

## Chapter 4: Access to Outdoors

### Summary

This chapter sets out the following proposals relating to access to the countryside:

- Achieving consistency in the opportunities available for participation in different activities and how activities are restricted and regulated;
- Simplifying and harmonising procedures for designating and recording public access;
- Improving existing advisory forums and how access rights and responsibilities are communicated to all interests.

### What issues are we considering?

The current system underpinning access to countryside is too complex and burdensome. As such, Wales needs a better and fairer approach to public access for outdoor recreation, which is less burdensome to administer, provides for the wide range of activities people want to participate in and has sensible safeguards for land management activities. The Welsh Government intends to develop a coherent system for outdoor recreation, which allows for a broad range of non-motorised recreation on paths, open country and inland water.

At present the legislative framework lacks coherency, for example paths and areas of access land have different rules and regulations on who can go there and what activities are allowed. Often these rules have no relationship to the actual conditions on the ground.

The issue is further compounded as there is unnecessary inconsistency in the way paths and places open to the public are currently recorded, changed, and restricted.

We believe the law needs to reflect current recreational needs and be more flexible to changes in demand and participation. It is currently too difficult to make changes to public access, either to increase it or restrict it.

We have an opportunity to make Wales more attractive as an activity tourism destination, both home and abroad. In addition, we seek to develop opportunities for access to the outdoors for recreation near to where people live in order to increase levels of physical activity and promote the wider benefits to physical and mental health of being outdoors.

Improvements to the opportunities for public access to the outdoors for recreation will contribute to the goals set out in the WFG Act 2015 and complement the provisions of the Active Travel (Wales) Act and the Environment (Wales) Act. The success of the Wales Coast Path has already demonstrated how outdoor recreation can help to support the economy, improve health and instil a sense of national pride.

Making changes to legislation could reduce impediments which currently frustrate progress by making it difficult to provide improved access opportunities that allow for healthy exercise, or limiting the potential of activity tourism.

## Current Position

Following a broad based review of the legislative framework for access and outdoor recreation, including the consultation in 2015 on improving opportunities to access the outdoors for responsible recreation<sup>40</sup>, the Welsh Government has identified a number of areas to be improved in order to deliver a better and fairer approach to public access for outdoor recreation. The aim is to develop an approach which is less burdensome to administer, provides for the wide range of activities that people can take part in, with sensible safeguards for land management activities and the cultural and natural environments.

It is not our aim to take away or reduce access rights for existing users. It is about increasing access for all non-motorised activities whilst allowing for sensible flexibility for land management and safety.

There are a large number of statutes that make up the legislative framework for access and rights of way. The key pieces of legislation include:

- The **National Parks and Access to the Countryside Act 1949** was the first significant legislation to establish rights for visiting the countryside;
- The **Countryside Act 1968** includes provisions in relation to stiles, gates and signage on public rights of way, including signposting footpaths and bridleways, and the riding of pedal cycles on bridleways;
- The **Highways Act 1980** includes the main powers and processes for creating, diverting, and extinguishing public rights of way;
- The **Wildlife and Countryside Act 1981** includes a duty to keep the definitive map and statement under continuous review and provides the associated mechanisms for updating these records;
- The **Cycle Tracks Act 1984** gives power to highway authorities to convert footpaths into cycle tracks, either for cycling only or for both cycling and walking;
- The **Countryside and Rights of Way Act 2000** [“the CROW Act”] created access on foot to open country, defined as mountain, moor, heath, and down. This Act places a duty on Natural Resources Wales to prepare, consult and issue maps of all registered common land and open country; a power on access authorities (local authorities and national park authorities) to ensure a means of access to the CROW access land; makes various provisions in relation to public rights of way, including a duty on local authorities to produce Rights of Way Improvement Plans and new procedures relating to the removal of obstructions; and provisions for the creation of local access forums.

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<sup>40</sup> [Improving opportunities to access the outdoors for responsible recreation](#), The Welsh Government, July 2015.

## What changes are we proposing?

The Welsh Outdoor Recreation Survey<sup>41</sup>, commissioned by NRW is the largest survey of participation in outdoor recreation by people living in Wales. Key challenges highlighted in the recently published 2014/15 survey summary compliment responses to the 2015 Welsh Government consultation about the need for a more fit for purpose legislative framework.

*“Change in activity preferences is often relatively unpredictable, and can shift rapidly. This highlights the need for recreation provision to be flexible, and where possible to accommodate a diversity of activities on the doorstep.”<sup>42</sup>*

Most of the almost 5,800 responses to the consultation were in favour of increasing opportunities for a wider range of users, notably cyclists but also, among others, horse riders and paragliders.

Flexible provision for different activities, and to allow sensible safeguards for land management and wildlife, would be supported by a consistent approach to access across land and water.

*“Outdoor recreation provides benefits for both health and the economy. Health benefits are particularly associated with frequent participation in doorstep activities, whilst economic benefits are derived more from days out to the best of Wales’ iconic coast and mountains. A key challenge is to find the right balance of support for both of these different types of recreation.”<sup>43</sup>*

Balancing the desire to improve the excellent tourism offer provided by Wales with the need to enhance doorstep opportunities can be achieved in part by broadening the type of areas available for access and in establishing a fairer approach to the types of recreation in which people can participate.

The survey identifies beaches (28%), mountains (16%) and the coast (14%) as the areas people would most like to go to in the future. These aspirations reflect the appeal of Wales’ more iconic locations, which also draw visitors to Wales.

### **Achieving consistency in the opportunities available for participation in different activities and how activities are restricted and regulated**

To help improve the opportunities for activity tourism and the options available for people to participate in outdoor recreation near to where they live, changes are needed to the rights associated with existing path networks and access land, in addition to establishing rights in areas where the public would most benefit.

Associated to this is the need to ensure appropriate regulation of activities to safeguard the interests of existing users, the natural and cultural environments and land management, including liability and responsibility.

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<sup>41</sup> Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report, Natural Resources Wales, December 2016.

<sup>42</sup> Challenge 4, p.21 of the Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report, Natural Resources Wales, December 2016.

<sup>43</sup> Challenge 5, p.21 of the Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report, Natural Resources Wales, December 2016.

## Increasing range of activities on access land and public rights of way

Wales has the greatest length of rights of way per square km (1.59km/sqkm) in the UK followed by England (1.46km/sqkm), Scotland (0.19km/sqkm) and Northern Ireland (0.01km/sqkm).<sup>44</sup> However, around 79% of the network in Wales is made up of footpaths, with the other 21% made up of bridleways and byways. In addition, access land designated under Part 1 of the Countryside and Rights of Way Act 2000 [the CRoW Act] is subject to rights for the public to enter and remain on specified types land “for the purposes of outdoor recreation”. Restrictions included in the CRoW Act effectively restrict rights to those on foot (or a mobility carriage).

In order to increase the value of these routes and areas as assets to promote participation and tourism we seek your views on introducing changes to the rights and restrictions associated with them.

### Proposal 10

To enable cycling and horse riding on footpaths to occur under the same conditions as those provided for cycling on bridleways under section 30 of the Countryside Act 1968. These provisions allow for cycling without placing additional burdens of maintenance and liability on the local authority; and they prioritise the ordinary users of those paths. Whilst it would not place additional liabilities or maintenance burdens on local authorities, it would enable them to plan and implement surface and furniture improvements to routes that would add most value to the rights of way network. It would place the onus of checking the suitability of individual paths on users.

### Proposal 11

To amend or revoke the following list of restrictions on access, provided in Schedule 2 (1) of the CRoW Act 2000:

- (b) uses a vessel or sailboard on any non-tidal water;
- (c) has with him any animal other than a dog;
- (i) bathes in any non-tidal water; and
- (s) engages in any organised games, or in camping, hang-gliding or para-gliding.

### Proposal 12

To allow, with appropriate authority, organised cycle racing on bridleways in order to bring rules relating to bridleways into line with footpaths.

We would welcome any further suggestions for change in relation to anomalous or unreasonable restriction on public rights of way.

<sup>44</sup> National Assembly for Wales Research paper, *Countryside access in the UK: a review of associated legislation and policy*, April 2014.

## **Extend access land to the coast and cliffs**

Under section 3 of the CRoW Act there is provision to extend access land to the coast. We are seeking views on implementing this provision to enable improved access for users; reduced liability on land managers and better protection for marine wildlife, including cliff nesting birds and seals with pups

### **Proposal 13**

To extend CRoW Act access land to the coast and cliffs.

## **Establish access on inland water**

There is an enduring dispute over the rights of those participating in water recreation on rivers and lakes. Implementing proportionate and fair legislation to establish clarity over rights of access as well as ensuring greater consistency with other access areas and activities we believe will help to reduce incidents of unfettered access currently causing confrontation between recreational users and will enhance recreational opportunities on water for locals and visitors.

In order to ensure that the interests of other users, land managers and the natural and cultural environments are enhanced and protected with the establishment of access rights to inland water, we are seeking your views on our proposals to extend Part 1 of CRoW Act provisions to all rivers and other inland waters.

There would not be a universal right to access water from land adjacent to the water. Access and egress points would need to be identified by a statutory authority and mapped. Access or egress at any other point along the water would only be permissible where needed in an emergency or where permission is granted by the landowner. A level of reduced liability, similar to that already in place on access land under sections 12 and 13 of the CRoW Act could apply to land managers with access and egress points on their land and to the responsible authority for water access.

### **Proposal 14**

To extend Part 1 of CRoW Act access land provisions to rivers and other inland waters

### **Proposal 15**

To establish NRW as the authority responsible for:

- identifying appropriate access and egress points;
- implementing measures to promote responsible use, including the use of river level indicators; and
- mediating between the different user interests to facilitate user access agreements.

## **Introducing a statutory requirement for responsible recreation covering access land, public rights of way and water**

We are of the view that Wales can learn from the approach taken by Scotland in relation to placing the onus on users to respect and protect the areas to which they have access. This would match the statutory duties already placed on land managers to ensure access areas are open and easy to use.

In order to protect the natural and built environments, access rights across CRoW access land and public rights of way will be dependent on the user behaving responsibly whilst undertaking recreation, with a failure to do so resulting in the rights being annulled. We are also seeking your views on guidance on responsible behaviour as part of the proposal for a statutory access code (see page 44 below under Statutory Code for Access in Wales).

### **Proposal 16**

To establish a statutory caveat on all users to behave responsibly whilst exercising their right to participate in recreation on access land, inland water and on public rights of way.

## **Establish mechanisms for restricting access**

There are circumstances where relying on responsible behaviour by users will not be sufficient to ensure land management, user and wildlife interests are protected. Under Part 1 of the CRoW Act restrictions to access can be imposed in special circumstances, namely, for reasons of land management; for nature conservation or heritage preservation purposes; to avoid the risk of fire; and to avoid danger to the public.<sup>45</sup> The duration of restrictions vary from a few days to longer. They can apply various limitations, including where people can enter and leave access land and restricting access with dogs during lambing season. They can also be used to prohibit any visits to an area. We believe these restrictions could usefully be extended and modified to apply to public rights of way and water.

Responses to the 2015 consultation demonstrated the need to tighten up restrictions on dogs in the countryside. Walking dogs is a key reason why many of us participate in physical activity. Evidence gathered by the Wales Outdoor Recreation Survey shows that around 39% of visits to the outdoors are made by people with dogs; and dog walkers are almost twice as likely to participate in frequent visits as those without.<sup>46</sup> However, without adequate control, dogs can pose a considerable threat to livestock, in particular, pregnant ewes and those with lambs. Therefore, we believe it is sensible to require dog walkers to place their animals on leads in the vicinity of livestock. Careful guidance and meaningful education is also required to encourage responsible behaviour, including bagging and binning dog waste.

<sup>45</sup> Natural Resources Wales website, "Restrictions on Access Land" April 2017.

<sup>46</sup> Pages 4 and 3 respectively of the Welsh Outdoor Recreation Survey Key Facts for Policy and Practice: Summary Report, Natural Resources Wales, December 2016.

**Proposal 17**

To enable temporary diversions and exclusions to be applied across all accessible land and water where circumstances require them and after the safety and convenience of the public have been considered.

**Proposal 18**

Dogs to be on a short fixed length lead in the vicinity of livestock at all times of the year. In all other circumstances they will be subject to “effective control”, a legally defined term already used in England under Schedule 2 paragraph 6A of the CRow Act. Exceptional circumstances relating to safety and the protection of nature conservation will be identified and guidance provided by the access code.

**Simplifying and harmonising procedures for designating and recording public access.****All Wales digital map of access**

There are currently a number of statutory maps covering access areas. These are often hard copy maps as required by legislation to be available to the public at reasonable times at the relevant authority offices (e.g. Local Authority or NRW offices).

In keeping with the commitment included in Taking Wales Forward to “go digital-first in our delivery of government services” we are of the view that information on accessible areas should be made more widely available to the public. This would benefit local people by demonstrating what is available on their doorstep and tourists when considering where to go and what to do.

One electronic map with information on all accessible areas, including public rights of way and access land, should replace existing statutory maps. This will increase clarity over where people can go and what they can do. In the medium to long term it will also reduce burdens on local authorities and other responsible bodies (e.g. National Park Authorities and NRW) in their duties to record public access.

**Proposal 19**

To enable the development of one statutory map of accessible areas and green infrastructure. Layers of mapping would initially include CRow access land (including water), public rights of way and designations, including, National Trails. Legislation would need to allow further layers to be identified and added.

## Reducing procedural burdens associated with public rights of way and access land

One of the key areas of access legislation in need of improvement relates to the recording and changing the rights of way network. The scope for change is broad but key findings from previous work, including the 2015 consultation, have identified the following:

- Enabling local authorities to create or divert routes by agreement across public land, and on private land where practicable and with the consent of land managers
- Amending the requirements around notification of orders, for example, updating the requisites for press notices to include electronic notifications;
- Amending the provisions around compensating landowners to reduce uncertainty and inequity; and
- Making it easier for Local Authorities and land managers to remove unnecessary stock control measures, including, stiles and gates.

The De-Regulation Act 2015 makes a number of changes to legislation in England to reduce the burden placed on local authorities and land managers in relation to rights of way. We believe some of those provisions relating to Definitive Map Modification Orders and Public Path Orders could usefully be applied in Wales.

Section 10 of the CRoW Act currently requires statutory maps of access land in Wales to be reviewed by NRW every ten years. The first of these was undertaken in 2015. In its evaluation report on the process and outcomes of the initial review, NRW advised the Welsh Government that a system of continual review would be more efficient and less resource intensive. We agree with this view and believe that people would be best served having up to date information on where they can access land legally. The proposal to digitise the mapping would further reduce the burden on NRW and facilitate better communication of any amendments.

<p><b>Proposal 20</b></p> <p>To amend technical provisions relating to procedures for creating, diverting and extinguishing public rights of way; and the recording of amendments to the definitive map and statement.</p>
<p><b>Proposal 21</b></p> <p>To introduce provisions to allow flexibility in relation to stock control measures on public rights of way.</p>
<p><b>Proposal 22</b></p> <p>To amend the requirement for a decadal review of access maps to a process of continual review.</p>



## **Extending Rights of Way Improvement Plans (ROWIPs) to include access land and water and integrating with Active Travel provisions**

Responses to the 2015 consultation on access highlighted the value of ROWIPs as a means by which Local Authorities identify, plan and prioritise their rights of way network. Evaluations of the development, content and delivery of the first ROWIPs (2007 – 2017) have highlighted their strengths and the benefits that have resulted.

Section 60 of the CRoW Act places a statutory duty on local authorities to develop ROWIPs and to review them every ten years. Local authorities are currently in the process of undertaking the first review.

With existing financial pressures there is now an even greater need to have clear evidence-based plans to target limited resources, providing the greatest public benefit by delivering across multiple policy areas and integrating with other services.

Under existing provisions Authorities may choose to extend the scope of their plans to include access land and other access provision that is important in their area. We believe there is scope for developing more integrated plans that require a more robust overview of access opportunities across local authorities, for example, the management of parks and gardens and green corridors for wildlife and active travel.

### **Proposal 23**

To create a requirement on local authorities and National Park Authorities to develop integrated access plans to take effect anytime up to the date of the next review in 2027.

## **Repeals**

During the review of access legislation a number of statutory provisions were identified as unsuitable or disadvantageous to outdoor recreation opportunities in Wales.

Under the Cycle Tracks Act 1984, local authorities can make an order to convert a footpath into a cycle track. The process means that the relevant paths are no longer recorded on the definitive map. They remain maintainable at public expense but anecdotal evidence suggests that they are sometimes overlooked when they cease to be on the definitive map and under the responsibility of public rights of way teams.

Since 2001 the Welsh Government has been implementing provisions under the CRoW Act. There are a number of provisions yet to be implemented, which are no longer pertinent or considered in keeping with the Welsh Government's priorities for access. These include provisions that are no longer necessary or are resource intensive for local authorities.

Examples of these include allowing the Welsh Ministers to designate areas within which paths can be closed for crime prevention or reduction measures; and provisions which set a cut-off date (1 January 2026) by which any unrecorded historical rights of way must be legally recorded or be lost. Implementation of these provisions would place an expensive burden on local authorities and risks losing a number of routes currently used by the public, which help promote economic, health and community well-being.

**Proposal 24**

To repeal the Cycle Tracks Act 1984. In doing this create a new type of public right of way, 'cycle paths', prioritising cycling and walking (and subject to proposal 10 above) to be recorded on the definitive map and statement. All existing cycle tracks designated under the 1984 Act would be recorded as cycle paths.

**Proposal 25**

To repeal unwanted provisions in the CRoW Act. In particular those relating to the 2026 cut-off date for historical routes under sections 53 – 56 of the CRoW Act.

**Improving existing advisory forums and how access rights and responsibilities are communicated to all interests.****Statutory Code for Access in Wales**

There was a general consensus amongst many key stakeholder organisations of the potential benefits of a comprehensive statutory code for access and outdoor recreation. We believe that a statutory code along with a sustained programme of education and promotion by the Welsh Government and its partners will help promote fairer, better and more responsible access to the outdoors by users and fairer, better and more responsible management of provision by local authorities and land managers.

In order to ensure the code is equitable and practical we are of the view that it should be developed through a partnership approach with key stakeholders and a public consultation process before being submitted to the National Assembly for Wales for consideration.

**Proposal 26**

To develop a statutory code for access to the outdoors for recreation similar to that already in place in Scotland under the Land Reform (Scotland) Act 2003<sup>47</sup>.

<sup>47</sup> Scottish Outdoor Access Code - <http://www.outdooraccess-scotland.com/the-act-and-the-code/introduction>

## Local Access Forums

With the current constraints on funding and the increasing importance of having a joined up approach to social, economic, environmental and cultural well-being, local access forums (LAFs) continue to be an important resource for the improvement in opportunities for recreational access to the outdoors.

Responses to the 2015 consultation relating to local access forums revolved around their membership and remit. We have carefully considered the proposals sent forward in the responses and are of the view that most of the issues raised can be tackled by making changes to the regulations<sup>48</sup> rather than Part 5 of the CRoW Act itself and updating the guidance previously provided by what was then the Countryside Council for Wales.

Changes identified include (but are not limited to):

- Amendments to enable deputies to represent members who are unable to attend their LAF meetings;
- Steps to encourage a more representative range of members, such as, guidance on when and where to hold meetings to allow for those who work and/or have caring responsibilities;
- Advertising for members on the internet and social media – this could also assist in reducing the cost of re-establishing LAFs;
- Guidance on how to promote the roles and responsibilities of LAFs to other public bodies. This includes how LAFs can engage most effectively with their Public Service Boards;
- Increasing the term of a LAF from 3 to 4 years.

We are not of the view that statutory changes are required to the number of LAFs or to their statutory status or that of the associated national level meeting of LAF chairs and deputy chairs.

### **Proposal 27**

To review the regulations and guidance relating to local access forums with a view to updating and clarifying their role and membership.

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<sup>48</sup> Countryside Access (Local Access Forums) (Wales) Regulations 2001 (SI 2001/4002)

## Questions

**Question 15**

Will these proposals deliver consistency in the opportunities available for participation in different activities and provide effective safeguards for land management and the natural environment?

**Question 16**

Will these proposals deliver a more integrated and up to date system for identifying, designating and recording publically accessible areas?

**Question 17**

Will these proposals provide significant clarification to ensure that the public, land managers and others are clear about their rights, responsibilities and duties in relation to access to the outdoors?