

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

To bring Members' attention to the recent publication of the Green Paper and to seek Members' approval for the preparation of a formal response to the consultation.

Background

In July 2013 the Welsh Government Minister, John Griffiths, announced that an Access & Outdoor Recreation Bill would begin its passage through the National Assembly. Following this announcement as part of an access review, the three National Park Authorities of Wales were invited to meet with Welsh Government officers to advise on the legislative proposals for access and public rights of way. The Welsh Government then staged three stakeholder workshops in September 2013 and undertook a range of consultation meetings with interested groups. This National Park Authority coordinated a written response to the Welsh Government on behalf of the three National Park Authorities with regard to a consultation document that the Welsh Government had circulated at its stakeholder workshops. It was the original intention of Welsh Government to publish the Green Paper in December 2013, however, we understand its publication has been delayed due in part to the unprecedented level of responses generated and legislative timetable. Since then there has been little formal contact with the Welsh Government with regard to this matter until the somewhat unexpected publication of the Green Paper on 10th July 2015.

Summary

A copy of the Green Paper has been attached to this report. The Welsh Government acknowledges the social, economic and health benefits of countryside access and sets out a number of principles in its vision for access and outdoor recreation. In order to deliver these objectives a number of key proposals are put forward. The proposals for change are divided into three main sections: access to land; access to inland water & access to coastal waters and the sea. The proposal to develop a new Statutory Code to replace the Countryside Code is also briefly discussed.

Access to Land

This consists of four sub headings:

1. Reform Procedures; dealing with proposals to streamline and harmonise areas of existing legislation in order to remove burdensome and costly procedures, including the recording of public rights of way, the maintenance of routes and the creation, diversion and extinguishment of paths. Consideration would also be given to reviewing the role of Local Access Forums and clarifying the legal situation in relation to dogs in the countryside.

2. Remove Restrictions; involving the removal of some of the restrictions on the range of activities that can take place on rights of way and on access land. This includes the consideration of the introduction of other activities such as camping and hang-gliding on access land and the introduction of higher rights of passage for cyclists and horse riders on public footpaths and access land.
3. Revise Access; this includes the extension of access land designation to other areas of countryside such as woodland and coastal cliffs. It also proposes the strategic review of access opportunities by local authorities with a view to prioritising networks and integrating existing provision.
4. New Rights; an entirely new access settlement in Wales which allows much greater use of land for recreation, introducing a new set of laws. This would in effect extend a right of non-motorised access to all land, similar to the arrangement that prevails in Scotland under the Land Reform Act 2003.

Access to inland water

Access to inland water has long been a contentious issue that has in recent years been investigated by National Assembly for Wales' Sustainability Committee inquiry and relying in the main on voluntary arrangements with a degree of conflict between canoeists and fisherman/riverside owners. The Committee made several recommendations relating to appointing a lead body to regulate the activity and the Green Paper does not discount legislating to establish the rights and responsibilities associated with inland waters, which could potentially provide the clarity and certainty needed to allow for local access arrangements to be established. The stakeholder consultations of 2013 generated a large number of polarised responses in relation to this matter with the three National Park Authorities advocating a voluntary approach to developing new inland water access opportunities.

Access to Coastal Waters and the Sea

Access to coastal waters has traditionally been less controversial than access to inland waters with a consensus that there is a general right of navigation and access to tidal waters, including tidal sections of rivers and estuaries. In recognition of the popularity of the coast as a destination for a range of recreational activities and the development of the Welsh Marine Plan, the Green Paper is asking what approach should be adopted to improve opportunities for responsible access for recreation on the coast and in the marine environment.

Comparisons

The Deregulation Act 2015 contains a small number of provisions relating to PROW, which aim to amend primary legislation to streamline procedures relating to the registration and changes to route and status of PROW. The Act does not make significant changes in relieving the administrative burden for local authorities and by comparison the Green Paper proposals are more far reaching in their scope. The Land Reform Act 2003 in Scotland introduced a wide ranging right of access to most land and inland water for non-motorised recreation.

Options

With regard to access to land, the stakeholder consultations held in 2013 demonstrated a consensus for *1.Reform Procedures*, which we consider is long

overdue and for which there are many suggestions to improve efficiency. There was some consideration also of the approach contained in *2.Remove Restrictions*, notably extending a right to cycle and ride horses on access land and *3.Revise Access*, especially the need to undertake strategic reviews which would build on, and in time, replace the existing Rights of Way Improvement Plans. However, in respect of *4.New Rights* there were very polarised views in respect of this more radical and controversial proposal and concerns over the implications of this approach were raised by the three National Park Authorities of Wales in their response to the Welsh Government. It is disappointing that the introduction of a new access settlement is concerned only to introduce a right to roam to all land rather than consider a radical overhaul of the public rights of way network to improve linear access.

Financial considerations

Any efficiency savings achieved in streamlining PROW procedures could be outweighed by the staff time that will need to be allocated to the introduction and on-going management of new rights of access to the countryside. The implementation of new legislation would generate additional work and would have to be funded accordingly.

Risk considerations

The most significant risk is the affect that new legislation could have on the National Park Authority's relationship with the country land owning and farming community. Most of the land in National Parks and the countryside of Wales is of course in private ownership of some kind. The effective management of countryside access and conservation depends very much on the effective partnership that the National Park Authority has with country landowners. The new legislation must therefore benefit all parties, not only countryside visitors and the recreational users but also the owners and occupiers who host the recreational activity on their land.

Compliance

The core proposals of the Green Paper comply with several Corporate Strategy Objectives notably Outcomes 2 & 3. The National Park Grant letter for 2015/16 from the Welsh Government asked the National Park Authority to "participate positively" in their work to develop ideas for improving opportunities for responsible outdoor recreation through legislative means.

Human Rights/Equality issues

In order to be compatible with the European Convention of Human Rights (the Convention) regard must be had to Convention Rights in the decision making process. Although this Authority will not be the decision maker for this proposal, this report's content and associated recommendation is considered to set out and strike a fair balance between the competing interests. The Green Paper is underpinned by a desire to ensure that people of all means and abilities have the opportunity to enjoy and appreciate the countryside.

Biodiversity implications/Sustainability appraisal

A full impact appraisal of proposals would be needed in order to avoid disturbance of sensitive natural habitats.

Welsh Language statement

No issues.

Conclusion

The National Park Authority strongly supports the commitment by 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. As will be seen from the Green Paper, the proposals will have major implications for the work of the National Park Authority. The Authority's response must therefore be carefully considered, as this consultation represents a major opportunity to shape the legal framework for the future management of public rights of way and countryside access. The deadline for consultation responses is 2nd October 2015. In the meantime, officers will be discussing the proposals with the County Council, Snowdonia and Brecon Beacons National Park Authorities and the many stakeholders represented on the Pembrokeshire Local Access Forum. These discussions will ultimately help to inform the response of the National Park Authority.

Recommendation

Members to indicate the approach they would wish to adopt in preparing a draft response for consideration of the meeting of the National Park Authority on 23rd September 2015.

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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Consultation Document

Improving opportunities to access the outdoors for responsible recreation



Date of issue: 10 July 2015

Action required: Responses by 2 October 2015

Overview

We are seeking your views and opinions on proposals to improve opportunities to access the outdoors for responsible recreation.

The purpose is to explore the potential for simpler more integrated legislation on access to the outdoors and public rights of way.

Full Biodiversity, Climate change, Rights of Children and Young People, Poverty, Equality and Welsh Language impact assessments will be exercised on the proposals during the consultation period.

How to respond

The closing date for replies is 2 October 2015. You can reply in the following ways.

Address:

Landscape and Outdoor Recreation Branch,
Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth,
Ceredigion SY23 3UR

E-mail: AccessandOutdoorRecreation@Wales.GSI.Gov.UK

Tel: 0300 062 2246

Online response form: This is available on our webpage www.wales.gov.uk.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Please telephone us on 0300 062 2246 or e-mail: AccessandOutdoorRecreation@Wales.GSI.Gov.UK to request your copy.

Contact details

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Data protection

How the views and information you give us will be used:

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full.

Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Foreword by the Minister for Natural Resources

Having the opportunity to go to a park, visit the countryside, or to take part in one of the many outdoor activities that Wales can provide is a really important part of every day life for many people in Wales. We are lucky that we have miles of paths that let the public explore and enjoy nature, along with world renowned rock climbing and mountain biking. Outdoor activity not only provides benefits of healthy exercise and the opportunity to spend time with the family, it is also a big income generator for our economy. There are many businesses across Wales involved in providing activity opportunities and related facilities, including places to stay and eat; and the manufacturing and distribution of equipment.

Access to the outdoors for recreation is a key part of our natural resources policy. The Environment (Wales) Bill seeks to introduce a new, more integrated and sustainable approach to managing our natural resources because of the many services, including outdoor recreation that they provide. There is also the valuable contribution that activity opportunities can make to reaching the ambitious long term goals set out in the Well-being and Future Generations (Wales) Act 2015, for a prosperous; resilient; healthier; more equal Wales; with cohesive communities; and a vibrant culture and thriving Welsh language. Improvements to the way we manage and provide public paths would help develop the culture change needed to advance priorities identified under the Active Travel (Wales) Act 2013. By providing active travel routes and creating more doorstep opportunities for recreation we would help to reduce the need for car journeys.

It's important that we can continue to meet current and future recreation needs. But we need to do this in ways that reduce the administrative burden on the local authorities who care for paths or the land owners and managers who sometimes need to reconcile farming and forestry needs with the demands of public access.

This is why I am pleased to publish this consultation on improving opportunities to access the outdoors for recreation.

I've heard many views expressed about how the current system can be improved. This consultation gives you the opportunity to consider the proposals and to engage constructively in the discussion so that we can move towards creating a system of access to the outdoors that works best for Wales.

Glossary

Bridleway	Paths that may legitimately be used by walkers, horse riders and cyclists
Byway Open to All Traffic (BOAT)	Routes that may legitimately be accessed by all users, including those in motorised vehicles
Definitive Map and Statement	Local authorities have a duty to keep a record of all the public rights of way in their area. This record is in the form of a paper based map and accompanying statement.
Definitive Map Modification Order (DMMO)	A legal order to amend the definitive map and statement
Event Order	A legal order creating or extinguishing a public rights of way.
Footpath	Paths that may legitimately be used by walkers. Most rights of way are footpaths.
Gross Value Added	The measure of the contribution to the economy of each individual producer, industry or sector in the United Kingdom
Higher Rights	A term often used to describe rights other than walking on public paths and other highways, namely bridleway and byway rights.
Primary Legislation	Acts or statutes
Restricted Byway	Paths may legitimately be used by the same groups as bridleways, while also allowing horse-drawn carriages and other non-motorised vehicles
Rights of Way Improvement Plan (ROWIP)	Local authorities are under a duty to develop plans that identify, plan and prioritise improvements to their rights of way network
Roads Used as Public Paths (RUPPS)	Paths mainly used for footpath or bridleway purposes but which may or may not have vehicular rights. The term was superseded by “restricted byways” under the Countryside and Rights of Way Act 2000.
Secondary Legislation	Statutory Instruments, Codes, Orders, Regulations

1. Introduction

A key objective of the Welsh Government is managing our natural resources in a joined up way that delivers real and lasting benefits for people, the environment, the economy, our culture and our communities. A critical element of this is enabling people of all means and abilities the opportunity to enjoy and appreciate the outdoors, whether that be our spectacular landscapes or green spaces in urban areas. The ability of people, particularly those affected by poverty, to have access to recreational amenities is crucial in order to have a positive effect on physical and mental health.

Visitor and resident spending on recreational activities is important to local communities and to the wider economy of Wales. Growing visitor numbers to Wales will mean competing with other destinations, which will depend on the facilities and infrastructure on offer.

The health, social, and economic benefits of outdoor recreation, whether walking, cycling, horse riding or enjoying nature have been recognised and promoted by the Welsh Government for over 10 years. In its strategic plan for 2011-16, the Programme for Government, the Welsh Government commits itself to:

- improve public access to land and water with better access for families and young children;
- improve rights of way for cyclists and walkers; and
- create the Wales Coast Path by 2012.

The commitment to complete the Wales Coast Path in 2012 was delivered on time. It attracted worldwide media coverage and has generated a great deal of income for Wales.

The outdoors provides opportunities for a wide range of activities which, when carried out responsibly, co-exist with each other and with land uses such as farming and forestry. Outdoor recreation brings substantial benefits to Wales' economy and generates significant health benefits for the population. Giving people better opportunities to enjoy the outdoors has the potential to help to address many of the policy objectives that the Welsh Government is pursuing. These include supporting the economy through providing opportunities for growth-jobs and income generation, encouraging vibrant rural communities, tackling poverty and improving both physical and mental health.

Since devolution significant progress has been made in expanding access to various forms of outdoor recreation. There has been a threefold increase in the amount of land accessible by right to the public through implementation of the statutory right of access on foot to around 360,000 hectares of open country and registered common

land together with 100,000 hectares of Welsh Government woodland managed by Natural Resources Wales. An estimated additional 4,000 miles of public rights of way are now easy to use since work began in 2000 on the implementation of Improvement Plans.

However, a number of stakeholders are advocating change, with user groups, landowners, and local authorities suggesting that the current legislation doesn't effectively facilitate or regulate outdoor recreation activities. The current legislation is perceived to be out-dated, disjointed, burdensome to administer, and often difficult for the public to comprehend. Some user groups express frustration at the restrictive nature of current rules which cater predominantly for walkers and to a far lesser extent for horse riders and cyclists. Landowners are frustrated by the complex and costly procedures related to public rights of way and the ambiguity around the regulation of certain activities or irresponsible behaviour. Local authorities that have primary responsibility for administering the current process have indicated that reform of the administrative arrangements is overdue. The costs and associated procedures impede their ability to deliver path networks that are fit for purpose.

The impact of low levels of physical activity on health, particularly amongst deprived communities, is a serious concern for this Government. If outdoor recreation is to play its part in helping to address this issue then it means being able to provide for a wider range of activities and improved access close to where people live in a way that is both easy to communicate and use. This kind of provision reflects trends in the way that people wish to use the countryside but can be difficult to deliver through the existing legislation.

This consultation will explore issues around providing the right recreation opportunities in the right places. Its purpose is to explore the potential to develop contemporary legislation that will better reflect current and future demands for outdoor recreation and provide a new regulatory framework which allows sensible and responsible use of land and water for non-motorised recreation, with fit for purpose safeguards for land management, other activities and wildlife.

It is not the Welsh Government's intention through this consultation to amend, or seek the amendment of legislation relating to hunting, fishing and shooting, though comments are welcome on how these activities may be positively or negatively impacted by any potential changes that are within scope.

To inform the content of this consultation the Welsh Government announced a review of the legislative framework for access and outdoor recreation. The initial pre-consultation period, which included three workshops, allowed interested groups to state their views and facilitated important discussions about the issues involved. This document has captured and structured the wide range of evidence and opinion which was presented during this process. Views are now being sought from

individuals and organisations, in particular those who haven't been able to contribute to the review to date, about the existing legislative and regulatory framework governing access to the outdoors for recreation. We want further evidence on how the current arrangements could be improved, whether that is through amendments to existing legislation or the potential creation of an entirely new regulatory framework.

There is no intention to introduce legislation on access in this Assembly Term (2011-2016). Ideas and comments are sought on what might be done through legislative and non-legislative means. Our views will inform priorities for the remainder of this term, and the decisions of a future Government.

2. Our vision for access and outdoor recreation in Wales

It is clear that whilst Wales has seen an increase in the opportunities available for accessing the outdoors since devolution, there is more that could be done to improve existing arrangements through both legislative and non-legislative means. The real challenge is to make improvements to access to deliver multiple benefits, whilst addressing concerns about negative impacts of access in some places and the potential impact of increasing access rights further. The Welsh Government's view is that the overall objective should be to create a framework which allows sensible and responsible use of land and water for non-motorised recreation, with fit for purpose safeguards for land management, other activities, and wildlife. This framework should be underpinned by a set of guiding principles.

The Welsh Government proposes an approach that:-

1. Encourages greater engagement with the outdoors and nature and makes the places where people live more attractive and enjoyable by ensuring that there is easy and affordable access to quality local green space and outdoor recreation activities close to where people live, improving community cohesion and tackling one of the symptoms of poverty.
2. Improves promotion and make better use of the opportunities and infrastructure already available for public access to the outdoors.
3. Improves the opportunities for responsible recreation through the creation of a new framework for responsible recreation on a secure and clear basis, while providing appropriate safeguards against irresponsible use of access.
4. Increases flexibility in the system to allow for a wider range of activities by introducing new mechanisms which modernise the existing network allowing for the positive management of multiple non-motorised recreation activities.
5. Streamlines and harmonises regimes by coordinating regulations governing public rights of way and access provision, and removing some existing anomalies and bureaucracy.
6. Provides safeguards for day to day land and water management activities, especially in terms of clarifying responsibilities, and allowing for the protection of the natural environment, wildlife and features of historical and cultural significance.

- . Provides safeguards for existing commercial activities and opportunities for new.
- . Fosters common understanding and support for reasonable and responsible access opportunities.

These principles should provide a yardstick against which we measure the current approach and proposals for reform.

Question 1: What are your views on the principles outlined above? If you would suggest changing them, please explain how and why.

3. The benefits of outdoor recreation

There is widespread acknowledgement of the benefits of outdoor recreation.

Outdoor recreation makes a significant contribution to the mental and physical **health** of the population in Wales, with nearly a third of people meeting the required levels of physical activity via their participation in outdoor pursuits¹. There is a considerable body of evidence that demonstrates that increasing levels of physical activity has beneficial consequences in terms of increasing lifespans and reducing the incidence of chronic disease, including cardiovascular disease, some cancers, type II diabetes and osteoporosis. It has been estimated that the cost of physical inactivity to Wales is around 650 million per year.²

Increasing opportunities for accessing the outdoors for recreation, whether for walking, cycling, or any other responsible recreational activity is an integral part of the Welsh Government's drive to increase physical activity levels within the population of Wales.

While physical activity makes an obvious and well documented contribution to healthy living it is also worth noting that evidence exists that just being in the natural environment or green space can significantly improve mental well-being. 1 in 4 adults in Wales experiences mental health problems or illness at some point during

¹ Outdoor Recreation and Health in Wales – Summary Report by the Countryside Council for Wales (February 2012)

² *Climbing higher: creating an active Wales* by the Welsh Government 2009

their lifetime³. Based on figures for 2009-10, the annual cost of mental ill health in Wales is estimated to be £1.2 billion.⁴ Passive or less strenuously active contact with green spaces can be psychologically and physiologically restorative, reducing blood pressure and stress levels.⁵

Social benefits of participation in outdoor recreational activity to quality of life have now been clearly evidenced. For the individual these include simply having fun, developing social networks, acquiring knowledge and skills, and gaining a sense of achievement. Communities also reap rewards as people take part in common activities and some individuals are diverted from crime and antisocial behaviour. Having quality green spaces for recreation can help to foster a sense of community ownership and a sense of pride and enthusiasm for where people live whether in an urban or rural community.

Economic prosperity and improved well-being are the most significant of a wealth of benefits that enjoying the outdoors can provide for individuals, communities, and society.

The Wales Visitor Survey 2013 showed that of those visitors to Wales who responded to the survey, either from the UK or abroad, 30% were motivated to take part in outdoor activities during their trip.⁶

Walking as an activity generates £562m of additional demand in the Welsh economy, £2.5m of Gross Value Added (GVA), and around 11,900 person-years of employment. This is highlighted by the Wales Coast Path, which alone generates an estimated £32.2m of additional demand in the Welsh economy, £16.1m of GVA, and 30 person-years of employment. Our experience of the Wales Coast Path has shown how a partnership approach to providing good quality recreational opportunities and effective marketing can raise the profile of Wales around the world drawing in visitors as a result.

Some 2.1 million people in the UK participated in some form of boating activity during 2012, of which 1.2 million went canoeing.⁹

³ Together for Mental Health A Strategy for Mental Health and Wellbeing in Wales by the Welsh Government (October 2012)

⁴ Together for Mental Health A Strategy for Mental Health and Wellbeing in Wales by the Welsh Government (October 2012)

⁵ *Preference for Nature in Urbanized Societies* by Van den Berg et al, cited in *Benefits of Green Infrastructure* by Forest Research October 2010

⁶ The Wales Visitor Survey 2013 The Welsh Government 2013

⁷ The economic impact of walking and hill walking in Wales Cardiff Business School 2011

⁸ Cardiff Business School (2012) *The Economic Impact of Wales Coast Path Visitor Spending on Wales*

⁹ *Watersports Participation Survey 2012*

In addition there are significant economic benefits to having greater access to green spaces. Proximity to high quality green space, like parks, increases property values by 2.6 -11.3 %;¹⁰ and every £1 of public spend on green space projects levers in £4.20 of private sector investment, boosting regeneration.¹¹

The benefits to the **environment** of encouraging responsible access to the outdoors are that people, especially those with no day to day contact with nature, learn to appreciate the natural environment and the need to protect it. The majority of Wales' population live in urban areas, and it is important that through outdoor recreation they have opportunities to learn about and experience our cultural and natural heritage; and appreciate and understand the nature of farming, forestry, fishing and other rural land and water uses.

4. The current position: progress and challenges

4.1 Current legislation and guidance

There are a large number of statutes that make up the legislative framework for access and rights of way. Some of the most significant are mentioned below, though this is not an exhaustive list.

The **National Parks and Access to the Countryside Act 1949** was the first significant legislation to establish rights for visiting the countryside. The 1949 Act acknowledged the need for a constructive approach to issues of access and conservation.

Under the 1949 Act county councils were given the task of surveying their areas and recording and mapping rights of public access. If necessary, county authorities were able to secure public access to areas of open country within their boundaries.

Most of the provisions relating to rights of way have been repealed but many of those relating to access to open country and nature reserves are still current.

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 1968 Act also introduced the power for local authorities to designate country parks.

¹⁰ Forest Research (2012) Economic benefits of greenspace A critical assessment of evidence of net economic benefits

¹¹ Forest Research (2012) Economic benefits of greenspace A critical assessment of evidence of net economic benefits

The **Highways Act 1980** includes the main powers and processes for creating, diverting, and extinguishing public rights of way. It also sets out the duty of local authorities to maintain public paths.

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, down. Access land in Wales extends to around 460,000 hectares of countryside (including 100,000 hectares of Welsh Government forests). 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.

Most recently the **Active Travel (Wales) Act 2013** makes it a legal requirement for local authorities to map and plan for suitable routes for active travel and to build and improve their infrastructure for walking and cycling every year.

Each of these creates or defines statutory responsibilities for Welsh Ministers, local authorities, Natural Resources Wales, and draws in the Planning Inspectorate to handle objections. It is also from the statutes above that the public are expected to grasp where they can go and what they can do, and that owners of property are expected to understand their obligations.

There are a number of related circulars and guidance such as WO 5/93 on Public Rights of Way, Planning Policy Wales and Technical Advice Note 16: Sport, Recreation, and Open Space (2009). In addition there are circulars on some specific technical matters such as special extinguishments and railway crossings. Most of the formal and statutory guidance associated with access and public rights of way is in need of updating.

4.2 Progress

Since devolution significant progress has been made, particularly on the extent of the resource that is available for use for various forms of outdoor recreation.

Since 2005 there has been a threefold increase in the amount of land accessible by right by the public through implementation of the statutory right of access on foot to

around 360,000 hectares of open country and registered common land together with another 100,000 hectares of Welsh Government Woodland Estate, managed by Natural Resources Wales.

In 2002 the National Trail network was increased by the opening of Glyndwr's Way National Trail; adding 135 miles of the highest standard trail to the existing 363 miles of the Pembrokeshire Coast Path and Offa's Dyke Path.

The wider public path network has also been improved with an estimated additional 4,000 miles of public rights of way that are 'easy to use' since work began in 2000 on the implementation of the Rights of Way Improvement Plans (ROWIPs).

The Programme for Government commitment to complete the Wales Coast Path in 2012 was delivered on time and within budget. The opening of the Path attracted media coverage on a worldwide stage. Research estimates that visitor spending attributable to the 1,600 mile Wales Coast Path equates to around 16 million gross value added to the Welsh economy each year.

There have also been improvements in opportunities for cycling, both on and off-road. The Active Travel (Wales) Act 2013 places duties on highway authorities to consider the needs of walkers and cyclists and make better provision for them. It also requires both the Welsh Government and local authorities to promote walking and cycling as a mode of transport. The aim of the Act is to encourage people to rely less on their cars when making short journeys to or from a workplace or educational establishment or in order to access health, leisure or other services or facilities. Linking green spaces to active travel networks will have a significant and positive impact on the natural and built environment; people's health and well-being; and on people's ability to afford to participate in recreational activities.

There are some 1,200 miles of the National Cycle Network in Wales already providing for an estimated 2 million walking and cycling trips annually; and in 2012, a total of over 26,000 rides were recorded at Natural Resource Wales' purpose built trails, including Coed Brenin. Partnership investment in the Mountain Biking Wales centres of excellence ensures Wales continues to be recognised as one of the leading mountain biking destinations in the world, with approximately 30 miles of trails. Natural Resources Wales hosts over 4 million visits annually to the Welsh Government woodland estate, providing high quality paths, trails, events and activities.

In addition the Well-being of Future Generations (Wales) Act 2015, the Environment (Wales) Bill and the Planning (Wales) Act 2015 are closely linked in the wider programme of reform and simplification to deliver economic, social, cultural and environmental benefits for Wales. Improvements to the procedures and options available for outdoor recreation will complement this and help to increase public understanding and enjoyment of our natural environment.

4.3 Changes in participation

While some rights of access have increased over the last decade, the Wales Outdoor Recreation Survey (Natural Resources Wales) suggests that the proportion of Welsh residents undertaking outdoor recreation frequently has remained fairly flat, at around 20%. Some 60% of people living in Wales state they would like to visit the outdoors more often, with one of the barriers reported being 'a lack of suitable places to go'.

In addition, the ways in which people use the countryside are changing with patterns of recreational behaviour indicating that people are increasingly taking part in more than one activity. When this is combined with a preference for convenient 'bite-sized' doorstep opportunities, it suggests that we need better local opportunities which allow a diverse range of activities. This can be difficult to achieve through the existing access arrangements.

4.4 Challenges

It is apparent that the current legislative framework in Wales throws up a number of challenges to landowners, users and the public bodies responsible for implementing it. Some of the key challenges identified are highlighted below.

Modern outdoor recreation needs

The current network of public rights of way hasn't changed significantly since the 1950s and is based predominantly on past historical use of routes. The paths that are today viewed as the basis of a network for largely recreational needs were recorded because they may have linked up isolated rural properties and features, such as a church or well, or because they were used to deliver the post or other goods. As a result the definitive map includes paths that end with no access to other paths or a metalled road or cross straight through farm yards. Such paths can be a problem for both users and landowners.

The current system legislates for individual paths rather than networks and has resulted in routes not linking up and in gaps in provision for horse riding or cycling as examples. If the social and economic benefits of outdoor recreation are to be realised, the legislation which enables it needs to evolve to take account of changes in preferences about participation.

Existing provisions are also viewed as inflexible, or place too high a cost on making changes to rights of way. This can impact on the development of networks and trails of potentially high recreational value by making it difficult for local authorities to secure public access in perpetuity. It can also create difficulties for local authorities and landowners where it might otherwise be practical to divert a right of way away from busy farm yards or other less desirable areas.

Current provisions – involving different categories of rights for different status of path, which may not even reflect conditions on the ground - can create confusion and are focussed predominantly on provision for walkers, which limits capacity for healthy exercise and the economic benefits of activity tourism. Recent legislation, namely the Countryside and Rights of Way Act 2000, hasn't addressed the need for a wider range of outdoor pursuits and has failed to address access to some important areas, including parts of the coast, countryside on the edge of urban areas, and water.

It appears impractical to try to address today's outdoor recreation needs with a sixty year old system of paths regulated by onerous and costly procedures.

Costs – time and resource

There is a high cost to administering the existing system, due to the complex and disproportionate duties or procedures placed on Natural Resources Wales, local authorities, landowners, and users.

Local authorities have primary responsibility for public rights of way. They are subject to statutory duties to maintain them and ensure that they are adequately signed and free of obstruction. They are also responsible for keeping and updating the definitive map and statement. Changes to these legal records as a result of the creation, diversion or extinguishment of paths or the correction of an existing administrative mistake on the record requires definitive map modification orders. Objections to the making of such orders by local authorities are dealt with by the Planning Inspectorate on behalf of the Welsh Ministers.

A key complaint by local authority rights of way teams is the cost of advertising orders and changes to their rights of way network. Existing requirements to advertise in certain publications mean that they must spend approximately 600 on advertising alone when they intend to make a change to a path. Other costs include legal and administrative expenses. In all the administrative cost of diverting or extinguishing a path is between 1500 and 3000 even where this raises no objections. This cost can rise if the case is more complex or if there are objections. Most of these costs can be passed onto the applicant in the case of public path orders, which makes applying for such an order (even when the alternative route is across the same property) a very expensive business.

Many local authorities have a backlog of cases relating to the alignment of their networks, including creation and diversion orders under the Highways Act 1990 and Definitive Map Modification Orders (DMMOs). Often it is the case that insufficient evidence has been submitted with an application or provided to support a change in the definitive map and statement. Some cases have remained unresolved for decades. In such cases often the applicant has either moved on, lost interest or even died and there is currently no way to transfer ownership of these applications.

The key challenge is whether a more reasonable balance can be struck between reducing the administrative burden and protecting the public rights which are inherent in these paths.

Practical difficulties

There are many actual and perceived practical difficulties to allowing increased access to land and water under current legislation, or reducing access in areas where there is no demand but where a management burden exists. These include the potential or actual conflict with land and livestock management, nature conservation, and even between different outdoor activities.

There are many paths, for example, that pass directly through farm yards. This is often raised as a safety and security issue by farmers and as something which detracts from enjoyment of an activity by users who fear loose dogs, livestock or are concerned that they themselves will get in the way or be a nuisance to farmers. The expense of moving these paths and tests set by the legislation prevent many farmers from having them diverted, leaving routes that are inconvenient to the owners and awkward for the users.¹²

Liabilities are also a concern for many landowners, in particular where they may wish to keep livestock in fields where there is public access. There are already provisions that ban certain breeds of bull from being kept in fields crossed by rights of way and requiring farmers to assess health and safety risks on their land.¹³ On the whole, farmers are very aware of the dangers posed by their animals yet incidents of attacks by cattle and some other animals do happen. Difficulties can occur if a walker, or other user, fails to close a gate allowing animals to escape, or shuts a gate when they should not preventing livestock from reaching water supplies. Out of control dogs near livestock, especially lambing ewes is also a big concern for farmers, though evidence collected by the National Sheep Association suggests that the majority of dog attacks on sheep occur where there is no public access.¹⁴

Competing uses of the outdoors can also create significant difficulties. Access to inland water is the most challenging example of this. Anglers and netsmen argue that canoeists and wild swimmers disturb fish and can destroy spawning grounds. They also say that canoeists can create problems for river management by damaging the river banks. Canoeists argue that anglers and netsmen are keeping a significant resource to themselves and preventing the use and enjoyment of the

¹² These tests include consideration of convenience, enjoyment and the end points of the existing and proposed routes.

¹³ Section 59 of the Wildlife & Countryside Act 1981 and Section 3 of the Health and Safety at Work Act 1974 respectively.

¹⁴ Sheep worrying survey results, National Sheep Association, <http://www.nationalsheep.org.uk/advice-for-farmers-detail.php?AdviceID=8>.

water by others. There is only anecdotal evidence to support most of these claims. Both argue that common law finds in their favour.

Question 2: Tell us your views on the issues highlighted above, and whether there are other key challenges you believe need to be resolved?

5. Exploring the opportunities for change

To help inform the gathering of evidence and views on the degree to which there is a need to amend the existing legislative framework varying degrees of change are outlined below. These proposals reflect the wide ranging discussion during the initial stages of the review. They are not fixed and should be considered as illustrative of the types of changes that could be implemented.

5.1 Access to land

A) Reform Procedures

These proposals are about making improvements to the administration of current access legislation.

Modifications could be made which would focus on streamlining and harmonising areas of existing legislation in order to remove burdensome and costly procedures, including the recording of public rights of way, the maintenance of routes and the creation, diversion and extinguishment of paths. Such changes are mainly to the technical aspects of rights of way law, and some are outlined below. This is not an exhaustive list but rather a flavour of what might be improved/changed.

To simplify the recording of public rights of way. We would like you to consider ideas you may have for making modifications to existing legislation that could reduce the cost and time spent on making changes to the definitive map and statement. For example:

Would there be merit in requiring the digitisation of definitive maps and statements and allowing applications for definitive map modification orders (DMMOs) and other applications relating to rights of way to be made electronically. Most Welsh local authorities have digitised their maps, but these are working documents and cannot be regarded as their definitive maps. If a member of the public wishes to view the map, they must still request to view the paper copy usually held at a council office.

Applicants for DMMOs currently have to serve notice on all relevant land owners and occupiers before the local authority can consider the application. Should this

remain the case or should local authorities be required to do this once they are satisfied that the evidence provided meets a standard basic evidential test

Consider the way in which objections to orders made by local authorities are dealt with, and the implications of successful objections to the order. Should all cases be submitted automatically for consideration by Welsh Ministers or are there certain types of objections that should be dealt with through further deliberation by the local authority

To simplify the procedures for creating, diverting or closing rights of way. We would like you to consider whether existing legislation should be amended to improve these procedures and what could be done to reduce the cost and time spent on making changes to the public rights of way network. Suggestions include revising the Highways Act 19 0 to allow local authorities to dedicate new rights of way on their own land; and allowing a single one event order for diverting a route rather than two as is currently required - one for creating the new route and one to extinguish the old route. We would also like you to consider whether changes are needed to the compensation provisions under the Highways Act 19 0 relating to the creation or diversion of paths.

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?

To improve provisions available to local authorities for making improvements on the ground. We would like you to consider how the provisions relating to obstructions might be clarified and consolidated as these are currently included in many varied bits of statute and require different enforcement procedures; improvements to provisions relating to stock control measures (stiles and gates, etc), such as how they are recorded and the types of furniture appropriate to today's users; and removing the prohibition on holding cycle races on bridleways bringing it more into line with rules governing footpaths where races are permitted with the Welsh Ministers' consent.

ou may wish to consider whether the duties placed on local authorities in relation to maintaining rights of way and removing obstructions from paths in need of amendment.

We would like your views on what improvements could be made to legislation on public rights of way and whether you have identified any anomalies that should be removed.

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?

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?

To amend the purpose and composition of Local Access Forums (LAFs).

Wales currently has 23 local access forums to advise local authorities, Natural Resources Wales and the Welsh Government on matters relating to opportunities for open-air recreation and enjoyment. The LAFs were established under the CRoW Act and were influential in the implementation of the provisions of that Act.

The LAFs have a very local focus and provide an advisory role to their appointing authorities. Members are appointed for a three year period and may be members of multiple LAFs. Members are appointed because they have knowledge and/or experience in areas of relevance to the LAFs' purpose, they are not selected as representatives of organisations or interest groups. This means that in the event that a member is unable to attend no deputy can be sent in their place.

The challenges faced by the appointing authorities (local authorities or national park authorities) include recruiting individuals with the knowledge to cover the range of interests required. Most problematic is finding representatives for disability interests, but it is also difficult to recruit across the social spectrum taking into account age, sex and cultural diversity. LAFs have been useful in implementing Welsh Government priorities and, in many areas where effective relationships have been developed, they have also been valued partners to their appointing authorities.

Looking to the future you may want to consider whether the governance, administration and purpose of LAFs can be improved to better support their appointing authorities.

There may well be implications for each LAF's appointing authority arising from the recommendations of the Commission on Public Service Governance and Delivery, and so we are interested to hear how the balance of local knowledge and simplifying administration should be struck.

Question 6: How should the number, role, membership, and purpose of local access forums be redefined?

Dogs. The *Outdoor Recreation and Health in Wales* report (2012) identifies owning a dog to be one of two 'lifestyle' factors which make the most significant positive difference to people's participation in outdoor recreation.

However, landowner groups have raised concerns about dogs in the countryside for a number of years. Concerns range from the safety of livestock from disease and worrying; and the safety of dog owners where the presence of dogs can spook and provoke attacks by livestock.

It is generally accepted that a walker is entitled to take a dog on a right of way as long as the dog stays on the line of the path. The law requires that dogs taken on to agricultural land, including those on a public right of way must be on a lead or otherwise under close control, when in a field with livestock. However, there is no explanation in statute as to what the term "*close control*" means.

On land that falls under the access provisions of the CRoW Act 2000 dogs are required to be on a short lead between 1 March and 31 July to prevent disturbance to ground nesting birds. Where a footpath crosses CRoW access land the rules governing rights of way apply, if the walker strays off this footpath, as is his right, then the dog must be put on to a short lead. This can be further complicated where the legal highway (the footpath) is not clearly defined on the ground.

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?

B) Remove Restrictions

These proposals involve removing some of the restrictions on the range of activities that can take place on rights of way and on access land.

Further to the modifications cited in **A)** (reform procedures) above, changes could also be made to existing access on paths and open country which allow for a greater range of activities, within an appropriate framework for restricting activities for safety and land management purposes. This would not mean access to any new areas of land or water, but would improve opportunities by allowing areas already accessible to be used for a wider range of activities.

Review the restrictions placed on CRoW Act access land. Schedule 2 of the CRoW Act lists a number of restrictions placed on those exercising their right of access. Undertaking any of the activities on the list stops the entitlement to be on that land.

There are some restrictions that could potentially be lifted to allow for a broader range of activities. For example, horse riding is prevented by the restriction stopping any person from being on the land while having “*with him any animal other than a dog*”. Other activities are also prevented through the restriction on engaging “*in any organised games, or in camping, hang-gliding or para-gliding*”.

To allow for variations to the rights attached to existing paths and assuming higher rights where reasonably practicable and sustainable. There are around 20,505 miles of public rights of way in Wales, the majority of which are footpaths – approximately 9 . A small number are bridleways – approximately 15 ; and a very small number – around 6 - are byways (byways open to all traffic and restricted byways). With increasing numbers of people wishing to take part in a wider range of activities we would like you to consider whether there should be greater emphasis on providing access opportunities for those who take part in activities requiring higher rights, for example cyclists and horse riders.

Cycle paths. The Welsh Government is keen to see more opportunities for cyclists and has brought about the Active Travel (Wales) Act 2013. Arguably there are a number of routes currently recorded as footpaths which could easily accommodate cyclists. Under existing law they could be made into cycle tracks that would allow for cyclists and pedestrians but the procedures are onerous and require the route to be removed from the definitive map and statement. The result is that there are few of them in Wales and there have been allegations that those which do exist are poorly maintained. The alternative is applying bridleway rights using a creation order under the Highways Act 19 0 – though this would also mean creating rights for horse riders which may not be appropriate in all cases – near busy trunk roads or through busy industrial or business parks.

Question 8: How could current legislation be changed to make it easier to allow for a wider range of activities on existing and new paths?

Motorised vehicles. The issue of off-road motorised vehicles in the countryside is very emotive. The CRoW Act sought to clarify the rights associated with routes formerly known as roads used as public path (R PPS) by redefining every R PP as a restricted byway. This helped to clarify who could legitimately use the routes. Following this the Natural Environment and Rural Communities Act 2006 (NERCA) sought to further clarify the extent of rights available for off-road motoring. Though it

did help in many regards it also caused great confusion over how and when the exceptions to the extinguishment of motorised vehicle rights applied.

Question 9: How could legislation better strike a balance between the various demands of motorised users, landowners and the natural environment?

C) Revise access

These proposals consider ways of permitting recreation activities in new areas.

Further to **A)** (reform procedures) and **B)** (remove restrictions) above we would like you to consider whether there is a need to make modest changes to the definition used for mapping land with access to bring in areas which have been hitherto excluded under the provisions of the CRoW Act and in doing so provide improved access and reduce liability for landowners.

Extending the definition of access land to include other areas. The access provisions under Part 1 of the CRoW Act could be extended to other areas currently excluded from the definition for mapping, such as woodland, lakes and coastal cliffs.

Coastal cliffs in particular are already being used for coastering and climbing, though some landowners are reluctant to give permission or to enter into agreements because of their concerns over liability in the event of an accident. Provisions in the CRoW Act already allow for extending mapping to include the coast, which could provide both certainty of access for users and clarify the liability issue for those landowners.

To require local authorities to review their network of paths and access areas, including towpaths, access land and publically owned land with a view to amending the network, adding higher rights where appropriate and linking access areas using “green corridors”. To allow for the prioritisation of the more significantly used networks. We would like your views on whether each local authority should be required to undertake a review of the opportunities available within their area for access and outdoor recreation and to confirm a prioritised network of recreational routes and of access areas.

Under existing provisions every local authority is required to produce a rights of way improvement plan (ROWIP) to act as the primary means by which the authority can identify, prioritise and plan for improvements to their local rights of way network. In drawing up their plans authorities are required to conduct a number of assessments of their networks in order to establish how they meet existing and likely future needs of users; the opportunities they provided for exercise and enjoyment; and how

accessible they are to those with mobility issues, including those who are partially sighted or blind.

The first ROWIPs were published in 2007 and since that time the Welsh Government has provided almost £10 million in extra funding to help authorities to implement their plans.

The provisions require that ROWIPs should be reviewed every ten years. The first review is due by 2017, which means that over the coming twelve months authorities should look to start their assessments. A commitment by the last Welsh Government in 2007 to repeal the plans was overturned in 2014, after the value of the plans to local authorities was established.

Our views would be appreciated on whether ROWIPs should be retained, amended or repealed.

Question 10: How should the need for new or improved access opportunities be identified, planned, and provided?

D) New rights and responsibilities

These proposals consider an entirely new access settlement in Wales which allows much greater use of land for responsible recreation.

The alternative to adjusting existing legislation would be to revise the current legislative framework and introduce an entirely new set of laws and guidance geared towards enabling and encouraging responsible recreation in Wales. Across Europe each nation has a different approach to how the public are provided with opportunities for outdoor recreation. The degree to which the approach is codified in legislation also varies.

Sweden, for example, has a common law right of access to walk, cycle, ski, and camp on all land and water, which is widely promoted by the national tourism agency. This 'right' does not extend to the curtilage of property, gardens, or cultivated land. A similar common law access right has been embedded into legislation in Norway's Outdoor Recreation Act 1957, which provides greater certainty for users and landowners of the rights and responsibilities that come with access. The right here excludes meadows and pastures and all fenced land, except at prescribed times of the year when the land is frozen or covered in snow. This usefully illustrates how such general principles in favour of access for recreation can still be codified with safeguards that suit local circumstances.

Of particular interest to some stakeholders in Wales is the experience in Scotland since the Land Reform (Scotland) Act 2003 introduced a right of responsible access to all land, with some exclusions such as the curtilage of buildings and other

structures, land under crops, and land used by schools. The Act created access authorities who had a positive duty to enable the public to exercise their access right, to create a local access forum for their area and to create a map of core paths. Scottish Natural Heritage were charged with the task of creating a comprehensive guide to responsible recreation for users of the new right and landowners; the Scottish Outdoor Access Code.

The introduction of this legislation has generated significant interest amongst recreation user groups in Wales, particularly groups who express frustration at what is seen as the restrictive nature of some of the current legislation, most notably for canoeing and off-road cycling. There has also been a reaction amongst landowner groups who are strongly resistant to the introduction of anything similar in Wales.

The independent Land Reform Review Group (LRRG) set up by the Scottish Government in July 2012 was charged with considering how well the Land Reform (Scotland) Act 2003 “the 2003 Act” delivered against its original purposes. The views of the Group on the access provisions of Part 1 of the 2003 Act were considered within a broader remit for community and crofter right to buy land.

Some 120 (25) of the responses to the LRRG call for evidence related to the access provisions of the 2003 Act. In its report, published in May 2014, the Group concluded that the “statutory framework should be judged a considerable achievement that has delivered significant public benefits” but that there “are undoubtedly problems to be addressed”.¹⁵ The report suggests that there is little appetite for legislative change, that issues related to implementation and most of these could be resolved over time and with increased awareness of the Access Code. Whilst listing a number of examples of problems which Wales could usefully reflect on, evidence from Scottish Land and Estates concludes that “when the picture across Scotland as a whole is taken, the introduction of a public right of access has not caused major problems for landowners”¹⁶. The issues that were raised were a combination of access being frustrated by obstructions and incidents of irresponsible use: dog fouling and dogs not under control, and tension between anglers and canoeists.

It has been suggested that Wales should therefore consider extending access for responsible recreation to all land, with some exclusions, including the curtilage of properties and farm buildings. Given such extensive access there would be the opportunity to thoroughly review existing routes of public rights of way, the level of demand, their legal status, and associated management to create an extensive fit-for-purpose network of paths. There could also be the opportunity to remove or

¹⁵The Land of Scotland and the Common Good – Report of the Land Reform Review Group, May 2014.

¹⁶ P.152 of the Scottish Land and Estate’s Response to the Scottish Government’s Land Reform Review Group, January 2013.

streamline much of the administrative burdens of the current regime, in relation to creating and updating maps of access land, and the comprehensive record of public paths. This could allow local authorities to prioritise maintenance on routes that are more heavily used rather than a general priority to maintain routes, even if they are little or never used.

Such a change to the legislative framework would allow for the introduction of clear mechanisms for restricting access on permanent and temporary basis to safeguard existing activities, land use, and nature conservation. It could also be accompanied by a statutory code of conduct for all users. This foundation of access could well have the potential to deliver a statutory framework which can both secure areas of recreational value whilst retaining flexibility to meet changes in demand. Careful consideration of what areas should be exempted from such new access rights, and what procedures and tests should be established for temporarily or permanently removing access rights in favour of land management and nature conservation would also need to be included in a new legislative framework.

Question 11: What are your views on the benefits and challenges of creating a right of responsible recreation to all land in Wales

5.2 Access to inland water

Access to inland water has long been a contentious issue and has been the matter most fervently discussed by stakeholders during the review. With increasing reports of tension, in some cases open hostility, between various users it is clear that there is a need to consider ways of alleviating the situation.

Sustainability Committee inquiry

In response to a petition from Canoe Wales, the Petitions Committee of the National Assembly for Wales held an inquiry into access to inland water in 200 . It recommended that a wider ranging inquiry be undertaken to allow for greater representation of the issues. The subsequent Sustainability Committee inquiry into access to inland waters was launched in 2009.¹ The Committee took written and oral evidence from a wide range of interests including statutory agencies, angling, canoeing and other organisations.

The inquiry served to highlight the deficit in opportunities, as well as the contested nature of rights to and on water for recreation. The recommendations were wide

¹⁷ For more information on the Sustainability Committee [Inquiry into Access to Inland Water in Wales 2009](#)

ranging and covered matters relating to, among others, access agreements, environmental quality, and enforcement.

In its response to the report and related recommendations the Welsh Government at the time stated it was “committed to addressing the widest possible range of people in the actions that it supports.

“The recommendations of the report are focused primarily on those participants in water-based activities who are the more experienced, committed users, and are members of clubs or national governing bodies such as anglers or canoeists. Whilst we accept a number of the recommendations we do not intend to restrict our activities on this issue to ones that meet the needs of only a minority of participants.”

With this in mind the Welsh Government provided over 2.6 million of funding through the Splash Water Recreation fund between 2009 and 2013/14 to encourage new and improved opportunities. Whilst the fund provided opportunities for many more people to enjoy water recreation, its impact in establishing new access provision was limited.

The Welsh Government remains committed to increasing opportunities for public access to land and water, in particular for families and children. Opportunities for responsible recreation on and next to inland waters near to where people live are increasingly important to enable greater participation in physical activity by people of all means and abilities.

Voluntary Access Arrangements

The Sustainability Committee’s report advocated that in the short term efforts should focus on establishing voluntary agreements and it has long been the policy of the Welsh Government to promote their use. Funding was first provided for pilot projects in 2007, the most notable of which was the Wye and Usk River Plan project, which established an access arrangement on parts of the Rivers Wye and Usk, alongside on-line and other information to encourage responsible use. The water level in the river is the key determinant of when the river should be accessed by canoes, and gauges which can be checked on-line provide information for prospective users.

The report also advocated a new approach to access agreements, which sought to address the barrier to progress caused by the traditionally drawn up agreements that required parties to sign formal documents setting out conditions of use. It is the Welsh Government’s view that access arrangements should be drawn up by landowners and riparian owners, consulted upon, and then put in place. Access under such arrangements could be all year round, at certain times of year or depend on water levels. They could also determine what types of activities can sensibly take place on any given stretch of water at any given time of year. These arrangements should primarily be focussed on three elements:-

- i. protecting the natural environment;
- ii. having no detrimental impact on land management; and
- iii. having respect for the needs of other users.

Access arrangements along the lines noted above need not be perceived as an acknowledgment that rights do not already exist nor should they be perceived as acknowledgment that they do. The Welsh Government is of the view that such arrangements should not be seen as setting out the limits of use, but rather the opportunities available for responsible shared use of the water.

There may be merit in considering legislation to establish a statutory level of access on which to base such arrangements. Even with the certainty of statute determining who has access to inland waters in Scotland, there continues to be areas where local interests agree voluntary management arrangements. These are in place to allow for better quality of experience for all users. For example, arrangements can designate a stretch of river for fishing for a certain number of days per week and canoeing for the other days. These arrangements are the result of negotiations between all the interests, including local authorities, and help to promote better understanding and tolerance.

Lead Body

The Sustainability Committee made several recommendations related to appointing a lead body with responsibility for identifying areas of inland water where access arrangements might be appropriate and to negotiate for non-motorised recreation access in those areas.

These recommendations primarily focussed on legislating for a lead body but there is an argument for agreeing without the need for legislation the appointment of a body that can usefully negotiate with all of the key interests.

Assertions over universal access

In order to better understand the opposing views over the existence of a universal right of access below is a summary of the assertions made by those claiming that rights already exist and those of the view that they do not.

Existing universal rights (the argument for)

The universal right of navigation dates back to time immemorial (nominally 11 9AD). At this time all land in England (Wales was subject to its own laws until 12 4AD), including non-tidal river beds and banks, were owned by the Crown and similarly to tidal would have been dedicated for public use.

That there is evidence to show that universal public access to water for navigation for commercial and recreational purposes was recognised by medieval jurists (legal commentators) as far back as the thirteenth century.

The Magna Carta and other ancient statute provided protection for established universal access rights. Their subsequent repeals did not revoke the rights, only the protection of those rights.

That there is no statute denying the public universal access.

No existing universal rights (the argument against)

That there is no reliable historical evidence or modern common law precedence to confirm a universal right of access.

Modern leading commentaries (including Halsbury's Laws of England and Woolrych on Waters) do not endorse the view of existing universal public of access to non-tidal waters. The general consensus is that the beds of non-tidal waters are not vested in the Crown; therefore they are most likely to be owned by the riparian owners or the adjoining landowners.

That statute covered specific significant rivers, including the Thames and the Trent. It does not imply universal access but rather denotes the opposite.

That there is no statute allowing for universal access.

Agreed assertions over universal access

There are also a limited number of areas where advocates and opponents of a presumed universal right of access agree. These include:

That public navigation exists where a river or channel is made navigable at public expense or by a public authority; has been freely devoted to public use for a long time; or has been made to replace a channel over which there was public access.

That public right of navigation may be extinguished by statute; by order of Natural Resources Wales (in Wales only and in restricted circumstances); or as a result of natural causes.

There is clearly a need to encourage greater collaboration and cohesion between those who hold these opposing views in the interest of more responsible and harmonious use of rivers. Establish greater clarity and certainty over where people can go and what they can do there is perhaps one approach to moving this debate forward.

Establishing a regulatory framework

Legislating to establish the rights and responsibilities associated with inland waters could potentially provide the clarity and certainty needed to allow for local access arrangements to be established that are deemed fair and sensible; help to build consensus and reduce conflict; and could help to establish levels of liability to protect landowners. Existing unfettered activity (perceived as legal or otherwise) could then be brought within a contemporary legislative and regulatory framework.

During the review a limited range of representations were received on what might be included in legislation. Views on the matter overwhelmingly rested in one of two camps – those who saw an opportunity to legislate to confirm unrestricted access to inland waters and those who objected to legislation to create unrestricted access to inland waters. There are potentially many options in between these positions, which should be heard and considered. Views are sought on what, if anything should be covered by any new legislation.

These could include:

- i. Legislation in relation to a statutory body (as covered in the section above), could allow for one organisation to help establish access arrangements and help enforce those arrangements.
- ii. In addition to i. above the statutory body could have the powers to designate stretches of water for recreational access with certain conditions, including the type of use, time of the year and environmental considerations.
- iii. To consider water within the same framework for land that is set out in option B “remove restrictions” above, where existing restrictions applied to access land are lifted to allow greater access to water.
- iv. To consider water within the same legislative framework for land that is set out in option C “revise access” above, where the existing definition of access land (under the CRoW Act) is extended to include other areas, in this case water but with restrictions and exceptions where needed to prevent detriment to users, land management or natural environment.
- v. Legislation could establish powers for licencing commercial craft for use on Welsh rivers where legislation allows. One of the key concerns voiced during the review was the use of rivers by commercial organisations without a contribution to the maintenance of the waterways or banks.

vi. A further option would be to consider inland water within the same legislative framework for land that is set out in option D above, where a general right of access is moderated by certain restrictions to safeguard other interests, such as angling, heritage and nature conservation. This is already the case in Scotland where the Land Reform (Scotland) Act 2003 intentionally applied the same provisions to both land and water – even to the extent that core path status can be applied to rivers.

Question 12: What approach do you advocate to improve opportunities for responsible access for recreation on inland waters?

5.3 Access to Coastal Waters and the Sea

The Welsh Government has invested in and promoted access to the coast for a number of years, which has resulted in the internationally recognised Wales Coast Path. For the purposes of this consultation access to coastal land is covered in section 5.1 C above.

Access to coastal waters has traditionally been less controversial than access to inland waters. There is a common, if not uneasy consensus that there is a general right of access on tidal waters, including tidal sections of rivers, estuaries and the sea. For clarity - there is no general right of access across land to tidal waters.

Activities in coastal waters are as varied as those exclusively on land. They include sailing, recreational angling, sea kayaking, coasteering, surfing and swimming. The Wales Outdoor Recreation Survey Report 2011 shows that of those who participated in outdoor recreation during the four weeks preceding the survey 2 had visited beaches (increase from 200), 26 had visited the sea (11 increase from 200) and 1 had visited other parts of the coastline (same as 200).

The 2011 survey also showed that 60 of people living in Wales would like to visit the outdoors more often. Around a quarter of Welsh adults (26) would like to visit beaches more often and 13 would like to visit other coastal areas or a woodland/ forest. There is clearly an appetite for greater access to recreation on the coast and in the sea.

The Welsh Government is currently in the process of developing the Welsh Marine Plan. In keeping with the principles set out by the Well-being and Future Generations Act 2015 its strategic objectives are:

- i. Achieving a sustainable marine economy;
- ii. Ensuring a strong, healthy and just society;
- iii. Living within environmental limits;
- iv. Promoting good governance; and

- v. sing sound science responsibly.

Outdoor recreation can help to achieve the objectives of the Plan through the provision of good quality opportunities for people to participate in physical activity; to enhance the visitor experience; reduce burdens of liability on landowners; and ensure that protection can be afforded to environmentally or culturally sensitive areas.

Question 13: What approach do you advocate to improve opportunities for responsible access for recreation on the coast and in the marine environment?

5.4 Statutory Code

In Wales we currently rely on a set of circulars and the Countryside Code to inform landowners and users of their duties and responsibilities in relation to accessing the countryside and public rights of way. The former are in need of updating and are mainly targeted at local authorities; the creation of the latter is a statutory duty placed on Natural Resources Wales but once issued there is no statutory obligation to adhere to its advice.

A comprehensive code could provide a guide to responsible outdoor recreation and direction on duties and responsibilities. Making the code statutory could also provide a basis on which to inform for enforcement. It is envisaged that such a code would include guidance on all the issues covered above and other areas that may not be legislated for but are significant issues for both landowners and users. These include linking up communities to access opportunities through active travel routes and public transport; capacity building for local authorities through working with the voluntary sector; and advice on biosecurity.

Question 14: What would be the advantages and disadvantages of a comprehensive statutory code of conduct for outdoor recreation in Wales?