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# ELM Access Test and Trial – Draft Recommended Actions November 2020

9<sup>th</sup> November 2020

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This report is in draft form only. The Kent Downs AONB Unit will be consulting widely through workshops, interviews and circulation of this document. Amendments will be made based on feedback that is received and this document should be viewed with this in mind.

Document prepared by:

Mike Phillips

3<sup>rd</sup> November 2020

Checked by:

Nick Johannsen

8<sup>th</sup> November 2020

This preliminary report is only possible due to the support of farmers, landowners, land managers as well as health and access professionals who have given their time so freely during the course of this Test and Trial. Thanks in particular are due to the following people who have made such a positive impact on our work:

Madeleine Hodge

Kent Downs AONB

Maxwell Ayamba

Sheffield Environment Movement

Jane Stoneham

Sensory Trust

This report has been prepared by Mike Phillips of White Horse Ecology on behalf of the Kent Downs AONB Unit. Mike Phillips has 20 years of experience working in the sector and is a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM).

The Enhancing Access Opportunities Test and Trial is being carried out by the National Association for the Areas of Outstanding Natural Beauty on behalf of Defra. It is part of the development of the Environmental Land Management Scheme (ELMs).

# 1 Background

The Kent Downs AONB Unit has been commissioned to carry out a Test and Trial that explores Enhancing Access Opportunities for the Environmental Land Management (ELM) scheme. As part of this work a series of workshops and interviews took place with farmers, landowners and land managers as well as those that might be able to deliver access opportunities for diverse community groups. This work was backed up by several commissioned studies into spatial prioritisation, barriers to access and legal & insurance liabilities incurred by landowners through allowing public access. All of this work forms part of the process that will co-create recommendations to be submitted to Defra at the end of the project in March 2021.

The timing of this work could not be more appropriate. The Covid-19 pandemic saw unprecedented use of publicly accessible land, highlighting both the health and wellbeing benefits of access to the countryside as well as the impact that abuse of access can have on the farming community. Additionally, the Black Lives Matter movement has cast a light upon the prejudice and inequalities present in society in general. The way that people access the countryside provides an example of how these inequalities pervade all areas of society. This is highlighted further by the importance given to equality of access in Natural England's recent Building Partnerships for Nature's Recovery<sup>1</sup> launch.

This document is the first attempt to outline a series of recommendations for actions that can be used to enhance access opportunities.

## 1.1 Key objectives of the Test and Trial

The Enhancing Access Opportunities Test and Trial has three primary objectives:

1. How can an Access ELM provide incentives to farmers, land manager and landowners to create high quality access for the public and potentially support farm business diversification?
2. How can an Access ELM help to overcome some of the barriers that limit levels of access to the countryside within certain groups?
3. Can an Access ELM help to alleviate public pressure on the most sensitive ecological sites?

## 1.2 Research - drawing on the knowledge and experiences of others

The development of these recommendations has been based on gaining a thorough understanding of existing information, commissioning new research as well as discussing the concerns and requirements of farmers, land managers, landowners and user groups.

### 1.2.1 Co-creation of recommendations

Consultation and in-depth conversations with farmers, landowners, land managers and users of public access forms a significant part of the background work carried out as part of this Test and Trial. This

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<sup>1</sup> Building Partnerships for Nature's Recovery - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/924682/Natural-England-building-partnerships-for-natures-recovery.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924682/Natural-England-building-partnerships-for-natures-recovery.pdf)

provides an invaluable insight into the requirements of the industry and includes, but is not limited to, the following:

Consultation type	Participants	Timing	Purpose
<b>Consultation already taken place</b>			
Workshop	Community groups and NGOs	March 2020	Initial understanding of barriers and requirements of groups that are underrepresented in the countryside
Case Studies	Farmers, landowners and land managers	April - December 2020	To better understand the in-depth views of farmers, community groups and the kind of provision that could be made available at different farms and other sites
Workshops	Farmers, landowners and land managers plus community groups and NGOs	June – July 2020	In depth conversations about the broader issues around public access, how it can be improved and how an ELM could make this happen
<b>Consultation yet to take place</b>			
Workshops	All interested parties	Late 2020	Presentation and discussion of initial findings and draft ELM recommendations
Case Studies	Farmers, landowners and land managers	Winter 2020-21	Case studies that will provide examples of how an Access ELM could be implemented on farms and other land holdings

## 1.2.2 Literature review

To fully understand the inequalities of access that exist, the Kent Downs AONB Unit commissioned a literature review to help identify the barriers to accessing greenspace and the wider countryside. This work was carried out by Sensory Trust with additional input from Madeleine Hodge of the Kent Downs AONB Unit and Maxwell Ayamba of the Sheffield Environment Movement. This report identifies the types of group that access the countryside least and examines the barriers that these groups face. It goes on to make wide ranging recommendations about how these inequalities and barriers could be challenged and mitigated.

## 1.2.3 Legal and insurance liabilities

Understanding the costs that are incurred by farmers and landowners is central to a successful access-based ELM and being able to adequately compensate those that participate. The BTF Partnership was commissioned to produce a report that details the legal and insurance liabilities that farmers and landowners take on by providing either permissive or formal access. This ranges from changes in the value of land to additional duty of care liabilities when inviting people on to land.

## 1.2.4 Key documents

The recommendations in this document have been drawn from a number of key documents that detail the work we have carried out as part of this Test and Trial. These documents are<sup>2</sup>:

1. ELM Access Workshop Notes – March 2020
2. ELM Access Workshop Notes – June 2020
3. ELM Access Case Studies with farmers and other organisations (currently 13 case studies)
4. ELM Access Legal and Insurance Liabilities
5. ELM Access Literature Review and Recommendations
6. ELM Access Prioritisation mapping – Kent

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<sup>2</sup> All of these documents are available from the Kent Downs AONB Unit (contact Mike Phillips for copies - [mike@whitehorseecology.co.uk](mailto:mike@whitehorseecology.co.uk))

## 2 Summary of research

Summarising all of the research and conversations that have gone into this project is challenging. For the purposes of brevity, the following sections will address the main findings as they relate to each of the key objectives of the Test and Trial. For each question we will look at the opportunities as well as the challenges.

### 2.1 How can an Access ELM provide incentives to farmers, landowners and land managers to create high quality access for the public?

Information has been gained from workshops and interviews that inform case studies.

#### **Opportunities**

- Addressing fragmentation in the statutory public rights of way access network.
- Providing additional routes in places where they are needed most (e.g. taking access to schools, villages away from lanes and roads or providing access to a viewpoint).
- Upgrading access (footpaths to bridleways).
- Compensating farmer for areas where people already walk without permission.
- Improving signage and furniture.
- Providing least restrictive access.
- Ensuring the existing public rights of way network is maintained.

#### **Challenges**

- Difficulties of overcoming inappropriate access or anti-social behaviour.
- Some landowners don't want additional access on their land and will not participate (this is a particular problem for longer distance routes).
- Justifying capital payments for permissive access.
- Ensuring that the access that is provided actually makes a difference to those that use the countryside.
- Finding appropriate payment rates.
- Legal liability for public safety falls predominantly on the landowner. This is not the case in all parts of the world.

### 2.2 How can an Access ELM help to overcome some of the barriers that limit levels of access to the countryside within certain groups?

#### **Opportunities**

- Support those that provide opportunities for diverse groups to access the countryside (not just educational visits for schools).
- Provide facilitators that create links between opportunity providers and those communities that need them most.

- Improving access for people with mobility issues using least restrictive access principles (e.g. stiles to kissing gates – kissing gates to radar gates – radar gates to gaps).
- Providing additional or improved access close to the communities that need it most.
- Providing opportunities for different groups to access agri-environment funding through ELM for providing public goods.

### **Challenges**

- Reaching those communities that would benefit most from additional access.
- There are cultural barriers for some communities that need to be overcome before significant increases in use of access is likely to occur.
- Creating a welcoming atmosphere in the countryside for those that may be fearful of visiting.
- Mitigating for the behaviour of those that may not be accustomed to the countryside or the countryside code.
- Providing funding to different groups challenges the idea that agri environment payments are only for farmers.
- Levels of payments to support different services. Some services (e.g. for traumatised children) may be much more expensive than a short visit for a group of people living in a deprived area.
- There is a cross-over between health and well being services. Should ELM be paying for these things to happen?
- Should ELM be paying for multiple visits?

## **2.3 Can an Access ELM help to alleviate public pressure on the most sensitive ecological sites?**

### **Opportunities**

- Providing alternative access to paths that pass known ecologically sensitive places (e.g. known bird breeding sites or sensitive habitats such as vegetated shingle).
- Providing signage, fencing and furniture that helps to keep people on more formal routes.
- To work together as a farm cluster to provide access that is both coherent but also guides footfall away from the most sensitive areas.

### **Challenges**

- There may be few opportunities to create this sort of access.
- Proving this access is needed may be difficult.
- Opportunities will need to be identified during the Land Management Plan phase. Using spatial prioritisation mapping at a national/regional/sub-regional scale is unlikely to appropriately identify areas where permissive access might help divert traffic away from sensitive areas.



## 3 Draft ELM Access recommendations

### 3.1 Primary recommendations

This section will outline the actions that received the broadest support during the consultation phase of the Test and Trial. These are the actions that ELM could provide financial support towards. Between now and the end of the project, recommended payment rates will be established and ideas around advice, guidance and priority areas will also be developed.

Action	How does it work	What might it look like
<p><b>1. Land management plans (LMP)</b></p> <p><b>Sustainable Farming Incentive (Tier 1)</b></p>	<p>The development of a farm plan that includes opportunities to improve access. This document will be produced with the farmer, landowner, land manager and will identify the opportunities to improve access throughout the holding. The plan should be supported by evidence from this Test and Trial, input from ELM convenors, local users and community facilitators.</p> <p>It will identify:</p> <ul style="list-style-type: none"> <li>• Where new access routes (either permissive or formal) might benefit people's experience when visiting the countryside.</li> <li>• Where improving existing access would provide opportunities for a wider variety of people to enjoy the routes.</li> <li>• If the holding is appropriate to accommodate visits from schools and other community groups.</li> </ul>	<ul style="list-style-type: none"> <li>• This is likely to be dealt with by other Tests and Trials.</li> <li>• Our recommendations are that these LMPs are subsidised, or the cost can be claimed back if an ELM application is made.</li> </ul>
<p><b>2. Create new permissive access</b></p>	<p>Prioritise the creation of access in the places where it will have the most impact, not just in terms of the number of people who are likely to use it but also based on the communities it is likely to serve. Permissive access should:</p>	<ul style="list-style-type: none"> <li>• Annual payments for the provision of permissive access routes.</li> <li>• Payment rates will differ depending upon the level of access provided (i.e. pedestrian, horses and cycles or access for people with reduced mobility).</li> </ul>

<p><b>Sustainable Farming Incentive/Local Nature Recovery (Tier 1/2)</b></p>	<ul style="list-style-type: none"> <li>• Address fragmentation in the network</li> <li>• Link the network to features of interest</li> <li>• Allow off-road routes to be developed</li> <li>• Create higher access (i.e. footpath to bridleway)</li> </ul> <p>Access in areas where levels of activity are lowest should be targeted as well as areas with higher percentages of people with protected characteristics and areas with higher levels of social and economic deprivation.</p> <p>Opportunities to improve access in the rural urban fringe or where public transport is available should be prioritised. Local prioritisation will be led by Rights of Way Improvement Plans where they exist.</p>	<ul style="list-style-type: none"> <li>• Possibly remove permissive access during certain times of the year (e.g. ground nesting bird season or lambing).</li> <li>• In exceptional circumstances, or where it is difficult to prevent, open access may be funded.</li> </ul>
<p><b>3. Improving existing access</b></p> <p><b>Sustainable Farming Incentive/Local Nature Recovery (Tier 1/2)</b></p>	<p>Improving the quality of formal routes to increase usage will look different in different areas. However, all will follow the principles of least restrictive access.</p> <p>In some areas it will be as simple as replacing stiles with kissing gates, adding radar key access or removing barriers altogether (to British Standard 5709 and using Countryside for All<sup>3</sup> guidance). Simple, clear signage will be eligible for funding.</p> <p>This option could be used in areas where there is open access to help guide traffic away from ecologically sensitive areas.</p> <p>In less rural and secluded areas or at ‘sites’ this may include surfacing of paths, enhanced maintenance,</p>	<ul style="list-style-type: none"> <li>• Set payments for improving access.</li> <li>• Alternatively, a payment for maintaining specific standards could be paid on an annual basis.</li> </ul>

<sup>3</sup> Countryside for All - <https://www.pathsforall.org.uk/mediaLibrary/other/english/countryside-for-all-guide.pdf>

	<p>interpretive signage that promotes inclusive understanding and parking or drop off points.</p> <p>ELM funding could also support the provision of volunteers or staff who provide information about access, welcome visitors to an area and help to put people at ease. This would only be at peak times and could be provided at visitor attractions or for farm clusters.</p>	
<p><b>4. Access hubs</b></p> <p><b>Local Nature Recovery (Tier 2)</b></p>	<p>Well resourced areas with parking, toilets, surfaced paths are often the way that people first experience access to the countryside rather than through an unfamiliar public rights of way network.</p> <p>Funding would be provided for those that provide parking, toilets, picnic &amp; barbecue areas, surfaced paths and other features that will encourage those people who don't usually access the countryside to feel welcome to do so.</p> <p>This funding would not be available to those also offering retail outlets over a certain size on the site or those that charge for parking or entry.</p>	<ul style="list-style-type: none"> <li>• Set payments for meeting specific minimum criteria</li> <li>• Available for all who provide good quality access that can act as a local hub for access</li> </ul>
<p><b>5. Educational access visits</b></p> <p><b>Local Nature Recovery (Tier 2)</b></p>	<p>Farms and other landowners or land managers offer opportunities for groups to visit and experience the countryside and countryside activities.</p> <p>Community facilitators act as the link between those providing the opportunities and those communities that are least likely to access greenspace and the countryside.</p>	<ul style="list-style-type: none"> <li>• Set payment per visit with a minimum number</li> <li>• Training through LEAF accredited scheme or similar paid for.</li> <li>• Facilitators will create links between land holdings and community groups.</li> <li>• Funding available to any farm, estate or organisation that provides high quality experiences for diverse groups that teach about countryside, farming or the environment.</li> </ul>

	<p>Those providing opportunities must meet minimum standards to ensure that inclusive opportunities are provided. Training will be provided to help those that would benefit.</p>	<ul style="list-style-type: none"> <li>• Possibly two different payment rates for visits depending upon the quality and length of experience</li> </ul>
<p><b>6. Community facilitators and champions</b></p> <p><b>Local Nature Recovery (Tier 2)</b></p> <p>Whilst this may be an ELM initiative, additional support and funding could be provided by local health and wellbeing budget holders or other local initiatives.</p>	<p>The role of the facilitator is to</p> <ul style="list-style-type: none"> <li>• create links between those providing educational access and those community groups that need it most</li> <li>• identifying and supporting community champions. Community champions would provide support to encourage and promote access to the countryside and greenspaces.</li> </ul> <p>Community champions would be paid staff or volunteers from communities that access greenspace least but must be given support and resources from the centralised facilitators. This would include, but not be limited to, arranging educational access visits.</p> <p>Community facilitators will ensure that support is focused on those communities in most need that will be identified using multiple factors. Community champions may represent a geographic area or a specific group.</p> <p>Facilitators will be given a budget to assist with transport costs if required but will aim to link communities with opportunities that are closest.</p>	<ul style="list-style-type: none"> <li>• Facilitators would be recruited centrally. Probably employed by an organisation or organisations that wins contract to deliver access facilitation.</li> <li>• Job description, targets and performance indicators decided centrally as part of contract.</li> <li>• Long term contract to enable relationships to be built with both providers and communities.</li> </ul>
<p><b>7. Online resources and promotion of best practice</b></p> <p><b>Tier?</b></p>	<p>Training for landowners and for general public. This action could take the form of providing face to face training, online training or the provision of attractive, inclusive and easy to use resources.</p>	<ul style="list-style-type: none"> <li>• To be delivered centrally</li> <li>• Resources relatively inexpensive to create</li> <li>• Promoted by ELM partners</li> </ul>

<p>ELM could either part pay or fully pay towards the costs of delivery or production of these resources</p>	<p>Resources for landowners, farmers and land managers could include:</p> <ul style="list-style-type: none"> <li>• Inclusivity training</li> <li>• How to communicate effectively with diverse groups</li> <li>• Managing access on land</li> <li>• An update of Countryside for All (a guide to making greenspaces more accessible to all)</li> </ul> <p>Resources for the general public could include:</p> <ul style="list-style-type: none"> <li>• Information about public rights of way and permissive access (through ELM at least) to be made freely available to all including Google, Bing and other map providers</li> <li>• The Countryside Code</li> <li>• Information on what is and isn't allowed on publicly accessible routes and land</li> <li>• How to stay safe when out and about in the countryside</li> </ul>	
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## 3.2 Secondary recommendations

Discussions, workshops and consultations also raised multiple other actions that could potentially be funded through ELMs. At this point in the Test and Trial, these potential actions will not be discarded and are being left in this document in case they warrant further discussion. They have been categorised as either actions that may receive support and actions that are unlikely to receive support.

### Actions that may receive support

- Capital costs to support educational visits.
- Cluster groups of farmers providing rationalised access across a geographic area.
- Upgrading from permissive access to formal PROW or upgrading footpath to bridleway. Whilst this may be the most favoured option in some instances, it should be driven by local authority access teams and not ELM.
- Landscape scale improvements in access gained from tier 3 projects (essential but beyond the scope of this report).
- Access to water needs to be considered within ELM provision. The scope of this Test and Trial does not allow justice to be done to this issue though it is acknowledged as an important area that needs to be addressed.
- Changes in statute to move liability for public use of land toward the user (beyond the scope of ELM).
- Consistent signage between farms can only be achieved if provided centrally as part of a permissive access agreement.

### Actions that are unlikely to receive support

- Substantial capital costs where permissive access only is granted.
- Base payment for maintaining existing public rights of way to the minimum legal standard.

## 3.3 Discussion

### Building on the access options within Higher Level Stewardship

Some of the recommendations looks similar to the options available during the early days of Higher Level Stewardship. However, these ideas were developed without reference to the HLS handbook and are based on both research and talking to farmers and other interested groups. On looking at evaluations of HLS access options, it is clear that some of the access created was useful but often access that was granted was little used and difficult to find out about. Evaluations suggested that the benefits were only felt locally. Some farmers suggested that access was only granted to gain enough points to qualify for HLS. Any new scheme would have to address these issues. Some of the ways that this could be done include:

- Allowing the scheme to be used to compensate farmers who already have people using their land (visual evidence of regular footfall) and where this provision can be improved and made welcoming.
- Ensuring that access routes are made available through Google/Bing etc and other platforms like Explore Kent.
- Have simple but effective criteria for path selection.
- Have more favourable compensation rates for farmers and landowners that adequately reflect the cost of permissive access.

### **Basic Payment Scheme and access**

Whilst the Basic Payment Scheme (BPS) does not directly contribute towards the provision of access routes, the cross-compliance element of BPS has meant that a failure to keep formal access routes open could potentially result in financial penalties. Both local authorities and the Ramblers have cited this as an important mechanism for ensuring that a much larger percentage of landowners meet their obligations around public rights of way. Whilst it is not felt appropriate to make a base payment for all ELM participants for their public footpath obligations, losing cross-compliance completely from ELM payments may have unintended consequences. Although this is beyond the scope of this Test and Trial, it is felt that this needs to be considered.

### **Commitment to long-term payments**

Providing permissive access can create changes in people's behaviour. Use on a certain access route becomes habitual making the removal of permissive access problematic. Consequently, there needs to be a commitment to maintain permissive access through ELM for the long-term and provide farmers with long-term contracts for providing this kind of access. Equally, farmers may need an exit strategy from permissive access agreements. This may be necessary if providing access creates unsustainable, unforeseen problems or if a farming tenancy ends and liabilities passed back to landowner.

### **Review of existing public rights of way network**

Although beyond the scope of an access ELM, landowners and users are clearly frustrated at the difficulty of moving public rights of way when they go through private spaces, do not connect or emerge on dangerous roads. Proactively reviewing some of these problem routes may improve landowner attitudes towards public access.

### **The countryside narrative**

To make the countryside a more inclusive place, the narrative and materials used to explain what is done needs to reflect the communities that we wish to attract. The Policy Exchange<sup>4</sup> found that farming and environment professionals were the two least ethnically diverse occupations in the UK in 2017. Is it any surprise that access to the countryside reflects this? Although addressing this specific point is beyond the scope of ELM, it should be at the forefront of any planning to make access to the countryside more inclusive.

### **Landowner liabilities**

The case study submitted by BTF Partnership was of a path of circa 800 metres that links properties to the Pilgrims' Way in Wrotham and acts as an informal dog walking area. Costs around insurance, tree safety, fencing, litter clearance and signage are estimated at around £1500 per annum or in the region of £200 per 100m. This is more than four times the rate paid under permissive access agreements made under High Level Stewardship. An assessment of whether the taxpayer should be expected to shoulder all of these costs is needed but it does show that higher intervention rates are required than were previously paid.

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<sup>4</sup> Policy Exchange – Two sides to diversity - <https://policyexchange.org.uk/wp-content/uploads/2017/03/The-two-sides-of-diversity-2.pdf>

**The role of guidance and advice**

Permissive access and network upgrades need to be applied in areas where they will make a difference. Creating permissive access where there is neither the demand nor a justifiable reason in terms of enhancing the public access network must be avoided. There is a role for guidance to be provided to farmers and landowners when creating Land Management Plans so that any access improvements proposed meet criteria laid out by ELM so that plans qualify for payment. Equally, this requires clear guidance from the ELM scheme that sets out how proposals can qualify for access payments.

**Flexibility of scheme**

There is support for flexibility within this programme of actions. Where permissive access is either unused (use of a footpath leaves visible evidence) or causes unforeseen difficulties there needs to be flexibility to remove it from ELM. Equally, when successful, upgrading and additional permissive routes should be created, even if this is mid-way through an agreement.

**Acknowledging access provided**

There are farms and organisations that already provide access for public good but receive neither recognition nor payment for this provision. This can be as a consequence of being near urban areas or a consequence of the way that the land is managed (e.g. large, fenced areas that provide ideal spaces for dog walkers). This needs to be both recognised within ELM as access provided and compensated for. For these areas, open access may be more appropriate than access routes.

**Creation of higher rights**

Changes in the way that people access the countryside mean that there is increasing demand for routes that can accommodate cycles in particular and horses. The current bridleway network is fragmented in many areas. Priority should be given to projects that address the connectivity of the network.



## 4 Next steps

This Test and Trial does not report back to Defra until March 2021. There is time to make a full assessment of these draft recommendations. There are a number of steps that will form part of this process and these are outlined below.

Process	Timing	Purpose
Workshop	November 2020	A chance to talk to farmers and access practitioners about our initial recommendations and gauge responses. These workshops will be the key mechanism for adapting and changing recommendations. Payment mechanisms, collaboration, levels of advice and guidance and forms of collaboration will also be discussed.
Case Studies	Winter 2020-21	To better understand the requirements of farmers around an Access ELM.
Circulation of draft recommendations	Winter 2021	There have been a wide range of people involved in discussions around an Access ELM. These recommendations will be circulated for feedback.
Review of Legal and Insurance Liabilities	January 2021	Based on feedback from the above processes, the insurance and legal liabilities placed on farmers and landowners will be revisited.
Costings and payment mechanisms	January – February 2021	Key to the success of any access-based ELM actions will be ensuring that farmers are appropriately compensated whilst still providing value for money for taxpayers. This study will also investigate innovative payment mechanisms and whether they are appropriate for access schemes.
Spatial prioritisation and advice & guidance	January – February 2021	This work will build on the mapping exercise undertaken earlier in the Test and Trial. It will look at how priorities will be established and who might be involved in monitoring and guiding applications.
Collaboration	January – February 2021	How can the access-based ELM actions lead to greater collaboration between farmers, particularly around long-distance routes or creating a more cohesive network of paths.
Circulation of final draft recommendations	Early March 2021	Once all feedback has been received, the draft recommendations will be finalised and circulated to all individuals and organisations who have been involved in the Test and Trial. They will be asked to feedback.
Submission of final report to Defra	End March 2021	Final report amended based on feedback and submitted to Defra.