 2000 should apply to it for the purpose of conserving and enhancing the area's natural beauty. In such circumstances Natural England may, by order, designate the area as an AONB.

2.6. Some further clarification is provided in the legislation:

- Reference to conservation of natural beauty includes conservation of its flora, fauna and geological and physiographical features (s.92(2) of the CROW Act; this provision applies to the AONB purpose and not to the assessment of natural beauty as such)
- Land is not prevented from being treated as of natural beauty by the fact that it is used for agriculture, or woodlands, or as a park, or that

Guidance for assessing landscapes for designation

its physiographical features are partly the product of human intervention in the landscape (s.99 of NERC Act).

3. Application of the legislation

3.1. While there is some guidance in the legislation as to the interpretation of some elements of the statutory provisions, there are no exhaustive definitions of natural beauty, opportunities for open-air recreation, or the desirability of designation. Nor are there any statutory provisions setting out how to determine the detailed boundaries of the areas to be designated.

3.2. In preparing this guidance, Natural England has considered the way in which these concepts have been applied previously in designating National Parks and AONBs. The most recent application is in relation to the South Downs National Park as expressed by the Secretary of State in his decision letter and the Inspector in his report on the re-opened inquiry. This is the only decision which post-dates and takes into account the provisions of the NERC Act. Finally, Natural England has taken the opportunity to record the current 'best practice' techniques that have been developed in recent years to facilitate robust, rigorous and transparent assessment of landscapes for designation.

3.3. The next few paragraphs address some particular aspects of the relevant statutory provisions. The guidance on how Natural England expects to apply the statute and assess key factors follows on in the rest of the document.

Distinguishing National Park from AONB

3.4. At the designation stage, there are two main differences between a National Park and an AONB – designation criteria and purposes:

- For an area to qualify as AONB it need only meet the 'natural beauty' criterion, whereas for an area to qualify as National Park it must also meet the 'opportunities for open-air recreation' criterion (see section 4 below for more detail on this); and

- For it to be 'desirable' to designate an AONB, only one purpose is relevant: conserving and enhancing its natural beauty. For it to be 'especially desirable' to designate a National Park, two purposes are relevant: conserving and enhancing its natural beauty, wildlife and cultural heritage, and promoting understanding and enjoyment of its special qualities by the public. (see section 5 below for more detail on this).

Approach to natural beauty

3.5. There is also a difference in the extent to which the natural beauty criterion has been expressly set out in the legislation. For both AONBs and National Parks it has been clarified that land is not prevented from being treated as of natural beauty by the fact that it is used for agriculture, or woodlands, or as a park, or that its physiographical features are partly the product of human intervention in the landscape (s.99 of NERC Act). In the case of National Parks, it has further been clarified expressly that when considering the natural beauty of an area, account may be taken of its wildlife and cultural heritage (s.59(1)) of NERC).

3.6. It is Natural England's view that both wildlife and cultural heritage are relevant contributors to natural beauty in most cases and that any assessment of natural beauty must take these factors into consideration, whether in relation to a National Park or an AONB designation. For example, the presence of particular wildlife or cultural heritage features can make an appreciable contribution to an area's sense of place and thereby heighten the perception of natural beauty.

3.7. There is now express statutory clarification that wildlife and cultural heritage may be taken into account in assessing natural beauty for National Park designations. In addition, there is greater clarity that land that has been greatly modified by humans (including parkland) may be included in a National Park or AONB. The natural beauty of such landscapes is often strongly linked with their wildlife and cultural heritage.

Guidance for assessing landscapes for designation

3.8. During the passage of the NERC Bill through Parliament, Lord Bach for the Government explained that “The intention, and the current practice, is that wildlife and cultural heritage considerations are factored into the natural beauty assessments rather than being free-standing tests in their own right”¹. Whilst this statement was made in connection with National Parks, past and present practice has been to treat the assessment of natural beauty in National Parks and AONBs in the same way.

3.9. Notwithstanding the differences in the express statutory provisions, the Government’s formal position is that the natural beauty required of a National Park and an AONB are the same.² Natural England considers that there is no material difference between the requirements in practical terms of the natural beauty criterion in the two pieces of legislation. Accordingly, if an area meets the natural beauty criterion, Natural England will normally consider it to have natural beauty of a standard suitable for either National Park or AONB designation.

Desirability of designation

3.10. Under the CROW Act, it must appear to Natural England that it is ‘desirable’ to designate land as an AONB, whereas under the 1949 Act it must appear to Natural England to be ‘especially desirable’ to designate land as a National Park. These two provisions are not identical. The implication is that the threshold of desirability for the designation of land as a National Park is higher than that for an AONB. This may be justified because a National Park designation brings with it more significant changes in the management of the land. When considering the desirability of designation of land as either a National Park or an AONB, the actual words

used in the statute should be applied in decision-making.³

4. Method for applying the designation criteria in practice

4.1. The following sections contain guidance on how Natural England normally expects to apply the statutory designation criteria in practice when assessing landscapes for designation.

4.2. In the simplest possible terms, the consideration of designating land under either piece of legislation raises the following questions:

- Does this landscape have sufficient natural beauty?
- Does this landscape offer sufficient opportunities for open-air recreation?
- Is it desirable to designate this landscape as National Park or AONB for its conservation and management?
- Where should the detailed boundary be drawn?

4.3. The document “*Landscape Character Assessment: Guidance for England and Scotland*” (Countryside Agency and Scottish Natural Heritage, 2002) specifies two distinct stages for assessing landscapes: **characterisation** and **evaluation**. It also defines the key terms that are used in such assessments.

4.4. Both stages can use the techniques of landscape character assessment to gather information in a structured way. The characterisation stage divides the landscape into smaller areas (the ‘spatial framework’) and provides relatively value-free descriptions of the area. At the evaluation stage, judgments are made about the value of the landscapes within that spatial framework and the course of action that should be taken.

¹ Lords Hansard 27 Feb 2006 (Col 79)

² See Lords Hansard 20 Mar 2006 (Col 51) and Commons Hansard 13 June 2000 (Col 556W). That the natural beauty criterion was the same for National Parks and AONBs was also accepted by the Inspector in the re-opened South Downs National Park inquiry.

³ Although in this guidance ‘desirable’ is used as shorthand to refer to the concept relating to both types of designation.

Guidance for assessing landscapes for designation

4.5. In the context of AONB and National Park designation, the value that is being assessed equates to the designation criteria for National Parks or AONBs as the case may be, and in particular the ‘technical criteria’ of natural beauty and opportunities for open-air recreation. The considerations relevant to these statutory criteria should be stated clearly and then subjected to assessment. For those areas that pass this threshold, a judgment also then needs to be made as to whether it is desirable to designate the land concerned as AONB or National Park.

4.6. Once Natural England is satisfied that it has identified an area that should be taken forward for designation it is necessary to define a boundary in detail. This should be done employing the guidance on detailed boundary setting contained in this document at Section 5 and Appendix 4.

4.7. In general terms, once a broad area of land potentially suitable for designation has been identified, the practical steps involved in assessing land for designation are as follows (see also the diagram on page 6):

A. Characterisation and Spatial Framework:

This is undertaken at an appropriate scale resulting in:

- a spatial framework of **Evaluation Areas**; and
- a description of the character of these Evaluation Areas.

What constitutes an ‘Evaluation Area’ is explained below.

Table 1 Some key terms from Landscape Character Assessment (LCA)

Character: A distinct, recognisable and consistent pattern of elements in the landscape that makes one landscape different from another, rather than better or worse.

Characteristics: Elements, or combinations of elements, which make a particular contribution to distinctive character.

Elements: Individual components which make up the landscape, such as trees and hedges.

Features: Particularly prominent or eye-catching

elements, like tree clumps, church towers, or wooded skylines. their character.

Characterisation: The process of identifying areas of similar character, classifying and mapping them and describing

B. Evaluation against the Technical Criteria:

Each Evaluation Area is evaluated against the technical criteria:

- natural beauty and opportunities for open-air recreation in the case of National Parks; and
- natural beauty only in the case of AONBs.

More details about this stage are given at paragraph 4.15ff below. An area that appears likely to be able to meet the technical criteria is included in a Candidate Area.

C. Consideration of Desirability of Designation:

For each Candidate Area, consideration is given to whether it would be desirable to designate the area as part of a National Park or an AONB.

4.8. This process can then be repeated, if necessary, at more detailed scales for those areas that qualified under the technical criteria (stage B) and are considered desirable to designate (stage C). The intention of this process is to undertake practical evaluation of landscapes to judge whether the building blocks of a potential designation are present.

4.9. The use of Evaluation Areas is intended merely to make the practical work of detailed evaluation of landscapes more manageable. It is not intended to lead to the designation or exclusion from designation of any land merely because of the way in which Evaluation Areas have been defined. That is why the process is intended to be flexible and iterative in its application.

4.10. The decision on whether land should be designated as either National Park or AONB is not taken on the basis of these Evaluation Areas or Candidate Areas but rather on the whole area of a potential designation – an “extensive tract of country” in the case of National Parks and an “area” in the case of AONBs. A potential designation may be comprised of land that was,

Guidance for assessing landscapes for designation

for practical evaluation purposes, contained in part or all of one or more Evaluation Areas. The area of the potential designation must be assessed as a whole against the relevant provisions of the statute.

D. Assessment for designation under the statutory provisions:

For a potential designation area, it is necessary to stand back and ask in relation to the area as a whole whether it meets the tests set out in statute for designation, both the technical criteria and the desirability of designation. This designation assessment is probably the single most important step in the designation process.

4.11. Once satisfied that a potential designation area does meet the relevant statutory criteria, the final stages of the designation process are:

E. Definition of a Detailed Boundary: The areas identified for designation are examined to define a detailed boundary which encloses them.

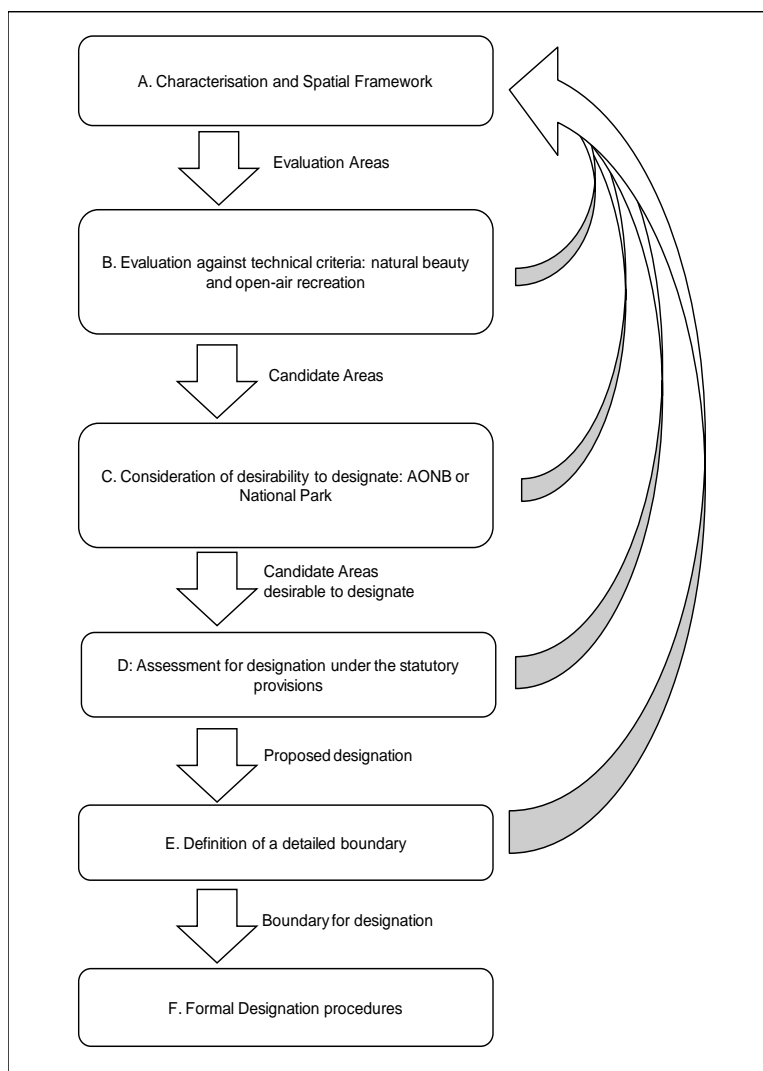
F. Formal Designation Procedures: Designation or Variation Orders are made and submitted to the Secretary of State for confirmation.

Characterisation and Spatial Framework

4.12. In order to aid the practical evaluation of a broad area of land potentially suitable for designation and to make evaluation a more manageable process, the broad area is divided into units of an appropriate scale to provide a spatial framework of landscape units which have been termed in this guidance.

Evaluation Areas

4.13. Evaluation Areas should normally be defined, at least initially, using recognised landscape character assessment techniques described in national guidance⁴. Each evaluation area is characterised, resulting in character descriptions which provide a relatively objective and value-free evidence base for the next stage (evaluation). The characterisation covers not only landscape character (including the factors relevant to natural beauty) but also recreation.



⁴ Landscape Character Assessment: Guidance for England and Scotland (2002)

Guidance for assessing landscapes for designation

4.14. The starting point should be a broad character assessment (eg at National Character Area level), followed by local character assessments (such as Landscape Character Assessments and Historic Landscape Characterisations prepared at County or District Council level) to inform more detailed evaluation. It is important that the most up-to-date and reliable character assessment information is used. Ideally the character assessment should also have been subject to stakeholder consultation, indicating that it is supported by a broad consensus of opinion. A character assessment that provides a consistent spatial framework across the whole area under consideration is also helpful.

Evaluation or assessment against the Technical Criteria

4.15. Each Evaluation Area is evaluated against the technical criteria. An area that appears likely to be able to meet the technical criteria (either by itself or with other areas as part of a larger designated area) is included in a Candidate Area.

Table 2 Candidate Areas

Appears likely to meet technical criteria for:		
Natural Beauty	Open-air recreation	Candidate Area for...
yes	yes	National Park or AONB
yes	no	AONB only
no	yes	Not a Candidate Area
no	no	Not a Candidate Area

4.16. The statutory criteria for designating land as a National Park or AONB apply to the *extensive tract* or the area in question. It is the National Park or AONB as a whole which must satisfy the relevant technical criteria.

4.17. As is explained above, in practical terms it is simpler and more manageable to make the initial evaluation in relation to parts of a potential National Park or AONB area or extension area – ie the Evaluation Areas – rather than for the National Park or AONB area as a whole. This is not, however, a substitute for the assessment of

whether a potential designation area as a whole complies with the relevant statutory provisions.

4.18. The result of the initial evaluation stage of the assessment is that all or part of each Evaluation Area that appears likely to be able to meet the technical criteria (either by itself or with other areas as part of a larger designated area) is identified as a **Candidate Area** for potential National Park and/or AONB designation. In cases where the judgment is not clear cut one way or the other, the Candidate Area may be identified for further and more detailed scrutiny.⁵

4.19. The Technical Criteria fall to be considered at both the initial evaluation stage and at the designation assessment stage. The following general guidance is given as to how the Technical Criteria should normally be applied.

- It is not necessary for the land to be included in a proposed designation to be of the same or similar character.
- In the case of National Parks, there should normally be a degree of concurrence between the land which meets the natural beauty criterion and land which meets the recreation criterion. However it is not necessary that they overlap completely.
- Field-by-field evaluation is not appropriate.
- There is no requirement that every parcel of land must meet either or both of the criteria (ie there may be, and is very likely to be, land which meets neither).
- The decision to include land that does not itself meet the technical criteria depends on the location, scale and effect of that land. Particular care is required at the margins of a designation. Within the main body of a

⁵ An Evaluation Area may contain land that meets the criteria to varying degrees. Such variations should be identified. A decision can then be made on whether to exclude the non-qualifying parts of the Evaluation Area from the potential National Park or AONB designation or whether in the context of the area as a whole they can be included. Alternatively, the extent of an Evaluation Area may be adjusted, so that a revised area of land is then re-considered against the technical criteria.

Guidance for assessing landscapes for designation

National Park or AONB there is likely to be greater scope for the inclusion of sizeable areas of land which do not themselves meet the technical criteria.

- If an area is fragmented by land which does not meet the technical criteria to such an extent that it affects the ability of the area as a whole to meet the technical criteria, then the entire evaluation area is unlikely to qualify.
- Section 99 of the NERC Act confers a power on Natural England to treat areas whose features are partly the product of human intervention in the landscape as being of sufficient natural beauty and therefore include them in a designation.
- A designation can ‘wash over’ (ie include) a large tract of land even though that land does not itself meet the designation criteria, even close to the boundary of a designated area⁶.
- It is not necessary to identify a precise ‘hard’ boundary for an area in relation to which the technical criteria are considered at the initial evaluation stage. However, gradual or sudden changes in quality or character near the margin of an Evaluation Area should be recorded, as they may be important for subsequent detailed boundary setting.

4.20. Below we set out our approach to evaluating the technical criteria in detail. It is based on factors, sub-factors and indicators which taken together tend to show whether or not a criterion is satisfied. However, the assessment of a landscape against the two technical criteria is not a simple ‘tick box’ exercise. Once appraisal in relation to the listed factors and indicators has been undertaken it will be necessary to stand back and ask whether, having regard to all relevant considerations, the land has sufficiently natural beauty and whether has sufficient opportunities for open-air

recreation, in line with the relevant statutory provisions. The listed factors and indicators are not intended to alter or replace the statutory criteria but merely to provide practical guidance for the assessment of areas against the criteria.

Natural Beauty

4.21. The evaluation of natural beauty is a complex exercise requiring careful assessment and judgment. It is undertaken after both a desk exercise and research in the field by considering **factors that contribute to natural beauty**. The suggested factors listed below (Table 3) have been drawn from the landscape value criteria included in the Landscape Character Assessment Guidance, but have been restated here to show more explicitly which factors relate to natural beauty and which to other aspects of the statutory criteria⁷. The factors provide a practical framework for the detailed expert work of assembling an evidence base for making judgments about natural beauty.

Table 3 Factors related to Natural Beauty

Landscape quality
This is a measure of the physical state or condition of the landscape.
Scenic quality
The extent to which the landscape appeals to the senses (primarily, but not only, the visual senses).
Relative wildness
The degree to which relatively wild character can be perceived in the landscape makes a particular contribution to sense of place.
Relative tranquillity
The degree to which relative tranquillity can be perceived in the landscape ⁸ .

⁶ This approach was applied in the Secretary of State’s decision on the South Downs National Park and was described as “the ‘washed-over’ principle” (Letter on behalf of the Secretary of State for Environment, Food and Rural Affairs, 31 March 2009, “Proposed South Downs National Park” at paragraph 65).

⁷ The LCA guidance sets out a list of tests for ‘landscape value’. In this approach, all the factors in the list are retained, but they have been disaggregated to show how they relate to the different components of the statutory criteria, including the consideration of the desirability of designation.

⁸ See MacFarlane, R., Haggett, C., Fuller, D., Dunsford, H. and Carlisle, B. (2004). *Tranquillity Mapping: developing a*

Guidance for assessing landscapes for designation

Natural heritage features

The influence of natural heritage on the perception of the natural beauty of the area

Cultural heritage features

The influence of cultural heritage on the perception of natural beauty of the area.

Cultural associations

The degree to which associations with particular people, artists, writers or events in history contribute to perceptions of natural beauty of the area.

4.22. The factors and indicators listed in this guidance for the two technical criteria are the main relevant factors. The lists are not intended to be exhaustive and other factors may be relevant in exceptional circumstances. Not all factors will be relevant in every case, as some will be absent in many cases.

4.23. Each of these factors is itself divided into sub-factors, which are judged by indicators (see **Appendix 1**). The indicators are statements of the features, characteristics and qualities which tend to indicate whether a particular factor is present. The factors, sub-factors and their indicators in Appendix 1 are not presented in order of importance.

4.24. It is useful to highlight some general points on the application of the natural beauty criterion:

- National Parks and AONBs are both national designations; the natural beauty required of a National Park and an AONB is in practice the same and areas that qualify for designation should satisfy the natural beauty criterion.
- There is no need for a National Park or AONB to display a distinctive or coherent identity. A designation can contain different landscapes

so long as the designation as a whole satisfies the natural beauty criterion.⁹

- Not all factors or indicators have to be present across a designation. Different parts of a designation can satisfy the natural beauty criterion for different reasons, provided that overall the area is of sufficient natural beauty to be designated as a National Park or an AONB.
- The weight and relative importance given to different factors or indicators may vary depending on the geographic context. For example, in the South Downs, less weight was given to relative wildness and more to relative tranquillity and natural and cultural heritage features, reflecting the area's lowland, settled character and proximity to major centres of population. Comparisons are not to be made to other designated areas or adjacent areas but against ordinary countryside.

4.25. The effect of **settlements** and other major developments are assessed on their individual merits by considering their particular character and qualities and their relationship to the adjoining landscape. It is recognised that many settlements have cultural heritage qualities that can make a positive contribution to natural beauty. This is true regardless of settlement size. In some cases a settlement may detract from the landscape to such an extent that it should be considered an incongruous feature.

4.26. The effects of **incongruous features** are assessed for the extent to which they detract from the natural beauty of an area under consideration. It is relevant to take into account whether a feature is temporary or transient. If an incongruous feature does not adversely affect natural beauty, it is not relevant that the feature does not in itself have natural beauty. It is a matter of judgment whether an incongruous feature has such an adverse effect that the

robust methodology for planning support, Report to the Campaign to Protect Rural England, Countryside Agency, North East Assembly, Northumberland Strategic Partnership, Northumberland National Park Authority and Durham County Council, CESA, Northumbria University.

⁹ The criterion is one of natural beauty, not 'characteristic natural beauty'. This is clearly laid out in paragraphs 2.45 to 2.48 of the Report into the South Downs National Park, Inspector's Report (2), 28 November 2008

Guidance for assessing landscapes for designation

whole potential designation fails to meet the natural beauty criterion (even though the area might, in the absence of the detractor, qualify) or whether it can be included. The cumulative impact of such features and the degree to which qualifying parts of the potential designation are fragmented may be relevant to the assessment.

Opportunities for Open-Air Recreation

4.27. This criterion only relates to designating National Parks.¹⁰ It is normally evaluated in practice by considering a number of **factors that contribute to the presence of sufficient opportunities for open-air recreation** (see Table 4). The factors provide a practical framework for the detailed expert work of assembling an evidence base for making judgments about opportunities for open-air recreation. In assessing land against these factors, it is relevant to consider the type, quality and quantity of opportunities available.

4.28. The statute provides simply that the type of recreational opportunities to which consideration should be given are “open-air recreation”. The statute excludes “organised games” but is no more restrictive than that. In considering opportunities for open-air recreation, the statute requires that regard be had in particular to the character of the land. This suggests that the character of the land has an important bearing on whether the opportunities for open-air recreation are sufficient to warrant designation. However, a ‘markedly superior recreational experience’ (see below) does not necessarily rely on the land having any particular character. Nor does the statute provide that particular types of open-air recreation can or cannot be taken into account (save for organised games). Provided that the landscape satisfies the natural beauty criterion, the question of whether or not it offers a markedly superior recreational experience should be assessed on

its merits having regard to all relevant considerations.

4.29. Recreational opportunities to be taken into account should normally be consistent with the conservation and enhancement of the area’s natural beauty, wildlife and cultural heritage. Quiet outdoor recreation is therefore likely to be the most weighty consideration under this criterion.

4.30. The statute also requires that regard is had to the position of the potential designation in relation to centres of population. This suggests that the accessibility of the potential designation to urban areas also has an important bearing on whether an area should be designated by reason of the opportunities it affords for open-air recreation.

4.31. Opportunities for open-air recreation are not limited to present facilities, but includes an ability to look to the future – opportunities is equivalent to the land’s potential.

4.32. It is not just the quantity of opportunities that is relevant, but also their quality, which should exceed that normally available in the wider countryside.

4.33. In considering these factors, the extent to which it is possible to promote opportunities for the understanding and enjoyment of the area’s special qualities may be taken into account. It is therefore permissible to look to the future, beyond present potential to whether it is possible to initiate further opportunities in the future, bearing in mind National Park purposes, the duty on public bodies to have regard to these purposes, and the powers and duties of a National Park Authority with regard to recreation. It is important that improvements in future recreation and understanding are not merely vague, speculative or unrealistic aspirations. The potential for improvements must therefore be a realistic possibility within a reasonable time scale.

4.34. It is not necessary that all factors or indicators be present across a designation, as

¹⁰ AONBs may fulfil a recreational role but they are not designated for any recreational opportunities they may offer.

Guidance for assessing landscapes for designation

different parts of a designation can satisfy the recreational criterion for different reasons. Overall, there should be a weight of evidence that an area of countryside has (or is capable of providing) sufficient **opportunities for open-air recreation** to such an extent that it provides a markedly superior recreational experience. Comparisons are not to be made to other designated areas or adjacent areas but against ordinary countryside.

4.35. Particular attention should be paid to public access to the land. While it is a matter of judgment whether a lack of public access to an area of land precludes satisfaction of the statutory criteria in a particular case, it is clearly unreasonable as a matter of principle to expect all land to be accessible, whether situated within the main body of a National Park or at its margins. Where there is no access, land may still be visually appreciated and enjoyed by those engaged in open-air recreation elsewhere in the National Park. It has been established that a designation may 'wash over' (ie include) a large area of land even when there is no public access to it for recreational purposes.

Table 4: Factors related to Opportunities for Open-Air Recreation in National Parks

The area must be able to deliver a markedly superior recreational experience. This is an overall assessment, to which amongst others the following factors can contribute:

- **Access to high quality landscapes:** the presence of natural beauty and in particular relative tranquillity and relative wildness. There is no particular type of natural beauty that is more suitable for recreation in National Parks. Weight should be given to accessibility from centres of population.

- **Features of interest:** access to a wide range of **natural or cultural heritage features or cultural associations**. This includes landmarks and features of recognised value, appropriate to the enjoyment of open-air recreation. The presence of such features can enrich the landscape experience and sense of place and may enhance people's perception/appreciation of natural beauty and understanding of the special qualities of the area.
- **Good recreation provision:** The area should provide, or be capable of providing, a significant **quantity** of recreation provision, a **diversity** of experiences and the opportunity for high **quality** open-air recreation including in particular that which is consistent with the special qualities of the area and does not detract from the enjoyment of the area by others. Particular regard should be had to the **accessibility of the provision from centres of population**.

4.36. The factors, sub-factors and indicators are given in **Appendix 2**. They are not in order of importance. The points made above about the factors and indicators listed in this guidance apply equally to the recreation criterion as they do to the natural beauty criterion. In particular, in assessing land for designation in relation to the recreation criterion, it is necessary to consider the character of the area and its position in relation to centres of population.

5. Consideration of Desirability of Designation

5.1. An area of land that satisfies the natural beauty and recreational opportunities criteria is capable of being included in a National Park or AONB. Designation does not follow automatically: it is for Natural England to exercise its judgment as to whether, by reason of the natural beauty and opportunities for open-air recreation of the area, it is **especially desirable** that it should be designated as National Park. In the case of an AONB, the

Guidance for assessing landscapes for designation

question is whether it is **desirable** that the area be designated as an AONB.¹¹

5.2. It can only be desirable for an area to be designated because of its natural beauty and (in the case of National Parks) its opportunities for open-air recreation. Accordingly, a potential designation area cannot be designated as a National Park or an AONB if, when taking the designation as a whole, it does not meet the underlying statutory criteria, no matter how much it would benefit from national landscape designation.

5.3. In order to help assess whether it is desirable to designate an AONB or a National Park a number of questions can usefully be posed.¹² These are detailed below in Table 5.

Table 5: Is it Desirable to Designate?

Are the technical criteria met?
Is the area of such significance that National Park / AONB purposes should apply to it?
What are the issues affecting the area's special qualities and understanding and enjoyment?
Can National Park / AONB purposes be best pursued through the management mechanisms, powers and duties which come with National Park or AONB designation?
Are there other relevant factors which tend to suggest whether it is or is not desirable to designate the area?

5.4. When considering **significance**, it is useful to take into account the following:

- **Special qualities:** the area's special qualities, ie those aspects of the area's natural beauty,

¹¹ When considering the desirability of designation of land as either a National Park or an AONB, the actual words used in the statute should be applied in decision-making.

¹² It should always be remembered however that the assessment of land for designation must be made by reference to the actual words of the relevant statutory provision.

wildlife and cultural heritage, which are valuable, particularly at a national scale.

- **Understanding and enjoyment:** the opportunities to promote the understanding and enjoyment of the area's special qualities.
- **Consensus:** Where there is a consensus of opinion that an area meets the statutory criteria or should be designated, this helps in determining whether it is accorded a special value that should be recognised, although consensus is not a pre-requisite. Evidence of past and present recognition of the importance of the landscape is therefore relevant. Care should be taken to ensure adverse change has not occurred in the landscape since consensus was reached.
- **Rarity or representativeness:** If a landscape, or an element within it, is rare or representative of a particular type of landscape, it may add weight to the judgment that an area should be represented within a National Park or AONB. Although this is not an essential requirement.

5.5. It is for Natural England to use its expert judgment to decide whether or not an area is of such significance that it should be managed for **National Park or AONB purposes**, ie whether:
a) its natural beauty, wildlife and cultural heritage should be conserved and enhanced; and
b) the understanding and enjoyment of its special qualities should be promoted (in the case of an area proposed for designation as National Park).

5.6. To assist with decision-making, consideration should be given to whether these purposes can be delivered effectively using current arrangements, or as part of a nationally designated landscape. This assessment may be made by first considering the issues affecting the area's special qualities and options available to address them.

5.7. **Issues affecting special qualities and understanding and enjoyment:** These include current and longstanding issues and the significant forces for change which affect an area's natural beauty, recreational opportunities, and special qualities, and the ability to promote

Guidance for assessing landscapes for designation

their understanding and enjoyment. The scale and impact of issues and likely changes should be assessed. Both current and likely future issues are potentially relevant.

5.8. Mechanisms, powers and duties:

Consideration should be given to an appropriate response to issues identified above. The following factors may be relevant:

- **Management arrangements:** the extent to which current and alternative management arrangements address the issues affecting the area and deliver National Park / AONB purposes. In cases where AONB designation is an option, consideration should be given to whether, due to the size of the area or its administrative complexity, establishment of a Statutory Conservation Board would bring benefits.
- **Funding:** Current and expected future funding that contributes to National Park / AONB purposes should be considered against likely future funding under alternative scenarios.
- **Regulation and development control:** This refers to the ability of statutory regulation powers, and development control powers, to contribute to National Park / AONB purposes.
- **Integrated management for the future:** The degree to which strategic planning (such as Local Development Frameworks, Rights of Way Improvement Plans, NP / AONB Management Plans etc) could contribute to National Park / AONB purposes.
- **Duties and incentives for statutory bodies and others:** Here it is relevant to consider what duties there are on public bodies to deliver National Park / AONB purposes, and what incentives exist for others to contribute to delivering National Park / AONB purposes.

5.9. National Parks and AONBs have differing purposes, mechanisms, powers and duties. Some of the key differences are summarised in **Appendix 3**.

5.10. Ultimately Natural England is required to take a decision whether it is desirable that an area be designated National Park or AONB, or not at all. Addressing the above series of issues

should help in ensuring that this decision is based on evidence and a good understanding of the relevant considerations. However, it is not an exhaustive list of considerations since any factor is relevant which can reasonably be said to relate to the judgement as to whether it is desirable that a particular area of land should be designated as National Park or AONB.¹³

5.11. It is also important to remember that this guidance recommends the division of an area into Evaluation Areas and Candidate Areas purely to make the practical work of evaluation and assessment more manageable. If ultimately the question of designation is to be formally posed, then the whole area to be subject to designation should be considered in its proper context against the actual text of the relevant statutory provisions themselves.

6. Definition of a Detailed Boundary

6.1. The principal purpose of setting a detailed boundary is to determine where it is desirable that the designation of a particular National Park or AONB should begin and end.

6.2. When defining the detailed boundary there may be more scope for excluding particular areas of land that do not satisfy the criteria where they are located close to the boundary rather than within the main body of the designation. This does not however equate to a field-by-field assessment of land at the margins of the designation.

6.3. Natural England proposes normally to apply the guidelines set out in **Appendix 4** when setting a boundary. It is important that decisions made when defining the boundary are made consistently along its length.

¹³ As to other relevant factors which may bear on whether it is desirable to designate land, in relation to the South Downs National Park the Secretary of State considered that it was especially desirable to designate that land because it was in relatively close proximity to major population centres in the South East.

Guidance for assessing landscapes for designation

7. Formal Designation Procedures

7.1. Natural England has statutory powers to designate National Parks and AONBs¹⁴ and also to vary their boundaries.¹⁵ It does this by making statutory orders, which take effect only if confirmed by the Secretary of State (who may also amend them, or refuse to confirm them). The Secretary of State also has freestanding powers to vary or revoke designations. The following procedures apply equally to new designations as they do to variations to existing boundaries.

7.2. Before any formal orders are made, proposed designations or extensions are usually consulted on. Public consultation is a matter of good practice and is a policy requirement. In addition, the legislation specifically requires that all local authorities who have land within the area to be designated must be consulted prior to a designation order being made. Natural England also envisages that stakeholder involvement at various intermediate stages would normally be encouraged.

7.3. Consultation responses may present new evidence to justify the inclusion or exclusion of land, identify further considerations as to the desirability of designation or identify specific boundary issues which need review. Therefore, after each consultation stage, Natural England normally reviews its evidence and produces a revised proposal if necessary. The relevant stages of the process of evaluating land for designation set out above may therefore be repeated as necessary as part of an iterative process.

7.4. Following review and possible refinement, the land proposed for designation and the associated boundary may be formally adopted by Natural England. This final decision is reserved for the Board of Natural England.

7.5. In the case of an AONB, a draft Designation Order is drawn up and placed on deposit for anyone to make representations to Natural England. Only then is it *made* (ie given formal legal existence). In the case of a National Park, a Designation Order is *made* and then placed on deposit for anyone to make representations to the Minister. In both cases, the deposit period is publicised widely and documents and maps will be available for inspection.

7.6. Once *made*, the Order (in both cases) is submitted to the Minister. If there are objections from a local authority which are not withdrawn, the Minister must hold a public inquiry. In this context 'local authority' does not include a parish council. The Minister may also hold a public inquiry or afford alternative ways to allow people to make further representations in any event.

7.7. The Minister may or may not confirm a Designation Order, with or without modifications, having considered any representations received and, in the event of a public inquiry, having considered the report of the inspector. If minded to confirm, the Minister makes a Confirmation Order, which contains details of any modifications to the original Order, and specifies when any new designation comes into effect.

7.8. Confirmation of the designation is made by the Minister once he or she has considered any representations to the Designation Order, or following receipt of an inspector's report in the event of a public inquiry. Where any modifications made by the Minister add land to the National Park or AONB not affected by the original designation order, notice must be given that the additions have been made and opportunity provided to hear representations on or objections to them.

8. Further information

8.1. While this paper deals only with the designation of National Parks and AONBs, Natural England has a wider role to further the role of protected landscapes. Its policy "Our Protected Landscapes" (July 2009, consultation draft) sets out the position Natural England will

¹⁴ s.5(3) NPAC 1949 and s.82(1) CROW 2000

¹⁵ s.45 Wildlife and Countryside Act 1981 and s.83(7) CROW 2000

Guidance for assessing landscapes for designation

adopt in this regard and its related advisory and guidance activities, both now and in the immediate future. It provides Natural England's approach to new and amended designations,

and sets out how it will continue to work in partnership with the organisations representing the national family of protected landscapes.

Appendix 1:

Evaluation Framework for Natural Beauty Criterion

Factor	Sub-factor	Code	Indicator
Landscape quality	Intactness of the landscape in visual, functional and ecological perspectives	NB1	Characteristic natural and man-made elements are well represented throughout
	The condition of the landscape's features and elements	NB2	Landscape elements are in good condition
	The influence of incongruous features or elements (whether man-made or natural) on the perceived natural beauty of the area	NB3	Incongruous elements are not present to a significant degree, are not visually intrusive, have only localised influence or are temporary in nature.
Scenic quality	A distinctive sense of place	NB4	Landscape character lends a clear and recognisable sense of place
	Striking landform	NB5	Landform shows a strong sense of scale or contrast
		NB6	There are striking landform types or coastal configurations
	Visual interest in patterns of land cover	NB7	Land cover and vegetation types form an appealing pattern or composition in relation to each other and/or to landform
	Appeal to the senses	NB8	Strong aesthetic qualities, reflecting factors such as scale and form, degree of openness or enclosure, colours and textures, simplicity or diversity, and ephemeral or seasonal interest
NB9		Memorable or unusual views and eye-catching features or landmarks	
Relative wildness	A sense of remoteness	NB10	Relatively few roads or other transport routes
		NB11	Distant from or perceived as distant from significant habitation
	A relative lack of human influence	NB12	Extensive areas of semi-natural vegetation
		NB13	Uninterrupted tracts of land with few built features and no overt industrial or urban influences
	A sense of openness and exposure	NB14	Open, exposed to the elements and expansive in character
A sense of the passing of time and a return to nature	NB15	Absence or apparent absence of active human intervention	

Table continued...

Factor	Sub-factor	Code	Indicator
Relative tranquillity	Contributors to tranquillity	NB16	Presence and/or perceptions of natural landscape, birdsong, peace and quiet, natural-looking woodland, stars at night, stream, sea, natural sounds and similar influences
	Detractors from tranquillity	NB17	Presence and/or perceptions of traffic noise, large numbers of people, urban development, overhead light pollution, low flying aircraft, power lines and similar influences
Natural heritage features	Geological and geo-morphological features	NB18	Visible expression of geology in distinctive sense of place and other aspects of scenic quality
		NB19	Presence of striking or memorable geo-morphological features
	Wildlife and habitats	NB20	Presence of wildlife and/or habitats that make a particular contribution to distinctive sense of place and other aspects of scenic quality
		NB21	Presence of individual species that contribute to sense of place, relative wildness or tranquillity
Cultural heritage features	Built environment, archaeology and designed landscapes	NB22	Presence of settlements, buildings or other structures that make a particular contribution to distinctive sense of place and other aspects of scenic quality
		NB23	Presence of visible archaeological remains, parkland and/or designed landscapes that provide striking features in the landscape
	Historic influence on the landscape	NB24	Visible presence of historic landscape types or specific landscape elements or features that provide evidence of time depth or historic influence on the landscape
Cultural associations	Associations with written descriptions	NB25	Availability of descriptions of the landscape in notable literature, topographical writings and guide books, or significant literature inspired by the landscape.
	Associations with artistic representations	NB26	Depiction of the landscape in art, other art forms such as photography or film, through language or folklore, and in inspiring related music
	Associations of the landscape with people, places or events	NB27	Evidence that the landscape has associations with notable people or events, cultural traditions or beliefs

Appendix 2:

Evaluation Framework for Recreation Criterion

Factor	Sub-factor	Indicator	
Access to high quality landscapes	Opportunities to enjoy outstanding natural beauty	R1	Good access (physically and/or visually) to areas that satisfy the natural beauty criterion (see Natural Beauty criterion)
	Opportunities to enjoy relative tranquillity and relative wildness	R2	Good access (physically and/or visually) to areas that offer an experience of tranquillity and wildness (see Natural Beauty criterion)
Natural or cultural heritage features or cultural associations	Presence of a range of natural or cultural heritage features or cultural associations	R3	Presence of natural features which enrich the experience of the landscape and contribute to understanding of special qualities and sense of place
		R4	Presence of cultural features and/or cultural associations which enrich the experience of the landscape and contribute to understanding of special qualities and sense of place
	Landmarks and other features	R5	Presence of recognised and valued landmarks or other features of interest which enrich the experience of the landscape and contribute to understanding of special qualities and sense of place
Good recreation provision	High quantity of appropriate recreation provision	R6	Presence of extensive network of rights of way and/or extent of open access land over much of the area
	Diversity of good quality provision for quiet enjoyment	R7	Opportunities to enjoy a range of high quality landscape experiences
		R8	Opportunities to enjoy a range of different provision for quiet recreation activity
Accessibility	Accessibility to centres of population	R9	Transport links to centres of population
		R10	Availability of sustainable transport options providing links to centres of population
Potential for enhancement	Potential for appropriate enhancement of enjoyment and understanding	R11	Possible plans to improve provision for access to or quiet enjoyment of the landscape so as to provide opportunities for the understanding and enjoyment of the area's special qualities, by new provision or improved management of existing

Appendix 3:

National Park and AONB Mechanisms, Powers and Duties

National Park

- **National Park purposes** must be considered by all public bodies in decisions affecting National Parks.
- If there is a conflict between the two purposes, greater weight should attach to the conservation and enhancement of the natural beauty, wildlife and cultural heritage of the area (**Sandford principle**).
- There will usually be a dedicated **National Park Authority (NPA)** which must pursue the purposes of designation.
- There must be a **National Park Management Plan** to ensure proactive and co-ordinated management of the area.
- NPAs exercise **countryside management functions**.
- NPAs exercise **planning and development control functions**.
- There is greater protection from inappropriate development through **planning policy**.
- NPAs **manage access (physical and intellectual)**.
- An **NPA** must seek to foster the economic and social well-being of local communities within the National Park,
- There is a dedicated government **funding** stream for the NPA over and above the funds that local authorities will continue to receive funding for their remaining functions.

Area of Outstanding Natural Beauty

- **AONB purposes** must be considered by all public bodies in decisions affecting AONBs.
- AONB purposes are normally delivered through a dedicated **AONB partnership** made up of the local authorities and other stakeholders.
- There must be an **AONB Management Plan** which sets out the policy for the management of the area and which includes an action plan for carrying out activity in support of the purposes of designation.
- Most AONBs have a small core team (the **AONB unit**) which coordinate, facilitate and sometimes delivers **countryside management** functions.
- There is greater protection from inappropriate development through **planning policy**.
- There is additional **funding** for the delivery of AONB purposes through Natural England and the local authorities plus opportunities for discretionary funding from other sources.
- It is possible to establish a **statutory conservation board** where this would be desirable. This would have the additional duty to have regard to the purpose of increasing the understanding and enjoyment by the public of the special qualities of the AONB.

Appendix 4:

Boundary Setting Considerations

Transition areas: The boundary should not be expected to be a sharp barrier between areas of differing quality. Often there will be a transition of natural beauty and opportunities for open-air recreation across a sweep of land: in those cases the boundary chosen should be an easily identifiable feature within this transition. The boundary should be drawn towards the high quality end of the transition in a manner that includes areas of high quality land and excludes areas of lesser quality land ie it should be drawn conservatively. Visual associations may also be used to help define the extent of land for inclusion in these circumstances.

Types of boundary: Wherever possible, an easily distinguishable permanent physical boundary should be chosen. Boundaries should not if possible be overly complex or convoluted. Where a boundary follows a road, the road verges and embankments may be included in the designation where they blend into the wider landscape¹⁶.

Other administrative boundaries: Where local government boundaries follow suitable lines, it may be administratively convenient to adopt them. In the majority of cases, however, they will be unsuitable. Similarly, land ownership is not itself a reason for including or excluding land from designation – there will often be instances where part of a landholding sites within the designated area and part sits outside.

Inclusion of settlements: A settlement should only be included if it lies within a wider tract of qualifying land, having regard to the influence of the settlement on the land in question. Settlements should be assessed on their individual merits and particularly on their character, qualities and relationship to adjoining countryside. The extent to which countryside penetrates the built-up area may also be relevant.

Integrity of settlements: Towns or villages should not normally be cut in two by a National Park/AONB boundary. The ability of a settlement to act as a gateway to a designated area is not dependent on its inclusion with a designation. A settlement does not equate to a parish and the division of parishes is acceptable in drawing a boundary.

Incongruous development: Unsightly development on the edge of a National Park/AONB should generally be excluded unless it is of a temporary or transient nature.

Land allocated for development: Land on the margins of a National Park/AONB identified in development plans (both adopted and emerging¹⁷), or having the benefit of planning permission, for major built developments (including the extraction of minerals and other deposits) should normally be excluded from the Park/AONB, unless the land will be developed or restored to a land use and quality which contributes to Park/AONB purposes. Land should not be included merely to seek to protect it from specific development proposals.

Features of interest: Areas and features of wildlife, historic, cultural or architectural value which are situated on the margins of a National Park/AONB should be included where practicable providing that they are situated within a tract that meets the statutory criteria.

Marine boundaries: In coastal areas where a marine boundary is to be drawn, the boundary should follow the mean low water mark.

¹⁶ The metalled surface of a road normally remains outside the National Park.

¹⁷ Proposed development schemes included in emerging development plans will be afforded varying weight depending on the extent to which they have progressed through the development plan preparation process and also the extent to which any adopted plans may remain relevant.

Appendix 5:

Statutory Provisions for Designating Landscapes

This appendix reproduces extracts of legislation relevant to designating landscapes. It does not exhaustively cover all legislation relating to National Parks or AONBs.

The legislation is as it currently reads (as at October 2009) and does not show earlier versions or amendments. Provisions not specifically relevant have been left out. When required, the currently applicable legislation should always be referred to directly.

National Parks and Access to the Countryside Act 1949 (as amended)

Section 5 National Parks

- (1) The provisions of this Part of this Act shall have effect for the purpose—
 - (a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and
 - (b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.
- (2) The said areas are those extensive tracts of country in England ... as to which it appears to Natural England that by reason of—
 - (a) their natural beauty and
 - (b) the opportunities they afford for open-air recreation, having regard both to their character and to their position in relation to centres of population,it is especially desirable that the necessary measures shall be taken for the purposes mentioned in the last foregoing subsection.
- (2A) Natural England may
 - (a) when applying subsection (2)(a) in relation to an area, take into account its wildlife and cultural heritage, and
 - (b) when applying subsection (2)(b) in relation to an area, take into account the extent to which it is possible to promote opportunities for the understanding and enjoyment of its special qualities by the public.
- (3) The said areas, as for the time being designated by order made by Natural England and submitted to and confirmed by the Minister, shall be known as, and are hereinafter referred to as, National Parks.

Section 6 General duties of Natural England in relation to National Parks

- (1) It shall be the duty of Natural England from time to time, to consider what areas there are in England ... falling within sub-section (2) of the last foregoing section, to determine in what order they should be designated under subsection (3) of that section, and to proceed with their designation at such times as Natural England may determine.

Section 7 Designation and variation of National Parks

- (1) Before making an order designating a National Park Natural England shall consult with every joint planning board and local authority whose area includes any land in the area to be designated a Park.
- (2) Any such order shall describe the area to be designated a Park by reference to a map and such other descriptive matter as may appear to Natural England to be requisite.
- (3) The provisions in that behalf of the First Schedule to this Act shall have effect as to the making, confirmation, coming into operation and validity of any order designating a National Park.
- (4) The Minister may by order made after consultation with Natural England vary an order designating a National Park.
- (5) Before making an order under the last foregoing subsection the Minister shall consult with any National Park authority for the Park in question and with every such board and council as aforesaid whose area, or any part of whose area, is comprised in the National Park, whether as existing or as proposed to be varied; and the provisions in that behalf of the First Schedule to this Act shall apply to any order under the last foregoing subsection.

- (6) It shall be the duty of Natural England to secure that copies of any order such as is mentioned in this section shall be available, at the office of Natural England, at the offices of each joint planning board and local authority specified in subsection (1) or subsection (5) of this section, as the case may be at the offices (where the order is for the variation of an order designating a Park) of any National Park authority for the Park in question, and at such other place or places in or near the Park in question as Natural England may determine, for inspection by the public at all reasonable times.
- (7) In this Section and Schedule 1 “local authority” means—
- (a) in relation to England, a county council, district council or parish council;
 - (b) in relation to Wales, a county council, county borough council or community council.

SCHEDULE 1

PROVISIONS AS TO MAKING, CONFIRMATION, COMING INTO OPERATION AND VALIDITY OF CERTAIN INSTRUMENTS

Part I

Orders designating National Parks, Public Path Orders, Diversion Orders and Extinguishment Orders, and Access Orders

- 1 (1) Before—
- (a) an order designating a National Park, the authority by whom the order was made shall give notice in the prescribed form stating the effect of the order and that it has been made and is about to be submitted for confirmation, naming places in the locality to which the order relates where copies of the order and of the map referred to therein may be inspected, and specifying the time (not being less than twenty-eight days) within which, and the manner in which, representations or objections with respect to the order may be made.
 - (2) Before the Minister makes an order varying an order designating a National Park, ... or an access order, he shall prepare a draft of the order and shall give notice stating that he proposes to make the order and the effect thereof, naming places in the locality to which the draft relates where a copy of the draft and of the map referred to therein may be inspected, and specifying the time (not being less than twenty-eight days) within which, and the manner in which, representations or objections with respect to the draft may be made.
 - (3) The notice to be given under either of the two foregoing sub-paragraphs shall be given—
 - (a) in the case of an order designating a National Park or an order varying such an order, by publication in the London Gazette, in two newspapers circulating in the country generally and in at least one local newspaper circulating in every county or county borough which includes any of the land to which the order relates:
 - (3A) Where under this paragraph any notice is required to be given by any person in respect of any land which is already in a National Park for which a National Park authority is the local planning authority, that person shall serve a copy of that notice on that authority.
- 2 (1) If no representations or objections are duly made, or if any so made are withdrawn, the Minister may, if he thinks fit, confirm or make the order, as the case may be, with or without modifications.
- (2) If any representation or objection duly made is not withdrawn, the Minister shall, before confirming or making the order, as the case may be, if the objection is made by a local authority cause a local inquiry to be held and in any other case either—
- (a) cause a local inquiry to be held, or
 - (b) afford to any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by him for the purpose,
- and, after considering the report of the person appointed to hold the inquiry or to hear representations or objections, may confirm or make the order, as the case may be, with or without modifications:

- (2A) In sub-paragraph (2) “local authority” does not include, in relation to an order designating a National Park in England, a parish council.
- (3) Notwithstanding anything in the foregoing provisions of this paragraph, the Minister shall not confirm or make an order so as to affect land not affected by the order as submitted to him or the draft order prepared by him, as the case may be, except after—
- (a) giving such notice as appears to him requisite of his proposal so to modify the order, specifying the time (not being less than twenty-eight days) within which and manner in which representations or objections with respect to the proposal may be made;
 - (b) holding a local inquiry or affording to any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by him for the purpose; and
 - (c) considering the report of the person appointed to hold the inquiry or to hear representations or objections, as the case may be, ...
- (4) Where, in the case of an access order, it is represented by the Environment Agency or a water undertaker being a water undertaking, that any land comprised in the order as submitted to the Minister or in the draft order prepared by him, as the case may be (or, where notice of a proposed modification has been given under head (a) of the last foregoing sub-paragraph, and land to which the proposed modification relates), should be excluded from the operation of the order on the ground that by reason of—
- (a) the proximity of the land to any reservoir used for the purposes of the statutory undertaking carried on by that Authority or, as the case may be, undertaker, or
 - (b) any other physical factor affecting the flow of water from the land into any such reservoir, the operation of section sixty of this Act as respects that land would be likely to involve danger to the purity of the water supply which could not be prevented by the taking of any reasonable measures, sub-paragraph (2) of this paragraph, or head
 - (c) of the last foregoing sub-paragraph, as the case may be, shall have effect in relation to that representation as if it provided for the consideration of the report therein referred to by the Minister and the Secretary of State acting jointly.
- (5) If, as the result of any representations or objections considered, or inquiry or other hearing held, in connection with the confirmation of an order designating a National Park or the making of an order varying such an order, the Minister is of opinion that Natural England, the Council a National Park authority, county planning authority or, in Wales, the local planning authority or any other person ought to be consulted before he decides whether to confirm or make the order either with or without modifications, he shall consult Natural England, the Council, authority or other person but, subject to the provisions of sub-paragraph (3) of this paragraph, shall not be under any obligation to consult any other person, or to afford any opportunity for further representations or objections or to cause any further inquiry or other hearing to be held.

- 3 As soon as may be after any such order as is mentioned in paragraph 1 of this Schedule has been confirmed or made by the Minister, the authority by whom the order was made, or, in the case of an order made by the Minister, the Minister, shall publish, in the manner required in relation to the class of order in question by sub-paragraph (3) of paragraph 1 of this Schedule, a notice in the prescribed form describing the effect of the order, stating that it has been confirmed or made, and naming a place where a copy thereof as confirmed or made may be inspected at all reasonable hours, and—
- (a) where under the said sub-paragraph (3) notice was required to be served shall serve a like notice and a copy of the order as confirmed or made on any persons on whom notices were required to be served under that sub-paragraph or under sub-paragraph (3A) or (4) of paragraph 1 of this Schedule; and
 - (b) where under the said sub-paragraph (3) a notice was required to be displayed, shall cause a like notice to be displayed in the like manner as the notice required to be displayed under that sub-paragraph:

Provided that no such notice or copy need be served on a person unless he has sent to the authority or Minister (according as the notice or copy would require to be served by an

authority or by the Minister) a request in writing in that behalf specifying an address for service.

- 3A An order designating a National Park shall have effect as from such time as may be determined by the Minister and specified in the notice of the confirmation of that order.
- 4 (1) The Minister may, subject to the provisions of this Part of this Schedule, by regulations make such provision as to the procedure on the submission and confirmation of orders to which this Part of this Schedule applies as appears to him to be expedient.
- (3) In this Part of this Schedule the expression “prescribed” means prescribed by regulations made by the Minister.

Wildlife and Countryside Act 1981

Section 45 Power to vary orders designating National Park

- (1) Natural England (as well as the Secretary of State) shall have power to make an order amending an order made under section 5 of the 1949 Act designating a National Park, and—
- (a) section 7(5) and (6) of that Act (consultation and publicity in connection with orders under section 5 or 7) shall apply to an order under this section as they apply to an order under section 7(4) of that Act with the substitution for the reference in section 7(5) to the Secretary of State of a reference to Natural England; and
- (b) Schedule 1 to that Act (procedure in connection with the making and confirmation of orders under section 5 or 7) shall apply to an order under this section as it applies to an order designating a National Park.

Countryside and Rights of Way Act 2000

Part IV Areas of Outstanding Natural Beauty

Section 82 Designation of areas

- (1) Where it appears to **Natural England** that an area which is in England but not in a National Park is of such outstanding natural beauty that it is desirable that the provisions of this Part relating to areas designated under this section should apply to it, **Natural England may**, for the purpose of conserving and enhancing the natural beauty of the area, by order designate the area for the purposes of this Part as an area of outstanding natural beauty.
- (2) Where it appears to the Countryside Council for Wales (in this Part referred to as “the Council”) that an area which is in Wales but not in a National Park is of such outstanding natural beauty that it is desirable that the provisions of this Part relating to areas designated under this section should apply to it, the Council may, for the purpose of conserving and enhancing the natural beauty of the area, by order designate the area for the purposes of this Part as an area of outstanding natural beauty.
- (3) In this Part “area of outstanding natural beauty” means an area designated under this section as an area of outstanding natural beauty.

Section 83 Procedure for designation orders

- (1) Where **Natural England** or the Council propose to make an order under section 82, or the Council shall consult every local authority whose area includes any part of the area to which the proposed order is to relate.
- (2) Before making the order, **Natural England** or the Council shall then publish, in the London Gazette and in one or more newspapers circulating in the area of every such local authority, notice that they propose to make the order, indicating the effect of the order and stating the time within which and manner in which representations with respect to the proposed order

may be made to **Natural England** or the Council (as the case may be), and shall consider any representations duly made.

- (3) An order under section 82 shall not come into operation unless and until confirmed—
 - (a) in the case of an order made by **Natural England**, by the Secretary of State, or
 - (b) in the case of an order made by the Council, by the National Assembly for Wales, and, in submitting any such order to the Secretary of State or the Assembly, or Council shall forward to the Secretary of State or the Assembly any representations made by a local authority consulted under subsection (1) or made by any other person under subsection (2), other than representations to which effect is given by the order as submitted to the Secretary of State or the Assembly.
- (4) The Secretary of State or the National Assembly for Wales may confirm an order submitted to him or it under this section either as submitted or with such modifications as the Secretary of State or the Assembly thinks expedient.
- (5) Before refusing to confirm an order under section 82, or determining to confirm it with modifications, the Secretary of State shall consult **Natural England** and every local authority whose area includes any land to which the order as submitted, or as proposed to be modified, relates.
- (6) Before refusing to confirm an order under section 82, or determining to confirm it with modifications, the National Assembly for Wales shall consult the Council and every local authority whose area includes any land to which the order as submitted, or as proposed to be modified, relates.
- (7) An order under section 82 may be revoked or varied by a subsequent order under that section.
- (8) Without prejudice to the powers of **Natural England** or the Council to vary an order under section 82, the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may by order vary any order under that section made by **Natural England** or the Council; and subsection (1) applies to any order under section 82 made by the Secretary of State or the Assembly by virtue of this subsection with the substitution for references to **Natural England** of references to the Secretary of State and for references to the Council of references to the Assembly.
- (9) It is the duty of **Natural England** and the Council to secure that copies of any order under section 82 relating to England or, as the case may be, to Wales, are available for inspection by the public at all reasonable times—
 - (a) at the office of **Natural England** or, as the case may be, the Council,
 - (b) at the offices of each local authority whose area includes any part of the area to which the order relates, and
 - (c) at such other place or places in or near that area as **Natural England** or, as the case may be, the Council may determine.

Section 86 Establishment of conservation boards

- (1) The Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may—
 - (a) in the case of any existing area of outstanding natural beauty, or
 - (b) in connection with the designation of any area as an area of outstanding natural beauty, by order establish a board (in this Part referred to as “a conservation board”) to carry out in relation to that area the functions conferred on such a board by or under this Part.
- (2) Schedule 13 (which relates to the constitution of conservation boards) has effect.
- (3) Where the Secretary of State or the National Assembly for Wales considers it expedient for either of the purposes mentioned in section 87(1), an order under subsection (1) may—
 - (a) provide for the transfer to the conservation board to which the order relates of any of the functions of local authorities, so far as relating to the area of outstanding natural beauty in question, or
 - (b) provide for any function of a local authority, so far as relating to the area of outstanding natural beauty in question, to be exercisable concurrently by the local authority and by the conservation board.

- (4) Subsection (3) does not apply to functions of a local authority under Part II, III, VII or XIII of the Town and Country Planning Act 1990 [or under Part 2 or 6 of the Planning and Compulsory Purchase Act 2004].
- (5) An order under subsection (1) may make further provision as to the constitution and administration of the conservation board to which it relates, including provision with respect to—
 - (a) the appointment of members,
 - (b) the removal and disqualification of members,
 - (c) the conduct of members,
 - (d) proceedings of the board,
 - (e) the appointment of staff,
 - (f) consultation with other public bodies,
 - (g) records and documents of the board,
 - (h) the provision of information by the board, and
 - (i) complaints of maladministration.
- (6) Before making an order under subsection (1) in relation to an area of outstanding natural beauty in England, the Secretary of State shall consult—
 - (a) **Natural England**, and
 - (b) every local authority whose area consists of or includes the whole or part of the area of outstanding natural beauty, and shall not make the order unless satisfied that the majority of those local authorities consent.
- (8) An order under subsection (1) which amends or revokes a previous order under that subsection establishing a conservation board—
 - (a) may be made only after consultation with the conservation board to which it relates (as well as the consultation required by subsection (6) or (7)), and
 - (b) in the case of an order revoking a previous order, may provide for the winding up of the board.
- (9) Subject to any order under subsection (10), where there is a variation of the area of an area of outstanding natural beauty for which there is or is to be a conservation board, the area of outstanding natural beauty for which that board is or is to be the conservation board shall be taken, as from the time when the variation takes effect, to be that area as varied.
- (10) Where provision is made for the variation of the area of an area of outstanding natural beauty for which there is or is to be a conservation board, the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may by order make such transitional provision as he or it thinks fit with respect to—
 - (a) any functions which, in relation to any area that becomes part of the area of outstanding natural beauty, are by virtue of the variation to become functions of that conservation board; and
 - (b) any functions which, in relation to any area that ceases to be part of the area of outstanding natural beauty, are by virtue of the variation to become functions of a person other than that conservation board.

Section 87 General purposes and powers

- (1) It is the duty of a conservation board, in the exercise of their functions, to have regard to—
 - (a) the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty, and
 - (b) the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty,
 but if it appears to the board that there is a conflict between those purposes, they are to attach greater weight to the purpose mentioned in paragraph (a).
- (2) A conservation board, while having regard to the purposes mentioned in subsection (1), shall seek to foster the economic and social well-being of local communities within the area of outstanding natural beauty, shall for that purpose co-operate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of outstanding natural beauty.

- (3) Sections 37 and 38 of the Countryside Act 1968 (general duties as to the protection of interests of the countryside and the avoidance of pollution) apply to conservation boards as they apply to local authorities.
- (4) The powers of a conservation board include power to do anything which, in the opinion of the board, is calculated to facilitate, or is conducive or incidental to—
 - (a) the accomplishment of the purposes mentioned in subsection (1), or
 - (b) the carrying out of any functions conferred on it by virtue of any other provision of this Part or by virtue of any enactment not contained in this Part.
- (5) The powers conferred on a conservation board by subsection (4) do not include—
 - (a) power to do anything in contravention of any restriction imposed by virtue of this Part in relation to any express power of the board, or
 - (b) power to raise money (whether by borrowing or otherwise) in a manner which is not authorised apart from that subsection, but the things that may be done in exercise of those powers are not to be treated as excluding anything by reason only that it involves the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights.
- (6) Schedule 14 (which relates to the supplemental and incidental powers of conservation boards) has effect.
- (7) An order under section 86(1) may—
 - (a) make further provision with respect to the supplemental and incidental powers of the conservation board to which it relates or the limits on those powers, including provision relating to the borrowing of money, and
 - (b) provide for any enactment which relates to or limits the supplemental or incidental powers or duties of local authorities or relates to the conduct of, or transactions by, local authorities to apply in relation to the conservation board with such modifications as may be specified in the order.

Section 88 Orders establishing conservation boards

- (1) Any power of the Secretary of State or the National Assembly for Wales to make an order under section 86(1) or (10) is exercisable by statutory instrument.
- (2) No order shall be made under section 86(1) by the Secretary of State unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument containing an order made under section 86(10) by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) If a draft of an order made under section 86(1) by the Secretary of State would, apart from this section, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.
- (5) The power of the Secretary of State or the National Assembly for Wales to make an order under section 86(1) or (10) includes power to make such incidental, supplemental, consequential and transitional provision as the person making the order thinks necessary or expedient.
- (6) The power of the Secretary of State or the National Assembly for Wales by an order under section 86(1) or (10) to make incidental, supplemental, consequential or transitional provision includes power for any incidental, supplemental, consequential or, as the case may be, transitional purpose—
 - (a) to apply with or without modifications,
 - (b) to extend, exclude or modify, or
 - (c) to repeal or revoke with or without savings, any enactment or any instrument made under any enactment.
- (7) The provision that may be made for incidental, supplemental, consequential or transitional purposes in the case of any order under section 86(1) or (10) which—
 - (a) establishes a conservation board or provides for the winding up of such a board, or
 - (b) otherwise has the effect of transferring functions from one person to another or of providing for functions to become exercisable concurrently by two or more persons or

to cease to be so exercisable, includes provision for the transfer of property, rights and liabilities from one person to another.

- (8) The power of the Secretary of State or the National Assembly for Wales under section 86(1) or (10) to provide by order for the transfer of any property, rights or liabilities, or to make transitional provision in connection with any such transfer or with any order by which functions become or cease to be exercisable by any conservation board, includes, in particular, power to provide—
- (a) for the management and custody of any transferred property (whether real or personal);
 - (b) for any liabilities transferred to include liabilities under any enactment;
 - (c) for legal proceedings commenced by or against any person to be continued by or against a person to whom property, rights or liabilities are transferred or, as the case may be, any board or other authority by whom any functions are to become exercisable;
 - (d) for the transfer of staff, compensation for loss of office, pensions and other staffing matters; and
 - (e) for treating any person to whom a transfer of property, rights or liabilities is made or, as the case may be, by whom any functions are to become exercisable as, for some or all purposes, the same person in law as the person from whom the transfer is made or the authority by whom the functions have previously been exercisable.
- (9) The power of the Secretary of State or the National Assembly for Wales to make an order under section 86(1) or (10) includes power to make different provision for different cases, including different provision for different areas or localities and for different boards.
- (10) In this section “enactment” includes an enactment contained in an Act passed after this Act.

Natural Environment and Rural Communities Act 2006

99 Natural Beauty in the Countryside

The fact that an area in England or Wales consists of or includes –

- (a) land used for agriculture or woodlands,
- (b) land used as a park, or
- (c) any other area whose flora, fauna or physiographical features are partly the product of human intervention in the landscape,

does not prevent it from being treated, for the purposes of any enactment (whenever passed), as being an area of natural beauty (or of outstanding natural beauty).