Report No. 50/15
National Park Authority

REPORT OF ACCESS & RIGHTS OF WAY MANAGER

SUBJECT: WELSH GOVERNMENT GREEN PAPER CONSULTATION; IMPROVING OPPORTUNITIES TO ACCESS THE OUTDOORS FOR RESPONSIBLE RECREATION

Purpose of Report
Members are asked to approve a formal response to the consultation, a draft copy of which is attached to the report.

Background
Following the publication of the Green Paper on 10th July 2015, members considered the matter at their meeting of 29th July. Members were also invited to attend a committee meeting of the Pembrokeshire Local Access Forum held at the National Park Authority offices on 4th September. The Local Access Forum is a statutory body and their role is to advise the National Park Authority and Pembrokeshire County Council as to the improvement of public access to the countryside for the purpose of open air recreation and enjoyment. A copy of the formal response to the Green Paper has been attached to this report. This report is based on the response of officers of the three National Park Authorities of Wales and incorporates the advice of the Local Access Forum. The deadline set by the Welsh Government for consultation responses is 2nd October 2015.

Summary
The response is characterised by an approach that seeks to promote and develop linear access, via an improved public rights of way network, as the principal means of access to the countryside of Wales. Public rights of way already offer unrivalled countryside access opportunities and it is the legal procedures that govern the administration of the network that officers consider need to be reformed rather than the introduction of a new access settlement in Wales. Therefore a range of suggestions are included to streamline and harmonise areas of existing legislation in order to remove protracted and costly procedures, including the recording of public rights of way, the maintenance of routes and the creation, diversion and extinguishment of paths. Proposals also seek to introduce enabling legislation to create more cycling and horse riding routes in the countryside with case by case assessments.

Strategic planning for the development of countryside access is welcomed and there are proposals to promote a more consistent approach to the rights and responsibilities of walking dogs in the countryside along with governance improvements of Local Access Forums.

The case for a new area based access provision is considered but this would not necessarily guarantee a reasonable standard of access to the countryside or deliver certainty of access and the costs in terms of management and relationships with

country landowners and farmers would outweigh the benefits. Such an approach appears to be championed by a minority of activity pursuits enthusiasts, whereas research and experience bears out the general public's desire for better maintained paths and more information. The Local Access Forum was also concerned about the implications of the introduction of a right of access to unenclosed countryside and was not supportive of this proposal. There does, however, appear to be a case for legislative change to formalise managed access to inland water and a proposal is put forward with this in mind.

The National Park Authority strongly supports the commitment by the Welsh Government to increase participation levels in outdoor recreation and countryside access. The response makes the point that Wales is reasonably well provided for in terms of countryside access opportunities in rural areas and is of the view that raising the level of awareness of the existing access provision is the key to delivering the desired increase in participation levels. This can be done through promotion, increased information and by targeting and introducing social groups to recreational activities. Research suggests that low participation in outdoor recreation is due not to a lack of physical access opportunities but a range of more deeply entrenched socio-economic barriers. The Welsh National Park Authorities play a key role in the reduction of these barriers and this work needs to be expanded if we are to increase participation levels that will result in a more physically active population.

Recommendation

Members are asked to approve the draft response of the three National Park Authorities of Wales, subject to any additional comments or views.

Background Documents

- Welsh Government Green Paper Consultation; Improving Opportunities to Access the Outdoors for Responsible Recreation 2015
- Response of three National Park Authorities of Wales to the Welsh Government Access Review 2013

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FINAL DRAFT
Three National Park Authorities of Wales Response to the Green Paper, Improving Opportunities to Access the Outdoors for Responsible Recreation, September 2015
Introduction

The three national park authorities of Wales have statutory responsibilities regarding the protection and conservation of their landscapes and, for promoting the enjoyment and understanding of their special qualities. They also have a duty to foster social and economic well-being of communities within them. Occasionally conflicts may arise when trying to deliver these objectives.

National park authorities are required to deliver these purposes working within statutory powers with land owners and occupiers and are very reliant on developing good working relationships to do so.

In Wales, the public has a right to cross private land via the public rights of way network, and has a right of access to all land mapped as Access Land under the Countryside and Rights of Way Act 2000. There are also some permissive access arrangements providing further access to land and limited access to inland water.

The three national parks in Wales comprise of 4,122 square kilometres representing approximately 20% of the land area of Wales. The Parks receive 12 million visitors each year who spend an estimated £1 billion on goods and services. Nearly three quarters of the population of Wales make a visit to a national park each year (during 2014/15 there were 3000 participants in social inclusion initiatives in the Pembrokeshire Coast National Park alone).

The three national parks in Wales also have a substantial resource for public access with a combined total of 5774km of public rights of way, 194000 hectares of Access Land as well as many other routes and areas where public access is permitted.

The Welsh national park authorities strongly support the commitment by the Welsh Government to provide a greater range of access opportunities to the countryside of Wales and increase participation levels for a wide range of outdoor activities.

We welcome the opportunity to contribute to the consultation on the Green Paper as, collectively, we have considerable experience in the management of countryside access and outdoor recreation. The Welsh Government commitment to increase opportunities for recreation and access has been reflected in the work of the three national park authorities for many years and we wish to assist the Welsh Government as much as possible in terms of advising on the future development of access and recreation in Wales.

It is also fundamental that any proposed changes should have synergy with the various other strategic plans from the Welsh Government e.g. The Environment Bill, Natural Resources Wales's natural resource management plans and national parks' management plans. These should also consider, wherever possible, any health or socio-economic initiatives.

Question 1

What are your views on the principles outlined above? If you would suggest changing them, please explain how and why.

The Welsh national park authorities are strongly supportive of the principles outlined by the Welsh Government in its vision for access and outdoor recreation in Wales. Our experience has demonstrated that visitor experience is enhanced when access arrangements take account of, and find solutions to reconciling land management, conservation, food production and forestry with recreational issues as these may occasionally conflict. We would therefore recommend a collaborative approach with the land-owning and farming community early in any process which involves change in order to overcome potential difficulties.
We are pleased to see that the principles outlined talk of responsible recreation; safeguards against irresponsible use; clarification of responsibilities and support for reasonable and responsible opportunities. We believe that the foundation for any properly functioning access system begins with understanding, responsibility and consideration for others.

Question 2

Tell us your views on the issues highlighted above, and whether there are other key challenges you believe need to be resolved?

We are in agreement with the comments made in paragraph 4.4.
Specifically, that:

1. despite its origins, the rights of way network is the main way that people can access the countryside of Wales and needs to be adapted to meet modern recreational needs;

2. the definitive map and statement is an archaic and outdated means of recording this network and (across Wales) suffers from the fact that individual definitive maps and statements were drawn up differently in different areas. Generally, definitive maps and statements suffer with quality issues and are riddled with anomalies and inconsistencies. As a conclusive legal record it should be of high quality;

3. making changes to individual rights of way can be costly, protracted and overly complicated and are often subject to objections by one or two persons who may have no direct or indirect material interest in those changes resulting in an onerous and expensive procedure to determine a relatively minor matter;

4. correcting simple and obvious anomalies on the definitive map is unnecessarily convoluted;

5. it is all very expensive with much of that expense being incurred because of the need to advertise in the press. In the electronic age this is an unnecessary and outdated burden. As well as discouraging landowners from making sensible applications it also seriously discourages local authorities and national park authorities from attempting to reconcile or make beneficial changes to local rights of way networks. Further comments on this point are contained in the response to question 3.

Question 3

What changes, if any, do you think need to be made to improve and simplify the procedures for recording, creating, diverting or closing public rights of way?

While we acknowledge that the public rights of way network is not ideal, it is a valuable resource providing unrivalled opportunities to access the countryside of Wales. However, it is widely recognised by practitioners and stakeholders that it is the onerous legal procedures that govern it that are in need of revision in order that it can be more easily adapted and improved. We would suggest therefore that there could be a broad range of changes made to the technical aspects of rights of way law. The three Welsh national park authorities have, to varying degrees, been involved with managing the technical and physical aspects of their respective rights of way networks for many decades and have therefore acquired substantial knowledge and experience of those fields over that time.

We will proceed by first considering the proposals in paragraph 5.1:

1. Digitisation – we would agree that digitisation of the definitive maps and statements is the way forward. This has significant advantages over the paper counterpart in terms of storage, accessibility, copying, currency, accuracy, reproduction, scalability, flexibility etc. However, because of the inherent accuracy of the "background" data over which the rights of way data will be viewed there are issues with transferring data from a paper map largely at a scale of 1:10000 map to an electronic system where scale is not a limitation. As national park authorities we have historically held our own digital data which was created independently of the unitary authorities. For instance, the Brecon Beacons National Park Authority holds a digital rights of way map of its area which comprises of a composite of the information shown on the seven definitive maps that cover it. With regard to applications being made digitally, some applications for public path orders are already made in this way and we see no reason why an applicant could not submit any rights of way related application electronically;

2. Service of Definitive Map Modification Order notices – whilst applicants may be best placed in terms of local knowledge to serve notice on land owners we can see the advantage of local authorities doing this in combination with a basic evidential test. However, landowner details should be provided to the authority by the applicant. Where a landowner is not known existing procedures as contained in Paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 could be used (and transferred to authorities);

3. Objections to orders – currently, all orders subject to objections (and representations) are submitted to the Welsh Ministers and dealt with by the Planning Inspectorate. We consider that this is unnecessary as many minor matters result in full scrutiny by Inspectors. There are a number of scenarios where the local authority (or national park authority) could determine such matters which would lessen the burden on the Planning Inspectorate. We would suggest the following as examples

where the local authority could determine matters (and confirm orders with or without modifications):

a. where an objection is irrelevant or made by those with neither a direct or indirect material interest in the order;

b. where a "representation" has been made which clearly is not in opposition to the order e.g. a comment in support of the order can be taken as a "representation";

c. where the objection relates to a minor drafting error in the order e.g. incorrect grid reference, road name, property name, right of way number, route length etc.; or, where the objection relates to minor accuracy issues in the order plan e.g. route drafted incorrectly, error with lettering etc.;

d. where a change is required to a new route or to a limitations, condition or width on a new route and both the objector and the landowner have agreed to that change.

We would also suggest that where an unopposed order requires minor modification (in a way similar to the above) that the local authority or national park authority also have the ability to confirm orders with modifications.

We would agree that local authorities and national park authorities should be able to dedicate new rights of way on their own land.

We would also agree that, in terms of a "diversion" being accomplished by creation and extinguishment orders under sections 26 and 118 of the Highways Act 1980, a method needs to be devised so that these order are deemed to be 'combined orders'. The current system, where they are considered to be independent orders, is problematic as an objection to one order may lead to the withdrawal of both as there is a risk that only one order will be confirmed.

With regard to compensation provisions under the Highways Act 1980 these are reasonable and, in our experience, invoked very little as truly "compulsory" orders are very rarely made. However, where claims are contested the procedure for determining the amount of compensation can be costly and lengthy. Expectations of the value of compensation are often exaggerated and protracted negotiation can ensue. Some cases may need determination by the Land Tribunal if agreement is not possible. It would be helpful if a pre-determined value existed for different compensation scenarios which would, at least, provide a starting point for negotiation e.g. a per metre value based on the type of right of way being created and the quality of the land affected.

There are a number of further issues that we would wish to highlight:

1. there is an inconsistency between orders made under Section 119 of the Highways Act 1980 and orders made under Section 257 of the Town and County Planning Act 1990 in terms of specifying limitations and conditions on new routes. This facility is not available in Town and County Planning Act orders and should be rectified;

2. there could usefully be a prescribed symbol for a restricted byway. We are currently having to use the text "Culffordd Gyfyngedig/Restricted Byway" on signposts;

3. there could usefully be a prescribed symbol for a byway open to all traffic. We are currently having to use the text "Culffordd yn Agored i Bob Traffig/Byway Open to All Traffic" on signposts;

4. there could usefully be a prescribed symbol and waymarker for unsurfaced routes that are shown on the List of Streets that do not have a surface i.e. "Other Routes with Public Access" on Ordnance Survey maps. This would benefit the public as the current network of unsurfaced routes is rarely signed or known to the public;

5. nationally agreed signs to inform the public of restrictions on rights of way would be useful e.g. no cycling, no horses, no vehicles. There are currently an array of inconsistent, misleading and confusing signs;

6. changes should be made to the need to notify the temporary closure of rights of way in the local press. The current requirement to give notice of an impending closure not less than seven days before the order is made and within 14 days of making the order need reviewing. Applying this to all classifications of rights of way is simply not necessary. A single advance notice to interested parties by email and site notice would serve the same purpose at much less expense and staff time;

7. amend Section 118 of the Highway Act 1980 to allow the extinguishment of a right of way with the retention of lower rights e.g. restricted byway to a bridleway or bridleway to a footpath. This process currently requires two orders – an extinguishment and a creation;

8. simplify the process for the extinguishment of rights where contiguous rights of way are of a different status and where it is not practical or reasonable to create higher rights;

9. extend the grounds for an extinguishment under Section 118 of the Highways Act 1980 to cover public safety and where a right of way is partly or completely physically destroyed.

10. change the publicity requirements for making orders under S26, S118 and S119 of the Highways Act 1980. Issue a single notice only of making the order to interested parties by email and site notice. All interested parties could then be advised by email of progress regarding confirmation and bringing into operation.

11. simplify the language used in orders and notices to be better understood by the public.

Question 4

What changes, if any, do you think need to be made to improve and simplify the provisions available to local authorities for making improvements on the ground?

Improvements to the rights of way network within the Welsh national parks have largely been undertaken through delegated powers from constituent unitary authorities (in the case of the Brecon Beacons National Park and the Pembrokeshire Coast National Park) or through joint working with unitary authorities (in the case of Snowdonia National Park).

Both the Brecon Beacons National Park Authority and Pembrokeshire Coast National Park Authority have enforcement powers through delegation but these have been rarely exercised as they can be costly and time consuming and issues are therefore usually resolved through negotiation. On occasion, enforcement has been necessary but there are still some outstanding matters to be addressed.

There are a few issues that we would wish to highlight:

1. there would be considerable advantage to national park authorities assuming statutory responsibility for the network of rights of way within their boundaries. It would provide a more integrated and cost effective approach to the delivery and promotion of recreational and access opportunities. A 'one-stop shop' for access within national parks would also be more straightforward for the public and would formalise what is happening on the ground. These new responsibilities would need to be adequately resourced;

2. authorisation of stiles and gates – the grounds for authorising a stile or a gate on a footpath or bridleway are limited to preventing the ingress or egress of animals. It is considered that these could be extended to include authorisation for the purposes of public safety e.g. to erect a gate where a bridleway crosses a road in order to arrest users motion before reaching the carriageway to or to erect a gate on a bridleway to prevent illegal vehicular use;

3. the responsibility for the maintenance of stiles and gates on public rights of way and control of verge vegetation rest with the landowner/occupier. Local authorities and national park authorities should have the power to take on responsibility for the maintenance of gates, stiles and verges on selected public rights of way that are of recreational importance and experience high levels of use. This will guarantee the standard of maintenance for ease of use and reduce the burden on landowners;

4. cattle grids on rights of way – cattle grids with bypass gates are often required on rights of way to prevent the ingress or egress of animals. Clarification is needed as to whether cattle grids can be authorised on rights of way under Section 147 of the Highways Act 1980;

5. removal of obstructions – where an obstruction cannot be removed by negotiation it will often be dealt with by Section 143 of the Highways Act 1980 under notice. However, the authority cannot remove the obstruction until one month has expired since the notice was served. If the obstruction completely prevents public use of an important route it is considered that a month is too long for the authority to wait before it can remove the obstruction itself. In comparison, a public road would not be left obstructed for a month before action was taken. In such cases of wilful or deliberate obstruction there should be no period of grace and action should be immediate. Authorities should be able to recover costs for enforcement work as they can now;

6. misleading signs on rights of way and access land – whilst Section 57 of the National Parks and Access to the Countryside Act 1949 makes it an offence to maintain a misleading sign on a right of way there is no power for authorities to remove signs. There should be a process similar to Section 143 of the Highways Act 1980 applicable to misleading signs that deter public use. This applies equally to Section 14 of the Countryside and Rights of Way Act 2000;

7. potentially unauthorised stiles and gates – within the national parks, the definitive maps and statements do not record limitations or conditions on the rights of way network. We therefore have a situation where potentially many hundreds of stiles and gates have not been formally authorised since the Definitive Maps and Statements were published - potentially a period of over fifty years. Some would have us remove these structures but it is often the case that the rights of way network has developed alongside agriculture and these structures are now an inherent part of the public rights of way network and modern field system. It is considered that a line needs to be drawn under this issue so that all structures currently in place on the rights of way network are deemed lawful. However, the Definitive Statements may need to reflect this;

8. access to and on access land – Chapter 3 of the Countryside and Rights of Way Act 2000 allows access authorities to enter into agreement with an owner or occupier of land to open-up, improve, repair or construct a means of access/egress to access land. However, there are no similar powers in terms of improving access on linear routes within that access land. This should include providing furniture where necessary, managing vegetation, maintaining path surfaces or providing access through internal boundaries. Where such issues arise, additional powers would be beneficial to guarantee through routes;

9. We would recommend that all previous access agreements made (in perpetuity) under Part V of the National Parks and Access to the Countryside Act 1949 should

be rescinded and that any such land become "access land" as defined by the Countryside and Rights of Way Act 2000. This is an anomaly which requires consideration in any proposed change to legislation.

With regard to the holding of cycle races on bridleways the current restrictions, whilst understandable, do appear to be somewhat anomalous. Provided that necessary safeguards are in place and procedures are correctly followed, we see no issue with removing the prohibition on holding cycle races on bridleways. However, where local authorities or national park authorities consider that a race would not be appropriate because of safety, conservation or other relevant concerns, it should not be authorised.

Question 5

What non-legislative changes would you like to see in the meantime that you believe would help to improve the rights of way network in Wales and reduce the burden on local authorities

In terms of non-legislative changes we would raise the following issues for consideration:

1. replacing stiles with gates – all three national park authorities have had some success with replacing stiles with gates. The removal of most of the stiles on the Pembrokeshire Coast Path being a very notable example. However, it is often difficult to persuade landowners to agree to such a change due to perceptions regarding such issues as gates being left open and stock escaping. Given that making access to the countryside easier for people with mobility problems and for families with young children is a major theme of the Welsh Government, more incentives are required for landowners in order to change these perceptions. The offer of a free gate is not enough;

2. agricultural cross compliance – in the Authorities' experience, cross compliance within agri-environment schemes e.g. Tir Gofal, Glastir, has brought success in realising the reopening of long-obstructed rights of way. This was as a result of entrants with obstructed rights of way being advised that financial restrictions could be imposed upon them if they did not take necessary action. Such a system should apply to all agricultural holdings as, historically, incentivisation has been a far more efficient system for improving access than the threat of enforcement action. We believe that cross compliance would encourage landowners/tenants to come forward with solutions to reconcile long-standing issues. The network should also be subject to inspection and testing through Welsh Government Rural Audit procedures.

Question 6

How should the number, role, membership, and purpose of local access forums be redefined?

We do not think that the Local Access Forum format needs substantial charge but we would make the following suggestions as to how the format could be improved:

1. although members are appointed on the basis of their individual experience and expertise they are also frequently representatives of various organisations and they should be able to send deputies when they cannot attend meeting themselves. These should be defined as 'special representatives';

2. the system of three year appointments should be reviewed as the recruitment process is disruptive and costly in terms of officer time and press notices. Most Local Access Forums are well established and this is an unwanted interruption. We would recommend that membership is extended to a five year period of tenure;

3. the terms for chairs should be reviewed and clarified as different Local Access Forums have different terms for chairs.

We consider that the Welsh Government should conduct a review of the role and governance of Local Access Forums. Whilst their advisory role was important during the introduction of the Countryside and Rights of Way Act 2000 and during the preparation of the Rights of Way Improvement Plans little major business has been attended to since. Local Access Forums form an important stakeholder consultation group and it could be argued that they are not fulfilling their potential in assisting local authorities with the management of access. Therefore, they should, by natural progression, expand their remit to include all matters pertaining to public access in the countryside including water (although it should be recognised that some Forums have already done so). There is clearly a difference in the way different local authorities and national park authorities use their Local Access Forums and in the type of business with which they are involved. It appears that in most cases it is the appointing authority that largely provides the business rather than members of the Local Access Forums.

Regulations state that the appointing authority must appoint a person to act as the secretary of the Local Access Forum. Invariably (if not exclusively), this person will be a member of staff from the appointing authority. We have some concerns concerning the potential conflict between being an employee of the authority and the secretary of the forum which is effectively independent of the appointing authority. There may be times when it can be difficult for the secretary to manage the expectations of Local Access Forum members against the background of the appointing authority's priorities. The secretary can, quite often, find himself or herself in a very difficult position and inconsequence the role is a demanding one.

Question 7

How should the rights and responsibilities surrounding dogs in the countryside be harmonised to provide greater certainty over what is acceptable and what is not, in a way that makes communicating messages about responsible dog ownership and handling more straightforward?

Generally, dogs are currently required to be on a lead or under close control when in the countryside.

Ultimately, the term "close control" is meaningless without a proper definition and there is a substantial amount of misunderstanding by dog owners about when a dog should be on a lead. The fact that Countryside and Rights of Way Act 2000 requires dogs to be on a lead

between the 1st March and the 31st July on access land only compounds the issue as there are different rules applying to different types of land. This is a major cause of conflict in the countryside.

The Welsh national park authorities believe that any dog on land in the vicinity of livestock should be on a lead. This is a clear message that is easy to understand. Therefore, a formal common linkage between both the Dogs (Protection of Livestock) Act 1953 and the Countryside and Rights of Way Act 2000 is required which should state that dogs be on a lead in the vicinity of livestock or when otherwise advised for nature conservations reasons e.g. due to the presence of ground nesting bird. This would make the situation clearer to dog owners as to whether their dogs should be put on a lead. The only exceptions should be when a dog is released by an owner who is in danger of being attacked by cattle, working dogs and rescue dogs.

The Welsh Government may wish to consider reviewing the legislation on dog fouling in the countryside as this is a substantial problem, where people appear to be less inclined clear up dog mess.

Question 8

How could current legislation be changed to make it easier to allow for a wider range of facilities on existing and new paths?

As is pointed out in the Green Paper, significant progress has been made in expanding access in Wales since devolution. Wales has a substantial network of rights of way (33,000km) and 20% of its land mass is designated as Access Land (460,000 hectares). Since the implementation of Rights of Way Improvement Plans access has been improved in these areas.

It is accepted that opportunities for cyclists and horse riding are largely limited to the rights of way network and it could be argued that the rights of way network does not cater sufficiently for their needs in its present form. There are significant opportunities where simple linkages could be made to join up bridle routes within the existing rights of way network. Many such anomalies exist where bridleways end at community boundaries only then to restart at others. There are also opportunities to create more equine access to the coast. Particular emphasis and priorities should be to expand on strategic or circular linkages.

On a point associated with the coast, we would recommend that true tidal limits should be set by Natural Resources Wales in order to allay any disagreements or disputes that have arisen and do arise over such issues.

We would agree that the creation of cycle paths under the current legislation i.e. the Cycle Tracks Act 1984 is not the solution to this problem and, in any case, that would do nothing to provide more provision for horse riders. On the face of it there are two solutions:

1. create more bridleways, as the Green Paper suggests, which would increase provision for both cyclists and horse riders;

2. create a new classification of right of way called a "cycle path" that is brought about in the same way as a bridleway i.e. Sections 25 and 26 of the Highways Act 1980 but, the use of which is confined to pedestrians and cyclists only. Cycle paths could also be created by upgrading existing footpaths where additional rights were considered to be appropriate and the route sustainable.

Both means would require incentives for landowners to accept higher rights across their land. It is unlikely that current compulsory powers would work given the remarks we have made elsewhere in this paper. A new way is required.

With regard to reviewing the restrictions placed on Access Land there would be scope for considering the introduction of cycling and horse riding routes across access land. However, these should be subject to assessment in terms of their environmental impact, resource implications and practicality within the given terrain. Restrictions on para-gliding and camping should remain in place due to the problems that these activities have caused for farmers and graziers.

Agri-environment policy needs to be closely aligned with access improvements so that farmers and graziers are not penalised financially or otherwise when agreeing to new rights of access or access improvements that may result in a loss of forage.

Question 9

How could legislation better strike a balance between the various demands of motorised users, landowners and the natural environment?

Some of the Welsh national parks, in particular the Brecon Beacons, suffer from incursions by mechanically propelled vehicles (motorcycles in particular) onto land where there are no rights for mechanically propelled vehicles. Common land suffers in particular because of its accessibility and many Sites of Special Scientific Interest have suffered damage because of such activities. We are not aware of any resultant prosecutions.

Anecdotal evidence would suggest that such activity has increased since the enactment of the Natural Environment and Rural Communities Act 2006. Despite the intention of the Natural Environment and Rural Communities Act 2006, issues still arise with illegal use of mechanically propelled vehicles in the countryside due to off-road motorists taking advantage of the interpretation of the legislation. There is a need to review this legislation and consider a blanket ban on off-road motorised access to the countryside of the national parks.

It appears clear to us that the purpose of re-designating roads used as public paths as restricted byways under the Countryside and Rights of Way Act 2000 and the further clarification of what rights existed upon them, through the Natural Environment and Rural Communities Act 2006, was the then Government's attempt to deal with the perceived problem of having mechanically propelled vehicles in the countryside.

It is clear from the statements made in 2003 by the Rt. Hon. Alun Michael MP, the then Minister of State for Rural Affair and Local Environmental Quality, that the intention was to legislate to prevent routes that had historically been used by horse drawn vehicles being used by mechanically propelled vehicles.

The Natural Environment and Rural Communities Act 2006 extinguished any existing rights for mechanically propelled vehicles over footpaths, bridleways and restricted byways and, on ways not shown on the definitive map and statement. Whilst this is subject to certain exceptions the effect of the Act is unequivocal.

In managing restricted byways, the greatest problem that is faced is that users of mechanically propelled vehicles still drive on restricted byways because they perceive that one or more exceptions apply without being able to provide evidence to prove their case. Defra guidance to local authorities states that:

"Section 34 of the Road Traffic Act 1988 provides that a way shown on a definitive map and statement as a footpath, bridleway or restricted byway is to be taken to be a way of the kind shown, unless the contrary is proved. In other words, the onus is on anyone seeking to drive a mechanically propelled vehicle over such a way to prove that a public right of way for mechanically propelled vehicles exists. Section 67 of the Natural Environment and Rural Communities Act 2006, creates a presumption that any unrecorded rights for mechanically propelled vehicles have been extinguished, unless the way falls into one of the exceptions in subsection 67(2) or (3) of the Act."

It continues by saying:

"Therefore anyone using a mechanically propelled vehicle on a way other than a byway open to all traffic would have to show both that:

(a) A public right of way for mechanically propelled vehicles existed at commencement of section 67 (on 16 November 2006); and

(b) That those rights had not been extinguished, because one of the exceptions in subsections 67(2) or (3) applied.

Unless these are proved, it is an offence to drive a mechanically propelled vehicle anywhere other than on a byway open to all traffic recorded on the definitive map and statement, or on an established road".

Defra advises that proving that the rights for mechanically propelled vehicles exist and that an exception or exceptions apply should be accomplished through the submission of a Definitive Map Modification Order. Where this is an issue for the Welsh national park authorities, no applications for Definitive Map Modification Orders have been received. An impasse therefore exists between the affected authorities and users of mechanically propelled vehicles as to whether rights for mechanically propelled vehicles exist or not.

The expectation of the public is that local authorities and national park authorities should uphold and exercise the will of Parliament. This is difficult when these authorities have no enforcement powers in this regard and have to rely on other agencies that have different priorities and levels of expertise.

Given this background and, the fact that our impression is that most visitors to national parks would rather not be confronted by mechanically propelled vehicles when out walking, cycling, horse riding or carriage driving, it is difficult to suggest how the demands of motorised users can be met within the national parks of Wales. It is questionable whether

the use of mechanically propelled vehicles is appropriate within such designated areas when such use is not compatible with the purposes of the national parks or where access to cultural sites of significance is adversely affected.

Past experience has shown that national park authorities and users of mechanically propelled vehicles can work together successfully in terms of maintaining routes and promoting codes of conduct. However, the situation has changed drastically since the Natural Environment and Rural Communities Act 2006 was enacted and contact between the two parties is virtually non-existent.

Question 10

How should the need for new or improved access opportunities be identified, planned, and provided?

Most, if not all, local authorities and national park authorities in Wales are currently managing their rights of way network through a system of priorities. Whilst this is considered to be good practice it is also dictated by the current financial climate. Whilst the way priorities are decided may differ, some of the national park authorities currently prioritise through the demand, degree of use, levels of promotion and the development of strategic networks.

As this is a dynamic system, we do not think that a separate review leading to a confirmation of a prioritised network of recreational routes and access areas is necessary. This is because the assessments required under the decadal review of the Rights of Way Improvement Plan would largely duplicate this suggestion and local authorities could publish a prioritised network of recreational routes as part of their reviewed Rights of Way Improvement Plan. However, any updated Rights of Way Improvement Plans should allow for the evolvement of additional routes through public demand and be flexible enough to cater for continuous changes.

Given that the value of Rights of Way Improvement Plans has been established it would appear logical to retain them as long as the rights of way network remains largely in its present form. It is the only large-scale opportunity that authorities have to consult the public on how the rights of way network should be managed, developed and improved. The timely review of Rights of Way Improvements Plans presents the opportunity for guidance to require local authorities to develop recreational networks for walkers, horse riders and mountain bikes.

Question 11

What are your views on the benefits and challenges of creating a right of responsible recreation to all land in Wales?

Our experience suggests that increasing area based access would not necessarily increase participation. Area based access does not necessarily deliver better or higher levels of access opportunities that people desire, provide certainty of where they can go in the countryside or guarantee a reasonable standard of access. Following the introduction of access rights under the Countryside and Rights of Way Act 2000 our observations are that there has

been no demand for additional areas of access and that the vast majority of people continue to walk on paths across access land.

Widespread research undertaken for the preparation of Rights of Way Improvement Plans and feedback since then indicates that the overriding factor is a demand for managed linear routes – well defined, maintained and signposted paths often in close proximity to communities. This applies to cycling and horse riding as well as walking and, as a means of access to reach destinations for other activities, such as water based recreation and climbing. Public rights of way and other linear routes provide this certainty when visiting the countryside and, if well managed, they provide people with the confidence to explore often with a reasonable standard of access. We accept that if paths are not well sign posted and way marked the public may be reluctant to use them. More recent research conducted by the Pembrokeshire Coast National Park Authority in November 2013 confirmed that the majority of respondents to a Citizens' Panel survey (90%) identified the improvement of paths and promotion of walking opportunities as a priority rather than a change in the law to walk anywhere in the countryside.

We do not believe that a model based on Sweden, Norway or Scotland will guarantee a connectivity of access opportunities due to the nature of the Welsh landscape. That is, it does not have the expansive nature of those examples either in land or water; it has more variable land-use; more intensive farming and condition of boundary crossing furniture. Above all, a landscape which is more densely populated and managed principally for agriculture, not public access.

Generally, research suggests that low participation in outdoor recreation is due not to a lack of physical access opportunities but a range of more deeply entrenched socio-economic barriers. National park authorities have been tackling these barriers with great success through a range of projects and initiatives in recent years.

The success of various initiatives such as Steps to Health, Walkability, Your Park, working with outdoor activity providers, Crossing Park Boundaries and MOSAIC are clear evidence that such intervention is crucial in yielding an increase in participation levels. Many schemes greatly exceed their targets in terms of participation levels and have the capacity to become self-sustaining following establishment. National park authorities are therefore well placed in addressing poverty of opportunity to pilot innovative work in both increasing physical access to trialling approaches that seek to promote behaviour change with regard to countryside access and active lifestyles for disadvantaged communities.

It is accepted that some people will not understand what their access rights are under current legislation and that this may be a barrier to exercising them. However providing access as per Sweden, Norway or Scotland may not lead to increased participation as it will require a major shift in perception and mind set amongst the public and land owning communities if people are to make full use of new rights. It must be borne in mind that most of the visitors to Wales' national parks come from England, where at present we share the same access arrangements. Our discussion with colleagues in the Scottish national park authorities suggests that the vast majority of people in Scotland use "Core Path Networks" and do not exercise their wider rights across enclosed farm land. The decadal review of the access provisions of the Land Reform Act 2003 showed that the Core Paths Network is not delivering the provision of linear access desired by the public.

It is difficult to see therefore how a shift in access legislation will make any significant impact on participation levels. The Welsh Government would arguably achieve improved outcomes by ensuring that a wide range of existing community outreach and social inclusion work continue to be an important activity for Access Authorities.

Economy

In order for the case for a right of responsible access to all land in Wales to be strengthened, we consider that it needs to be demonstrated how the introduction of a new right of access would benefit the Welsh economy. Evidence needs to be provided that having different access arrangements in Wales would lead to an increase in visitor numbers and an increase in spend. We are not clear how a new right of responsible recreation would increase spending unless it encouraged people to stay for longer. We are not aware of any research that suggests that the current access legislation deters visitors from staying, rather it may be that the current resource is not managed to an adequate standard (probably due to lack of resources or less focussed direction of resources because of the current duty to manage the entire public rights of way network). We are not in receipt of requests from the public for more area based access; the general feedback is for better maintained linear routes within the existing network and on access land.

We have found from experience that the quality of access opportunities in terms of well-maintained and promoted routes is more important and vital to encourage return visits. Bad experiences where land is not managed for public access would not encourage repeat visits. The economic return based on well managed linear access, including circular walks, generally co-exists well with agriculture and has the support of rural communities and the farming industry in Wales. The wider effect of access provision on intensive agricultural systems must be considered.

Walking is by far the dominant visitor activity in Wales and leisure walking generates a direct expenditure of £632M (The Economic Impact of Walking in Wales 2011). The Pembrokeshire Coast Path and Snowdon are key economic assets that rely on the management of linear access. The Wales Coast Path likewise is becoming a major attraction. We suggest that the next step in optimising the economic return on the Wales Coast Path is to build on the success of the Pembrokeshire Coast Path and replicate the development of access opportunities in the path network of the coastal corridor of Wales. Similarly the development of a connected network of core paths or key routes across Wales could promote longer stays, walking holiday itineraries and greater economic impact. Future public rights of way legislation could assist this goal.

Visitor Experience

We have already mentioned that most walkers/users desire well managed linear access with confidence that they will not experience barriers and poor sign posting. Our view is that a "Core Path Network" could deliver this but we would expect it to be a reduced version of the current public rights of way network. The trade-off for this would be that visitors would have a right to roam across uncultivated farmland and open country (so long as they complied with the Access Code). However there would be no specific provision for walkers exercising their wider rights and they would be required to try to find their own way around or across fields and gates. In our view (borne out by Scottish colleagues) most visitors would not take up this offer and the useable access would therefore be reduced.

We also anticipate that there is likelihood for conflict especially on cultivated land and in the vicinity of farm buildings where land owners may be suspicious of the intentions of some visitors and frustrated at the potential for disruption of farm management.

Working with partners and land managers

The three Welsh national park authorities are countryside landowners themselves and work closely with the country land owning and farming community, not only in the management of public rights of way and access but also in the delivery of landscape, nature conservation schemes and projects e.g. The Nature Fund.

Most of the land in national parks and the countryside of Wales is, however, in private ownership of some kind and it is unlikely that a model based on Sweden, Norway or Scotland would be well received by the farming community. Problems of trespass, especially uncontrolled dogs and *de facto* access to water still generate many complaints. There is a danger that if a model based on Sweden, Norway or Scotland was introduced it could polarise relationships between rural and urban areas and adversely affect the welcome for visitors in the countryside. The contrast between the successful establishment of the Wales Coast Path and the problematic implementation of the English Coastal route with its "spreading room" indicates the problems of introducing area based access in lowland landscapes.

It should be noted that stocking densities are much higher in Wales and sheep farming on upland commons is much more extensive in Wales than in Scotland and brings with it a different set of issues. In Scotland deer are more common and their management is less susceptible to disturbance by dogs.

The landowning community will need to be convinced that creating a right of responsible access will not cause an undue burden on them in terms of land management. The situation in Scotland (and to a lesser extent the Countryside and Rights of Way Act 2000) demonstrates that wider access rights may not be taken up to their full extent. However if this is the case landowners will inevitably question why they are being introduced.

Issues relating to occupiers' liability, strict liability for livestock and trespass would all need clarification or amendment as these would be major concerns for landowners. Protected habitats and species would also require consideration. Access in a hedged and fenced landscape, which may have impenetrable barriers, especially on farm boundaries, could be problematic. Extending area based access to horse riders and cyclists is likely to be even more problematic both in terms of landowners' perceptions and practical management.

We are therefore genuinely concerned that the general goodwill and cooperation of the land owning and farming community will be adversely affected and have a major impact on our working relationships with the sector and our ability to manage countryside access and conservation, critically, without bringing any major public benefit.

A fundamental principle of the access rights in Scotland is that they are conditional on being exercised responsibly by the public and their understanding of a 150 page code of conduct. Landowners will look to national park authorities and local authorities to help enforce compliance in this regard. One of the criticisms of the Scottish legislation resulting from the decadal review is the problem of arbitrating disputes where landowners challenge access rights, as these can be long drawn out issues and costly for local authorities. Our staff

would be best deployed in managing and proactively improving the existing access provision rather than dealing with problems and disputes that would inevitably arise from a general right of access. The introduction of new access rights would also have to be balanced against the cost of maintaining waymarking, signage and providing additional access furniture in the countryside. This is particularly pertinent when resources to maintain networks are dwindling.

Conclusion

The response of stakeholders to the access review of 2013 demonstrated that there were very polarised views in respect of proposals to introduce a new access settlement in Wales which allows much greater use of land for recreation. If the introduction of a new access settlement is focused on the review of the public rights of way network to improve linear access provision there may well be a consensus to achieving such an objective.

Question 12

What approach do you advocate to improve opportunities for responsible access for recreation on inland waters?

Access on inland waters is currently one of the most contentious issues that we face in terms of access management. This is largely because of the uncertainty in the law as to whether there is a right of public navigation on inland waters. The legal issue of whether there is a right of public navigation on inland waters needs to be determined as a starting point.

Where people currently use inland waters for paddlesports, access to them relies on a mixture of existing rights of way, trespass, voluntary path agreements or local arrangements – many of which rely purely on the goodwill of the constituent parties and may be very informal in nature.

In contrast to the lack of evidence of demand for more area based access to enclosed land, there is anecdotal evidence that demand for access to and on water is greater.

The way forward depends largely on the determination as to whether there is a legal right of navigation to inland water. If it is determined that there is no legal right of navigation we would suggest that the Welsh Government should introduce measures to enable navigation in a managed way. The Countryside and Rights of Way Act 2000 introduced rights of access to land mapped as access land with certain exceptions and with the possibility for land owners to restrict access in some circumstances. We suggest that if legislation is required to provide navigation rights then appropriate measures should be available to land owners and/or riparian owners, Natural Resources Wales or navigation authorities to restrict navigation (on a temporary basis) for legitimate reasons as is the case with access land.
If it is determined that there is a right of public navigation on inland waters we would recommend that relevant stakeholders be encouraged to enter into constructive dialogue to ensure that the waterways are available to all on an equitable basis and to provide solutions to specific management issues. Dialogue between stakeholders such as The British Mountaineering Council and the Royal Society for the Protection of Birds on other terrestrial situations, such as climbing on sea cliffs where birds nest at certain times of the year, has resulted in amicable arrangements being negotiated that are respected by both parties.

In terms of access to inland water across land, a system based on Part 1 of the Countryside and Rights of Way Act 2000 which would allow access authorities to improve provision where no legal or permissive access currently exists would appear reasonable.

In terms of practical application this could be based on the provisions contained in Part 1, Chapter 3 of the Countryside and Rights of Way Act 2000 where powers are currently available to the relevant access authority for the creation of suitable access/egress points where necessary and where suitable low key infrastructure, typically, riverside steps, launch points, boardwalks, dedicated stiles, signage and parking can be created.

Both terrestrial and navigation rights would need to be balanced with safeguards for landowners in relation to their potential liabilities so there is a necessity to offer reduced landowner/tenant occupier liabilities (again similar to those in Section 13 of the Countryside and Rights of Way Act 2000) but should include both natural and man-made features such as overhanging vegetation (including trees), water borne debris, waterfalls and gorges and also include certain man-made features such as fencing, weirs, spillways, walls, pipes, culverts, locks, embankments as well as livestock.

We would recommend that true tidal limits should be set by Natural Resources Wales in order to allay any disagreements or disputes that have arisen and do arise over such issues.

Question 13

What approach do you advocate to improve opportunities for responsible access for recreation on the coast and in the marine environment?

As stated in the Green Paper access to coastal waters has traditionally been less controversial than access to inland waters. As a result, it is somewhat difficult to see how the present arrangements can be improved. Provision is good in terms of launching and landing facilities but there is great potential again to improve participation by promotion, events etc. There has been a notable increase in athletic events involving swimming and rowing. The stricter control of powered water craft could encourage more bathing, sail boarding and canoeing.

As mentioned elsewhere, we would recommend that true tidal limits should be set by Natural Resources Wales in order to allay any disagreements or disputes that have arisen and do arise over such issues.

Question 14

What would be the advantages and disadvantages of a comprehensive statutory code of conduct for outdoor recreation in Wales?

The main advantage of a statutory code of conduct would be the ability to pull all the current guidance into one place (as is the case in Scotland). Guidance is currently disparate and that contained in circulars is not easily accessible to the public. Whilst the Countryside Code has a long history in England and Wales it largely appears, that for all the publicity surrounding it, the public have little understanding of its principles.

There is a danger that the same would apply to a statutory code in that there is a difficult task in promulgating such a code and getting the public to understand it and realise the consequences if it is not adhered to.

We would have concerns about the policing of such a code given that resources for local authorities and enforcement authorities are in decline. It is also unlikely that minor countryside infringements are likely to be a priority for enforcement authorities, assuming that they have a part to play. Many of the current problems in the countryside are civil in nature rather than criminal. Possibly the best way forward would be to continue to promote the Countryside Code in the educational curriculum and elsewhere as it is the lack of awareness of the code, rather than its core principles, which appears to cause problems.