

# 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.

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# Guidance for assessing landscapes for designation

## Foreword

This guidance is intended, primarily, for use by Natural England specialist staff to help identify whether land is likely to meet the statutory criteria for AONB or National Park designation. We are, however, making it available on request to external audiences who may find it useful as an aid to understanding how decisions to designate are reached.

We will consider and respond to any formal proposal to designate or vary the boundary of an AONB or National Park but will, at all times, retain discretion as to which if any proposals to take forward, and how and when to do so. In any case which may proceed, Natural England will form its own view on whether or not the statutory criteria are met. The final extent of the area to be the subject of any consequential designation or variation order will also be entirely at Natural England's discretion.

This guidance will only be applied once a decision to commit resources to an assessment of an area of landscape against AONB or National Park designation criteria has been made. In coming to this earlier decision Natural England will have regard to a range of factors including:

- The extent/quality of evidence submitted that land might meet designation criteria;
- The reason(s) for the proposal;
- Evidence of local consensus that designation is appropriate;
- Benefit/positive impact of proposal balanced against the likely cost of designation;
- The relative importance of the proposal compared against other corporate priorities.

# Guidance for assessing landscapes for designation

## 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. The assessment process described in this document effectively constitutes the **second** phase of a potential designation or variation project. This guidance will only be used once a decision to commit to undertaking a designation assessment has already been reached by Natural England. This earlier decision will take into account a number of factors including the likely availability of resources to execute a designation order, and its relative importance when compared against other work priorities.

1.3. 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.

1.4. 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.

1.5. 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 judgments and the weighing of considerations, depending on the particular circumstances of each case. These decisions should be informed by professional advice where appropriate as well as information submitted by statutory consultees, the public and stakeholders. 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 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 (“NPAC 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 reproduced 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.

2.2. The requirements for designation can be summarised as follows (with the differences between National Park and AONB highlighted in bold):

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	AONB	National Park
<b>Technical criteria</b>	Natural beauty	Natural beauty Opportunities for open-air recreation
<b>Desirability</b>	Desirable to designate ... for the purposes of... (defined below)	Especially desirable to designate ... for the purposes of... (defined below)
<b>Designation</b>	AONB (normally with AONB Partnership or exceptionally a Conservation Board)	National Park (with National Park Authority)
<b>Purposes</b>	Conserving and enhancing its natural beauty	Conserving and enhancing its natural beauty, wildlife and cultural heritage Promoting understanding and enjoyment of its special qualities by the public

## National Park

2.3. 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**.

2.4. 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.

2.5. Some further clarification is provided in the legislation:

- Reference to conservation and enhancement of natural beauty includes conservation of its flora, fauna and geological and physiographical features (s.114(2) NPAC 1949; this provision applies to National Park purposes and not the assessment of natural beauty as such, however see the note to paragraph 6.3).
- When considering the natural beauty of an area, account may be taken of its wildlife and cultural heritage (s.5(2A)(a) NPAC 1949).
- 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 Natural Environment and Rural Communities Act 2006 (“NERC”).
- 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.5(2A)(b) NPAC 1949).

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## Area of Outstanding Natural Beauty (AONB)

2.6. Section 82(1) of the Countryside and Rights of Way Act 2000 (“CROW”) 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 CROW 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.

2.7. 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, however see paragraph 6.3).
- 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 NERC).

## Distinguishing National Park from AONB

2.8. The differences, at the designation stage, between National Park and AONB may be summarised as follows:

- AONBs need only meet the natural beauty test, National Parks must also meet the recreation test (see further paragraph 7.1);
- the test for desirability is different, with National Parks requiring the standard of ‘especially’ desirable (para. 8.6);
- AONB purposes do not include promoting understanding and enjoyment of the area’s special qualities (para 8.8) except in the case of AONB Conservation Boards (para 8.8);
- in practice local authorities in many AONBs make a big contribution to promoting understanding and enjoyment; however, it is not a statutory purpose that can be taken into account at designation (para 8.9)

2.9. It is Natural England’s view that the practical application of the natural beauty criterion is identical in National Park and AONB designation, despite there being differences in the degree to which the criterion is clarified in the legislation (para. 6.1ff. and 8.6).

## Practical application

2.10. As can be seen from the preceding section, the legislation contains no exhaustive definitions of some important concepts: natural beauty, opportunities for open-air recreation, the desirability of designation or how to determine the detailed boundaries of designations.

2.11. Natural England has therefore considered in detail the way in which these concepts have been applied previously in designating National Parks and AONBs. The most recent designation, and the only one which takes into account the NERC Act, is in relation to the South Downs National Park and that has accordingly been taken into account. Natural England has also taken this 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.

2.12. The remainder of this document addresses some particular aspects of the relevant statutory provisions and then sets out guidance on how Natural England normally expects to apply the statute and assess key factors.

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## 3. Natural England's approach to designation

### Principles

3.1. Natural England may decide to use its statutory powers to designate tracts of land as either AONB or National Park in furtherance of its general purpose of conserving and enhancing the landscape. We will use these powers judiciously, and future designation work within the current legal framework is likely to be confined to a limited number of particularly important boundary variations. .

3.2. Natural England intends to select areas for future consideration, and to prioritise these using transparent criteria. Once a project reaches a stage where the designation criteria need to be considered in detail, this guidance should be used. It explains how Natural England normally expects to apply the statutory designation criteria in practice when assessing landscapes for designation.

3.3. In considering whether to take forward a designation or variation project Natural England acts under Government guidance provided in 2004 that remains extant. This guidance states that “ultimately, boundary changes should be rarely needed” and “In considering responses to a consultation, the Countryside Agency [now Natural England] will have regard to local authority (or other) requests to extend or reduce the area being put forward for designation, but the final extent of the area to be the subject of a designation order will be entirely at Natural England's discretion. We would not expect consultation on a limited boundary variation to lead to wholesale re-evaluation of boundaries elsewhere.

3.4. In the simplest possible terms, the consideration of designating land under the 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?
- Where should the detailed boundary be drawn?

3.5. The main technique used to answer these questions is landscape character assessment. The document “*Landscape Character Assessment: Guidance for England and Scotland*” (Countryside Agency and Scottish Natural Heritage, 2002, under review at the time of writing) specifies two distinct stages for assessing landscapes: **characterisation** and **evaluation**. It also defines the key terms that are used in such assessments.

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**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

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

3.7. 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.

3.8. 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.

## **Practical application**

3.9. 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 below):

# Guidance for assessing landscapes for designation

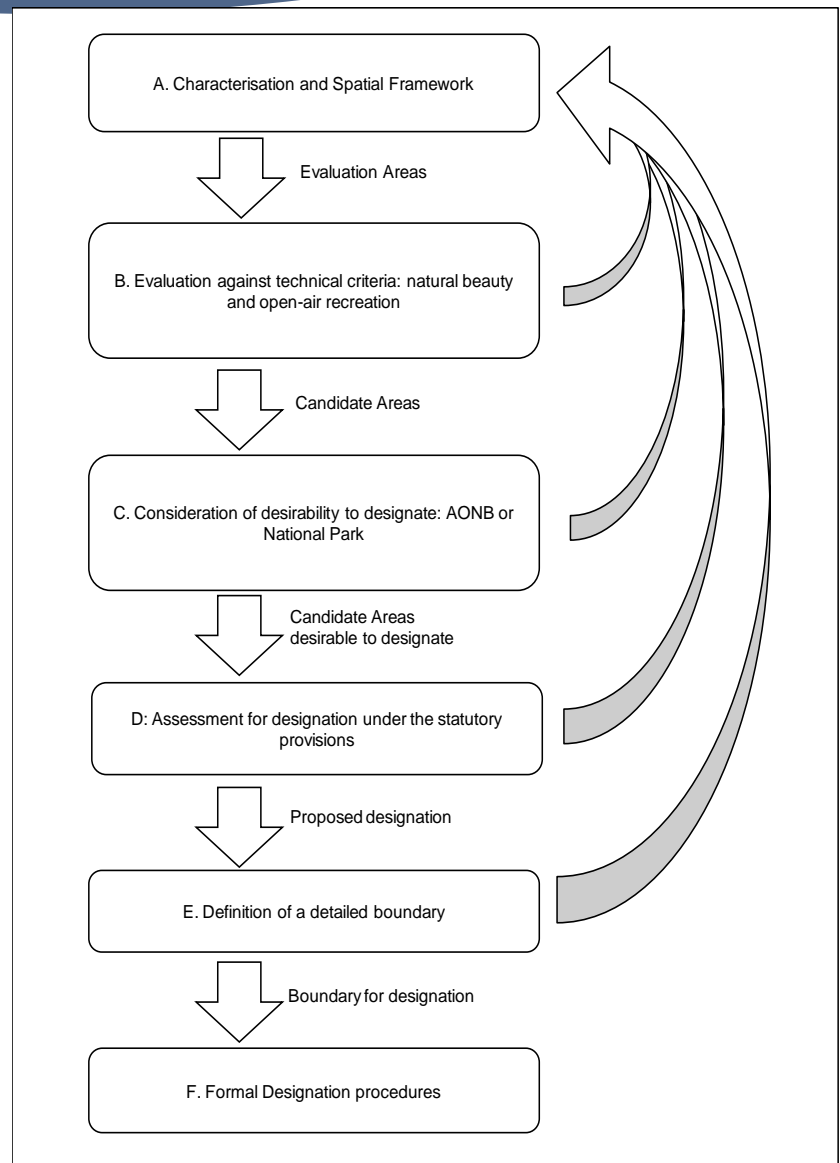
**A. Characterisation and Spatial Framework** (para 4.1ff): This is undertaken at an appropriate scale resulting in:

- a spatial framework of **Evaluation Areas** which are defined below; and
- a description of the character of these Evaluation Areas.

**B. Technical Criteria** (para 5.1ff): Each Evaluation Area is evaluated against the following technical criteria:

- natural beauty (paras 6.1ff) and opportunities for open-air recreation (para 7.1ff) in the case of National Parks; and
- natural beauty only in the case of AONBs.
- An area that appears likely to be able to meet the technical criteria is included in a Candidate Area.

**C. Desirability to Designate** (para 8.1ff): 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. At this stage, it may also be necessary to decide between the options of designating National Park or AONB.



**3.10.** 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.

**D. Assessment for designation under the statutory provisions** (para 8.20): 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 consideration.

**E. Definition of a Detailed Boundary** (para 9.1ff): The areas identified for designation are examined to define a detailed boundary which encloses them.

**F. Formal Designation Procedures** (para 10.1ff): Designation or Variation Orders are made and submitted to the Secretary of State for confirmation.



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## 4. Characterisation and Spatial Framework

4.1. 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 Evaluation Areas in this guidance.

4.2. Evaluation Areas should normally be defined, at least initially, using recognised landscape character assessment techniques described in national guidance<sup>1</sup>. 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.

4.3. 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, or local seascape analyses) 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.

4.4. 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.

## 5. Technical Criteria: General

### Principles

5.1. The technical criteria for designating National Parks are natural beauty and opportunities for open-air recreation. In the case of AONBs it is only natural beauty.

	<b>AONB</b>	<b>National Park</b>
<b>Technical criteria</b>	Natural beauty	Natural beauty <b>Opportunities for open-air recreation</b>

5.2. Natural England considers the practical application of the natural beauty criterion to be identical for both National Park and AONB, despite the fact that there is a difference in the extent to which it has been expressly set out in the legislation (see paragraph 6.5 for further details). Accordingly, the only technical difference<sup>2</sup> between areas capable of being designated National Park or AONB is that, in order to be designated National Park, an area must meet the recreation criterion.

5.3. The following general guidance is given as to how the technical criteria should normally be applied.

<sup>1</sup> Landscape Character Assessment: Guidance for England and Scotland (2002)

<sup>2</sup> Apart from that relating to desirability of designation.

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- Natural England considers the practical application of the natural beauty criterion to be identical for both National Parks and AONBs, despite the fact that there is a difference in the extent to which it has been expressly clarified in the legislation.
- 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 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 clarifies that landscapes that are partly the product of human intervention can still have natural beauty and may be included in designations. This principle is very significant in the context of English landscapes.
- A designation can ‘wash over’ (ie include) a tract of land even though that land does not itself meet the designation criteria, even close to the boundary of a designated area<sup>3</sup>.
- 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.

## Practical application

5.4. 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

<sup>3</sup> 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).

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5.5. At a subsequent stage (addressed under ‘Desirability’ at para 8.20), it is necessary to consider whether a number of Candidate Areas together, or Candidate Areas and an existing designation in the case of a boundary review, form an extensive tract that satisfies the National Park designation criteria, or an area which satisfies AONB designation criteria. This is significant because 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.

5.6. As is explained in paragraph 4.1ff, 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.

5.7. 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 area may be identified for further and more detailed scrutiny.<sup>4</sup>

5.8. Below we set out our recommended 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 sufficient natural beauty and 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.

## 6. Natural Beauty

### Principles

6.1. Natural beauty is not exhaustively defined in the legislation. It is also a very subjective characteristic of a landscape and ultimately involves a value judgment. In deciding whether an area has natural beauty, Natural England must therefore make a judgment as to whether people are likely to perceive a landscape as having sufficient natural beauty. In order to make these judgments (some of which are subjective) in a transparent and consistent way, this Guidance sets out which criteria Natural England intends to use.

6.2. In England it is widely accepted that the beauty of all our most cherished landscapes is in part due to human intervention such as agriculture and forestry. It has long been the practice to include such factors in the assessment of natural beauty. This is now clarified in statute, and in the case of both AONBs and National Parks land is not prevented from being treated as being 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).

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<sup>4</sup>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.

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6.3. It is Natural England's view that fauna and flora (i.e. wildlife), geological and physiographical features<sup>5</sup> and cultural heritage can contribute to the natural beauty of all landscapes and that any assessment of natural beauty must take these factors into consideration, whether in relation to a National Park or an AONB designation.<sup>6</sup> 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. There is now express statutory clarification that wildlife and cultural heritage may be taken into account in assessing natural beauty for National Park designations (s.59(1)) of NERC).

6.4. 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"<sup>7</sup>. Whilst this statement was made in connection with National Parks, past and present practice has been to treat the practical assessment of natural beauty in National Parks and AONBs in the same way.

6.5. Notwithstanding the differences in the express statutory provisions, the Government's formal position during the passage of the NERC Act was that the natural beauty required of a National Park and an AONB are the same.<sup>8</sup> 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.

## Practical application

6.6. The systematic evaluation of natural beauty can be a complex exercise requiring careful assessment and judgment. Natural England has developed a list of **factors that contribute to natural beauty**. It provides a practical framework for an evidence-base which assists in making judgments about natural beauty in a rigorous and transparent way. The suggested factors (see Table 3) have been drawn from the landscape value criteria included in the Landscape Character Assessment Guidance 2002. They have been restated in Table 3 to show more explicitly which factors relate to natural beauty and which to other aspects of the statutory criteria<sup>9</sup>.

6.7. The factors 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 some circumstances. Not all factors will be relevant in every case.

6.8. 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.

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<sup>5</sup> This view does not rely on the 'extended definition' of natural beauty contained in s.114(2) NPAC and s.92(2) CROW which refer specifically to the purpose of 'conserving and enhancing' natural beauty.

<sup>6</sup> The European Landscape Convention defines landscape as *an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors*.

<sup>7</sup> Lords Hansard 27 Feb 2006 (Col 79)

<sup>8</sup> 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.

<sup>9</sup> 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.

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**Table 3 Factors related to Natural Beauty**

<b>Landscape quality</b> This is a measure of the physical state or condition of the landscape.
<b>Scenic quality</b> The extent to which the landscape appeals to the senses (primarily, but not only, the visual senses).
<b>Relative wildness</b> The degree to which relatively wild character can be perceived in the landscape makes a particular contribution to sense of place.
<b>Relative tranquillity</b> The degree to which relative tranquillity can be perceived in the landscape <sup>10</sup> .
<b>Natural heritage features</b> The influence of natural heritage on the perception of the natural beauty of the area. Natural heritage includes flora, fauna, geological and physiographical features.
<b>Cultural heritage</b> The influence of cultural heritage on the perception of natural beauty of the area and the degree to which associations with particular people, artists, writers or events in history contribute to such perception

6.9. The sub-factors and associated indicators should be regarded as a “menu” of examples (developed from past designations and subsequent consultation) from which those appropriate to the character of the landscape under consideration should be chosen, adapted or added to. There is no “scoring” involving accumulations of indicators and it is possible for a landscape to exhibit natural beauty or offer opportunities for open air recreation even a number of the indicators suggested in **Appendix 1** are not present.

6.10. It is useful to highlight some general points on the application of 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.<sup>11</sup>

<sup>10</sup> See MacFarlane, R., Haggett, C., Fuller, D., Dunsford, H. and Carlisle, B. (2004). Tranquillity Mapping: developing a 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. See also <http://www.cpre.org.uk/campaigns/landscape/tranquillity>

<sup>11</sup> 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

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- **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 wider countryside<sup>12</sup>.

6.11. 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. While this could be said to be 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.

6.12. 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 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.

## 7. Opportunities for Open-Air Recreation

### Principles

7.1. This criterion only relates to designating National Parks. AONBs may fulfil a recreational role but they are not designated for any recreational opportunities they may offer.

7.2. 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.

7.3. 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.

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<sup>12</sup> In the course of the reopened South Downs public inquiry the Inspector repeatedly used the term "ordinary countryside" to describe wider countryside that was currently undesignated. For example see paragraph 2.53 of the Inspector's Report (2), 28 November 2008

# Guidance for assessing landscapes for designation

7.4. 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.

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

7.6. 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.

## Practical application

7.7. This criterion 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.

7.8. 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 consider 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.

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

7.10. 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 criterion 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) an area of land even when there is no public access to it for recreational purposes.

# Guidance for assessing landscapes for designation

**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 have the potential to provide, a range of recreation opportunities, 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**.

7.11. The factors, sub-factors and indicators are given in **Appendix 2**. They are not in order of importance.

## 8. Consideration of Desirability of Designation

### Principles

8.1. The decision whether it is desirable to designate lies at the heart of the legislation. 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, however, follow automatically: it is for Natural England to exercise its judgment as to whether the desirability test is met, i.e. whether an area, which meets the relevant technical criteria should become a National Park or AONB in order to



# Guidance for assessing landscapes for designation

achieve the purposes of that designation. The following are the fundamental practical questions to address in considering each type of designation:

- Is it especially desirable to create a National Park (with a National Park Authority, management plan and certain duties on public bodies) in order to conserve and enhance the area's natural beauty, wildlife and cultural heritage and promote the understanding and enjoyment of its special qualities by the public?
- Is it desirable to create an AONB (with an AONB Partnership or statutory conservation board, management plan and certain duties on public bodies) in order to conserve and enhance the area's natural beauty?

## Purposes of designation

8.2. The objective of giving landscapes National Park or AONB designation is to ensure that the purposes of designation are pursued. The purposes are:

	<b>AONB</b>	<b>National Park</b>
<b>Purposes</b>	Conserving and enhancing its natural beauty	Conserving and enhancing its natural beauty, wildlife and cultural heritage  Promoting understanding and enjoyment of its special qualities by the public

8.3. National Parks and AONBs have the purpose of conserving and enhancing the area's natural beauty, which encompasses its flora, fauna, geological and physiographical features.<sup>13</sup> The Government considers this to confer "the highest status of protection as far as landscape and natural beauty is concerned."<sup>14</sup> In National Parks, this purpose also encompasses the conservation and enhancement of its wildlife and cultural heritage.

8.4. National Parks have the second purpose of promoting the understanding and enjoyment of its special qualities (see para. 8.16) by the public. If there is a conflict between the first and the second purpose, the 'Sandford' principle requires that greater weight should be given to the first purpose<sup>15</sup>.

8.5. The lead role in achieving the purposes of designation rest with the National Park Authority, AONB Partnership or Conservation Board. However, a duty to have regard to the purposes of designation applies to all relevant bodies, which includes Government departments and agencies, public bodies, statutory undertakers and persons holding public office.<sup>16</sup>

## Distinguishing National Park and AONB

<sup>13</sup> S.114(2) NPAC and s92(2) CROW

<sup>14</sup> English National Parks and the Broads: Government Vision and Circular 201 (Defra, 2010), para. 20

<sup>15</sup> S.11A(2) NPAC

<sup>16</sup> Guidance on this duty is available in Duties on relevant authorities to have regard to the purposes of National parks, AONBs and the Norfolk and Suffolk Broads (Defra, 2005) and England's statutory landscape designations: a practical guide to your duty of regard (NE, 2010)

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8.6. **Different thresholds** apply to AONB and National Park designation. The implication of the word ‘especially’ 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 administration of the area.<sup>17</sup>

8.7. In both cases though, Natural England intends to apply a high threshold, in recognition of the fact that National Park / AONB represent the highest level of landscape protection. Areas should be nationally significant in order to be considered desirable to designate, and there should be confidence that the mechanisms, powers and duties resulting from designation are necessary to ensure the delivery of National Park / AONB purposes.

8.8. National Parks and AONBs have **different purposes**. AONBs do not have the statutory purpose of promoting the understanding and enjoyment of the area’s special qualities to the public. AONB Conservation Boards<sup>18</sup> are a special case, having the additional purpose of “increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty” (CROW s.87). In all AONBs there is no duty on relevant authorities (other than the Conservation Board) to have regard to the understanding and enjoyment of the area’s special qualities.

8.9. In practice, AONB partnerships have been encouraged to promote understanding and enjoyment of the area’s special qualities. Currently in many cases local authorities use their powers to do this. This contrasts with National Parks mainly in the scale, resources and expertise available, and in the fact that in National Parks it is an entrenched purpose to which all public bodies must have regard under statute.

8.10. There is also an apparent difference in the first purpose: both designations share the purpose of conserving and enhancing natural beauty (including flora, fauna, geological and physiographical features), but for AONBs this does not expressly include the purpose of conserving and enhancing wildlife or cultural heritage. In fact, ‘wildlife’ is practically equivalent to ‘flora and fauna’. Furthermore, Natural England considers that ‘cultural heritage’ often contributes to the perception of natural beauty of the area (see Table 3) and so forms part of the AONB purpose to the extent that this is the case.

## Practical application

8.11. 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.<sup>19</sup> These are detailed below in Table 5.

**Table 5: Is it Desirable to Designate?**

Is there an extensive tract that satisfies the National Park technical criteria, or an area which satisfies AONB technical criteria?
Is the area of such <b>significance</b> that National Park or AONB <b>purposes</b> should apply to it?
What are the issues affecting the area’s <b>special</b>

<sup>17</sup> 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. However, in this guidance ‘desirable’ is used as shorthand to refer to the concept relating to both types of designation.

<sup>18</sup> As at March 2011 there are two Conservation Boards: for the Chilterns AONB and the Cotswolds AONB.

<sup>19</sup> 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.

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**qualities** and understanding and enjoyment?

Can National Park or 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?

8.12. The considerations relating to AONBs can be applied if the technical criterion of outstanding natural beauty is met. The considerations relating to National Park designation may only be applied if both the natural beauty criterion and the opportunities for open-air recreation criterion are met. It is also necessary to consider whether the Candidate Areas together, or Candidate Areas together with an existing designation in the case of a boundary review, are capable of forming an extensive tract that satisfies the National Park designation criteria, or an area which satisfies the AONB designation criterion. It is advisable, on completion of the “desirability” assessment, to verify whether any desirability factors could affect the overall composition of the proposed designation.

8.13. 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, wildlife and cultural heritage, which make the area distinctive and 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. Views of stakeholders and the public can be strong indicators as to whether there is consensus about the value of a landscape. 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.

8.14. Natural England should use these considerations help to judge whether or not an area is **of such national significance** that special purposes should apply to it, i.e.:

- **National Park purposes:** its natural beauty, wildlife and cultural heritage should be conserved and enhanced; **and** the understanding and enjoyment of its special qualities should be promoted;
- the **AONB purpose** alone: its natural beauty should be conserved and enhanced; or
- not of such national significance that those purposes should not apply.

8.15. 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.

8.16. **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

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beauty, recreational opportunities, and special qualities, and the ability to promote their understanding and enjoyment. The scale and impact of issues and likely changes should be assessed. Both current and possible future issues are potentially relevant.

8.17. **Mechanisms, powers and duties:** Consideration should be given to an appropriate response to issues identified above. The following factors may be relevant (Appendix 3 gives more detail):

- **Management arrangements:** the extent to which current and alternative management arrangements address the issues affecting the area and deliver National Park / AONB purposes. Management in pursuance of National Park or AONB purposes can deliver wider environmental benefits such as climate change mitigation and adaptation, and improved connectivity of wildlife habitats. 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 might be justified.
- **Funding:** Current and expected future funding that contributes to National Park / AONB purposes should be considered against likely future funding under alternative scenarios. Concerns regarding the immediate availability of funds to support management of a National Park or AONB should not normally outweigh other considerations of desirability. Designation represents a long term commitment which is likely to outlast current funding and detailed management arrangements.
- **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.

8.18. This is not an exhaustive list of considerations: **other factors** may be relevant if they can reasonably be said to relate to the judgment as to whether it is desirable that a particular area of land should be designated as National Park or AONB.<sup>20</sup> The more directly or substantially a factor bears upon the achievement of National Park or AONB purposes the more weight Natural England is likely to give it in the decision whether or not it is desirable to designate.

8.19. Natural England recognises that designation may have impacts beyond the statutory purposes. Common issues raised include democratic representation, impacts on housing markets and local economies. Natural England, in designating, must bear in mind that Parliament has put in place the basic framework of National Parks and AONBs which addresses some of these issues. In addition, Government policy influences how National Parks and AONBs operate in relation to wider policy areas, such as housing, the economy and planning. Any matters beyond those relevant to the consideration of the desirability of designation may rightly form the basis of Natural England's advice to Government.

8.20. Natural England must then look at all these matters as a whole to satisfy itself whether it is **especially desirable** to designate the area as National Park, or whether it is **desirable** to designate it as AONB. The decision is not taken on the basis of 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

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<sup>20</sup> 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.

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Parks and an “area” in the case of AONBs. A potential designation may be comprised of land that was, for practical evaluation purposes, contained in part or all of one or more Evaluation Areas. 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. In the case of National Park this is section 5 of the National Parks and Access to the Countryside Act 1949, and in the case of AONBs this is section 82 of the Countryside and Rights of Way Act 2000.

## 9. Definition of a Detailed Boundary

### Principles

9.1. 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.

9.2. 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 should not however normally require a field-by-field assessment of land at the margins of the designation.

### Practical application

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

## 10. Formal Designation Procedures

10.1. Natural England has statutory powers to designate National Parks and AONBs<sup>21</sup> and also to vary their boundaries.<sup>22</sup> 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.

10.2. Before any formal orders are made, the legislation specifically requires that all county councils, district councils, National Park Authorities and parish councils, who have land within the area to be designated (or in the National Park or AONB to be varied), must be consulted prior to a designation order being made. As a matter of good practice, Natural England will also throughout the process seek engagement with key stakeholders and the general public.

10.3. 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 consultation, 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.

10.4. 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.

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<sup>21</sup> s.5(3) NPAC 1949 and s.82(1) CROW 2000

<sup>22</sup> s.45 Wildlife and Countryside Act 1981 and s.83(7) CROW 2000

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10.5. 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) and submitted to the Minister with a copy of any representations. In the case of a National Park, a Designation Order is *made*, submitted to the Minister 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.

10.6. 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.

10.7. 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.

10.8. 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.

10.9. The Secretary of State will need to make an establishment Order in the case of a new National Park to create the National Park Authority and in the case of an AONB if a new Conservation Board is to be created. It may also be necessary to vary establishment Orders in the case of National Park or Conservation Board boundary variations if a new local authority is added to the existing area. Detailed provisions are contained in section 63 and Schedule 7 Environment Act 1995 and section 86(7) CROW.

## 11. Further information

11.1. 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 Protected Landscapes Position (2010) sets out the position Natural England will 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.

11.2. Relevant documents:

- Landscape Character Assessment, Guidance for England and Scotland (SNH & CA, 2002)
- English National Parks and the Broads: UK Government Vision and Circular 2010 (Defra, 2010)
- Natural England's Position on Landscape (NE, 2008)
- Natural England's Position on Protected Landscapes (NE, 2010)
- National Park Management Plans, CA216 (CA, 2005)
- Guidance for the review of AONB management plans, CA221 (CA, 2006)
- AONB Management Plans: A guide, CA23 (CA, 2001)

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- Duties on relevant authorities to have regard to the purposes of National parks, AONBs and the Norfolk and Suffolk Broads (Defra, 2005)
- England's statutory landscape designations: a practical guide to your duty of regard (NE, 2010)

## Appendix 1:

### Evaluation Framework for Natural Beauty Criterion

The sub-factors and associated indicators should be regarded as a “menu” of examples (developed from past designations and subsequent consultation) from which those appropriate to the character of the landscape under consideration should be chosen, adapted or added to. There is no “scoring” involving accumulations of indicators and it is possible for a landscape to exhibit natural beauty or offer opportunities for open air recreation even if a number of the indicators shown in this appendix are not present.

Factor	Example sub-factor	Example Indicator
<b>Landscape quality</b>	Intactness of the landscape in visual, functional and ecological perspectives	Characteristic natural and man-made elements are well represented throughout
	The condition of the landscape’s features and elements	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	Incongruous elements are not present to a significant degree, are not visually intrusive, have only localised influence or are temporary in nature
<b>Scenic quality</b>	A distinctive sense of place	Landscape character lends a clear and recognisable sense of place
	Striking landform	Landform shows a strong sense of scale or contrast
		There are striking landform types or coastal configurations
	Visual interest in patterns of land cover	Land cover and vegetation types form an appealing pattern or composition in relation to each other and/or to landform which may be appreciated from either a vantage point or as one travels through a landscape
	Appeal to the senses	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
		Memorable or unusual views and eye-catching features or landmarks
		Characteristic cognitive and sensory stimuli (e.g. sounds, quality of light, characteristic smells, characteristics of the weather)
<b>Relative wildness</b>	A sense of remoteness	Relatively few roads or other transport routes
		Distant from or perceived as distant from significant habitation
	A relative lack of human influence	Extensive areas of semi-natural vegetation
		Uninterrupted tracts of land with few built features and few overt industrial or



Factor	Example sub-factor	Example Indicator
		urban influences
	A sense of openness and exposure	Open, exposed to the elements and expansive in character
	A sense of enclosure and isolation	Sense of enclosure provided by (eg) woodland, landform that offers a feeling of isolation
	A sense of the passing of time and a return to nature	Absence or apparent absence of active human intervention
<b>Relative tranquillity</b>	Contributors to tranquillity	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	Presence and/or perceptions of traffic noise, large numbers of people, urban development, overhead light pollution, low flying aircraft, power lines and similar influences
<b>Natural heritage features</b>	Geological and geo-morphological features	Visible expression of geology in distinctive sense of place and other aspects of scenic quality
		Presence of striking or memorable geo-morphological features
	Wildlife and habitats	Presence of wildlife and/or habitats that make a particular contribution to distinctive sense of place or other aspects of scenic quality
		Presence of individual species that contribute to sense of place, relative wildness or tranquillity
<b>Cultural heritage</b>	Built environment, archaeology and designed landscapes	Presence of settlements, buildings or other structures that make a particular contribution to distinctive sense of place or other aspects of scenic quality
		Presence of visible archaeological remains, parkland or designed landscapes that provide striking features in the landscape
	Historic influence on the landscape	Visible presence of historic landscape types or specific landscape elements or features that provide evidence of time depth or historic influence on the landscape.
		Perceptions of a harmonious balance between natural and cultural elements in the landscape that stretch back over time
	Characteristic land management practices	Existence of characteristic land management practices, industries or crafts which contribute to natural beauty
	Associations with written descriptions	Availability of descriptions of the landscape in notable literature, topographical

Factor	Example sub-factor	Example Indicator
		writings or guide books, or significant literature inspired by the landscape.
	Associations with artistic representations	Depiction of the landscape in art, other art forms such as photography or film, through language or folklore, or in inspiring related music
	Associations of the landscape with people, places or events	Evidence that the landscape has associations with notable people or events, cultural traditions or beliefs

## Appendix 2:

### Evaluation Framework for Recreation Criterion

The sub-factors and associated indicators should be regarded as a “menu” of examples (developed from past designations and subsequent consultation) from which those appropriate to the character of the landscape under consideration should be chosen, adapted or added to. There is no “scoring” involving accumulations of indicators and it is possible for a landscape to exhibit natural beauty or offer opportunities for open air recreation even if a number of the indicators shown in this appendix are not present.

Factor	Example sub-factor	Example indicator
<b>Access to high quality landscapes</b>	Opportunities to enjoy outstanding natural beauty	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	Good access (physically and/or visually) to areas that offer an experience of tranquillity or wildness (see Natural Beauty criterion)
<b>Natural or cultural heritage features or cultural associations</b>	Presence of a range of natural or cultural heritage features or cultural associations	Presence of natural features which enrich the experience of the landscape or contribute to understanding of special qualities or sense of place
		Presence of cultural features or cultural associations which enrich the experience of the landscape or contribute to understanding of special qualities or sense of place
	Landmarks and other features	Presence of recognised or valued landmarks or other features of interest which enrich the experience of the landscape or contribute to understanding of special qualities or sense of place
<b>Good recreation provision</b>	High quantity of appropriate recreation provision	Presence of extensive network of rights of way or extent of open access land over much of the area
	Diversity of good quality provision for quiet enjoyment	Opportunities to enjoy a range of high quality landscape experiences
Opportunities to enjoy a range of different provision for quiet recreation activity		
<b>Accessibility</b>	Accessibility to centres of population	Transport links to centres of population
		Availability of sustainable transport options providing links to centres of population
<b>Potential for enhancement</b>	Potential for appropriate enhancement of enjoyment and understanding	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 purpose** must be considered by all public bodies in decisions affecting AONBs.
- AONB purpose is 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 purpose of increasing the understanding and enjoyment by the public of the special qualities of the AONB and, as with National Parks, the Sandford principle applies where this purpose comes into conflict with the purpose of conserving and enhancing the natural beauty of the area.
- AONB Conservation Boards have a duty to seek to foster the social and economic well being of local communities

## 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 landscape<sup>23</sup>.

**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 sits 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 (whether or not this is part of the same designation), 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 emerging<sup>24</sup>), 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, geological, geomorphological, 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 or the County boundary in the case of estuaries.

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<sup>23</sup> The metalled surface of a road normally remains outside the National Park.

<sup>24</sup> 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.

**Section 11A Duty of certain bodies and persons to have regard to the purposes for which National Parks are designated**

- (1) A National Park authority, in pursuing in relation to the National Park the purposes specified in subsection (1) of section five of this Act, shall seek to foster the economic and social well-being of local communities within the National Park, and 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 the National Park.
- (2) In exercising or performing any functions in relation to, or so as to affect, land in any National Park, a relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.
- (3) For the purposes of this section “relevant authority” means—
  - (a) any Minister of the Crown,
  - (b) any public body,
  - (c) any statutory undertaker, or
  - (d) any person holding public office.
- (4) In subsection (3) of this section—
  - “public body” includes—
    - (a) any local authority, joint board or joint committee;
    - (b) any National Park authority;
  - “public office” means—
    - (a) an office under Her Majesty;
    - (b) an office created or continued in existence by a public general Act of Parliament; or
    - (c) an office the remuneration in respect of which is paid out of money provided by Parliament.
- (5) In subsection (4) of this section, “joint board” and “joint committee” mean—
  - (a) a joint or special planning board for a National Park reconstituted by order under paragraph 1 or 3 of Schedule 17 to the Local Government Act 1972, or a joint planning board within the meaning of section 2 of the Town and Country Planning Act 1990;
  - (b) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972.
- (6) In this section, “local authority”—
  - (a) in relation to England, means a county council, district council or parish council;
  - (b) in relation to Wales, means a county council, county borough council, ... or community council.

**Section 114 Interpretation**

- (1) In this Act the following expressions have the meanings hereby assigned to them respectively, that is to say—
  - “area of outstanding natural beauty” means an area designated under section 82 of the Countryside and Rights of Way Act 2000;
  - “the Council” means the Countryside Council for Wales;
  - “drainage authority” means the Environment Agency or an internal drainage board;

“interest”, in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights;

“land” includes land covered by water and as respects Scotland includes salmon fishings;

“the Minister” as respects England and Wales means the Minister of Town and Country Planning, and as respects Scotland means the Secretary of State;

“National Park” has the meaning assigned to it by subsection (3) of section five of this Act;

“open-air recreation” does not include organized games;

“owner”, in relation to any land, means, except in Part III of this Act or in relation to Scotland, a person, other than a mortgagee not in possession, who, whether in his own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let, and, in Part III of this Act, as respects England and Wales means any person being either entitled to the fee simple or being a mortgagee in possession of the land and as respects Scotland has the meaning assigned to it by section twenty-six of this Act;

“vehicle” does not include a vessel, except any vessel adapted for use on land while it is being so used;

“waterway” means any lake, river, canal or other waters, being (in any case) waters suitable, or which can reasonably be rendered suitable, for sailing, boating, bathing or fishing;

- (2) References in this Act to the preservation, or the conservation of the natural beauty of an area shall be construed as including references to the preservation or, as the case may be, the conservation of its flora, fauna and geological and physiographical features.
- (3) References in this Act to the planting of trees shall be construed as including references to the planting of bushes, the planting or sowing of flowers and the sowing of grass and the laying of turf.
- (4) References in this Act to any enactment shall be construed as references to that enactment as amended by or under any subsequent enactment including this Act.

## **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, ...is submitted to the Minister for confirmation, 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.

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- (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) ...[Wales only]
- (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) ...
- (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.

#### **Section 92 Interpretation of Part IV and supplementary provision**

- (1) In this Part, unless a contrary intention appears—
- “the 1949 Act” means the National Parks and Access to the Countryside Act 1949;
  - “area of outstanding natural beauty” has the meaning given by section 82(3);
  - “conservation board” has the meaning given by section 86(1);
  - “the Council” means the Countryside Council for Wales;
  - “liability”, in relation to the transfer of liabilities from one person to another, does not include criminal liability;
  - “local authority” means a principal council within the meaning of the Local Government Act 1972;
  - “principal area” has the same meaning as in the Local Government Act 1972.
- (2) Any reference in this Part to the conservation of the natural beauty of an area includes a reference to the conservation of its flora, fauna and geological and physiological features.
- (3) This Part does not apply in relation to any of the lands mentioned in section 112(1) of the 1949 Act (Epping Forest and Burnham Beeches).

### **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 physiological 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).