

NRW Consultation Response Form



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Wales**

Welsh Government consultation on improving opportunities to access the outdoors for responsible recreation – NRW Response

Consultation Response Form

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Question 1: What are your views on the principles outlined above [section 2]? If you would suggest changing them, please explain how and why.

Our recently published Enabling Plan for Outdoor Recreation and Access sets out NRW’s aims for this area of our work: ‘More people in Wales participating in and benefitting from outdoor recreation more often’. To deliver our aim it will be important to work in a number of ways. Therefore the Enabling Plan identifies the need to see that:

- Access opportunities are provided and improved that meet people’s needs
- Information is provided and people are engaged in outdoor recreation
- People understand how to undertake recreation responsibly
- Outdoor recreation is well planned and managed sustainably; and
- There are effective mechanisms for delivery

NRW’s strategic direction (as outlined above) is well aligned to the Government’s vision, purpose and objectives as set out in the consultation paper.

We agree that an effective legislative framework is an important element of achieving those objectives and outcomes. However, it should be part of a range of sustained actions to deliver the benefits of recreation for Wales.

We welcome the paper’s inclusion of a framework of principles against which to consider the outcomes, aims and objectives of possible legislative change. The principles provide a useful guide as to the development and direction of legislative and related work for improving access opportunities.

It would help to bring together and structure more clearly, in one place, the framework of principles alongside the Government’s overall vision, aims, objectives and actions for this policy area.

The principles included in the green paper cover most of the essential points we would expect to find. In our view they could be improved by being more simply expressed and including the use of more straightforward wording e.g. as used at the time of the CROW legislative proposals, which referred to improving the: extent, quality, permanency, clarity, certainty, and cost-effectiveness [of rights and procedures].

We feel that the following points should also be included:

- [Rights to be] free at the point of use;
- No overall diminution of rights [as a result of changes to the legislation].

In addition we feel the Government’s vision needs to better recognise the social barriers to recreational access, as well as the physical ones. We have said more about the social barriers, and addressing them, in our response to Question (Q) 2 below.

Question 2: Tell us your views on the issues highlighted above [section 4], and whether there are other key challenges you believe need to be resolved?

The Key Challenges include:

- Integrating recreation provisions with new and emerging legislation, such as the Well-being and Future Generations Act and the Environment Bill
- Provision and management of opportunities in ways that support more people being taking part in outdoor recreation more often, particularly close to where people live
- Overcoming social barriers to recreational participation
- Provision and sustained management of publicly accessible ‘green space’ as part of the mix of recreational access opportunities, particularly close to where people live
- Balancing land management and recreational user needs
- Providing flexibly for the sustainable management and/or protection of natural resources (e.g. habitats and species)
- Sustained action for increasing responsible behaviours

Detailed Comments

The intention to address the requirements of society for coherent outdoor recreation provision is welcome. We wish to see any changes to the legislative framework for recreational access that are brought forward supporting ‘more people in Wales participating in and benefitting from outdoor recreation more often’.

Data from the Wales Outdoor recreation Survey (WORS), the Scottish Recreation Survey (now SPANS) and the English recreation survey (MENE) have all found a strong connection between participation and proximity - frequency of participation increases with shorter travel distance and shorter duration. This stresses the importance of provision of access opportunities close to where people live, where the objective is to increase frequency of participation (which is directly connected to health benefits).

To bring the benefits Government seeks, legislative changes need to be capable of supporting and sustaining recreational activity close to where people live but also access to Wales’ fantastic landscapes. It will also need to be supported by a range of other action, such as management of the access opportunities, and engagement of people in their responsible use because legislative change alone will not deliver the multiple benefits of the Integrated Natural Resource Management approach being promoted by Welsh Government in the Environment Bill.

A key challenge is to ensure the delivery of improved recreational access opportunities supports delivery of other legislation, notably the Active Travel (Wales) Act and Well-being of Future Generations Act. We’d welcome and seek to support the development of strong links between these new Acts, and in due course the proposed Natural Resource Plans/ Area Statements proposed within the Environment Bill.

We agree current recreation-related legislation can be complex, unwieldy and relatively resource intensive. However, the system provides wide spread access and significant activity; it demonstrably provides significant benefits to people in Wales. Any legislative changes, in seeking to simplify the current complexities as well as extending recreational benefits, should not lose existing benefit, or the robust balance between public and private interests.

Our experience of delivering the Natural Resources Management (NRM) area trials in the Rhondda found recreational access to have been the most frequently raised issues to date in our community/public engagement work. This indicates, at least qualitatively, the value people put on the ‘cultural services’ provided by recreational access.

People in the Rhondda trial frequently asked for more or better access provision (including improved maintenance and information) even though 40% of the catchment is NRW forestry estate dedicated under CROW; 25% is CROW open access land, and across the Borough as a whole there are around 743 kms of PROW. This disparity in provision and public perception and use, even where access provision appears on the face of it to be abundant, is a key challenge. It also indicates the need for improving the quality of access provision, promotion and engagement with people so they make greater [responsible] use of the opportunities and infrastructure already available.

We’d note that further evidence is needed to better assess the overall value of the current recreation network and to assess the impacts of the preferred option[s] that Government decides to take forward.

Other key challenges we would note are:

Social barriers to participation

Simplifying access legislation will only partially address some significant barriers to more people enjoying the outdoors. NRW’s *Come Outside!* Programme has been working with organisations in disadvantaged and deprived communities to inspire and motivate people with sedentary lifestyles to discover, enjoy and benefit from the outdoors. The programme has found a complex mix of barriers often but not exclusively associated with deprivation, problems of aspiration, awareness, knowledge, poor health (physical and mental), or lack of peer endorsement – the feeling that the outdoors is ‘not for them’.

The *Come Outside!* Programme has successfully sought to overcome such social barriers by targeting support organisations who work with people with sedentary lifestyles in Community First areas – service providers working in community development, youth services and public health. The support workers are linked up with local outdoor access providers in local green spaces as part of their service provision. This approach has helped overcome many of the barriers that prevents groups and individuals from taking advantage of opportunities to access the outdoors on their doorstep. The challenge now is to see the approach more widely adopted.

An external interim evaluation report of the achievements of the *Come Outside!* Programme can be found at: <https://naturalresources.wales/about-us/our-projects/come-outside/?lang=en>

The Mosaic project led by the Campaign for National Parks has successfully introduced black and ethnic minority people to the many high quality access opportunities available in Wales’ National Parks. Community champions were recruited to facilitate trips from nearby centres of population into the Parks’ inspiring landscapes, changing perceptions and creating new recreational habits for these communities. See <http://www.cnp.org.uk/mosaic-wales> for further information.

Local green and blue space provision

To support more frequent participation, we would like to see more access to high quality, freely accessible green space within easy walking distance of everyone’s homes (evidence suggests a 300m radius or 400m actual walking distance is the maximum distance that people will walk on a daily basis to get to green space). Most local authorities (LAs) currently have insufficient green space within walking distance of the homes of most of their population.

The importance of safeguarding and managing green and blue space for recreational access by local authorities needs to be recognised and strengthened. It would be useful to agree a definition of ‘quality local green space’ – and make it clear that it’s now accepted that ‘green space’ implicitly includes ‘blue space’ too.

A requirement for LAs to create and maintain an all Wales GIS maps of their accessible natural green space would be very helpful and to see the data included in the Wales Index of Multiple Deprivation.

Existing access to quality green [and blue] space, in particular close to where people live, is competing with other land uses, such as for development. The planning system needs to better prioritise the protection and provision of green and blue space in order to support the Government’s aims as set out in this green paper.

Land management needs

Land owners and land managers, including Natural Resources Wales on the estate we manage, face the challenge of making a living and meeting responsibilities in legislation for public recreational access.

NRW has been able to successfully integrate the management of our estate for production, recreational access and nature conservation e.g. at Coed y Brenin and Newborough. Greater flexibility within legislation would benefit land management e.g. to make PROW temporary closure procedures more proportionate to the duration of activity.

Liability arising from public access is a significant concern to many land owners and managers. Section 13 of the CROW Act reduces the occupiers’ liability under the Occupiers’ Liability Act 1957 to anyone accessing CROW access land by removing their liability of any injury caused by any natural feature, any watercourse or by any boundary feature (except by proper use of a gate or stile). Government should consider, in making legislative changes, how it can similarly and consistently apply the approach used in CROW when amending or introducing new legislation.

Responsible Recreation

The improvement of responsible recreation behaviours will need sustained action in terms of informing and educating people about where they can go, what they can do and how to recreate responsibly. We have addressed this challenge in detail in Question 14.

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?

Key Points in relation to changes are that

- **Changes should retain the balancing of public and private interests with no diminution of existing rights**
- **The package of proposals that formed the PROW sections within the Deregulation Act in England provide a useful starting point for changes in Wales**
- **Improve the digitisation of PROW information and processes; facilitate the re-use of PROW data to provide benefit to the public**
- **We have listed a number of key issues that should be addressed if making changes to PROW provisions**

The PROW network remains one of the main means to access the countryside and public green spaces in and around urban areas. In parts, the network is also a significant historical and cultural resource.

We agree that there is a need and scope to improve and simplify procedures for recording and changing PROW. The resulting focus of resources is on legal process and access infrastructure rather than engaging people in recreational use and enjoyment of the outdoors. Reductions in local government budgets have resulted in local authorities cutting back PROW and access services which will have a detrimental effect on existing and future access opportunities.

Existing legislation seeks to balance public and private interests, which whilst not a perfect system, does *legally* provide access to the public and protect over 33,000 kms of public rights of way across Wales. Changes to legislation should consider carefully how to retain the balance of public and private interests and retain the value of an extensive network of routes (including many of cultural, historic and landscape value) from which very significant benefits demonstrably accrue.

Evidence (e.g. from ROWIPs and Natural Resources Management (NRM) pilots) indicates that people still value well managed routes that are open, available and well-signed. In the absence of a well-developed network of PROW in Scotland, a core path network was developed as part of the Land Reform (Scotland) Act. Retention of the existing public paths and associated legislation in some form would still be required even if the Government decided to take forward one or more of the options to significantly extend or introduce new statutory rights that it has put forward for consideration in the Green Paper.

A package of proposals developed through a consensus of stakeholders was introduced in England in the Deregulation Act 2015. We believe Government should consider that package of proposals, at least as a starting point, if bringing forward changes to PROW legislation in Wales. Further matters specific to Wales would then be considered for inclusion in a similar consensual way.

Some of the suggestions for change in the consultation appear to offer clear benefits with no obvious detriment to the public or to private interests. These include allowing for Public Path Orders (PPOs) and Definitive Map Modification Order (DMMO) applications to be submitted electronically and enabling highway authorities to dedicate PROW on their own land.

Other matters are less straightforward. Land owning and land management interests would like to see procedures for making preferential changes to the rights of way network simplified, particularly where paths run through farm yards or where the historic network in an area has a disproportionate impact on rural business. Many user groups are sympathetic to this yet will still want to see appropriate safeguards to ensure that important routes are not lost and that any new access provided in lieu of existing routes is of a comparable quality.

Many of the ‘new’ provisions stakeholders wish to see already exist, but can be difficult and costly due to the processes involved. There is a general feeling amongst practitioners that the current system is not inherently broken, but would benefit from some streamlining and modernisation. We have listed below some of the areas for consideration that could provide benefits. If reforms to PROW are taken forward we would be happy to provide further information and support in the detailed consideration of these issues and related ones, including the following key ones:

- A “single one event order” for diverting PROW combining diversion and extinguishment orders
- Removing the requirement to make a separate ‘legal event modification order’ after confirmation of ‘public path orders’
- More provision for combining orders e.g. packages of extinguishment and diversion orders

- Modification consent orders (as introduced in England under part 5 of Schedule 7 of the Deregulation Act 2015)
- Publicising orders – allowing web-based notices for orders in place of newspaper adverts
- Reforming the management of objections to bring about reductions to costs and delays e.g. the process for dealing with irrelevant objections
- Digital Definitive Maps - digitisation of Definitive Maps in Wales would have significant benefits in providing information to the public. The data should also be free for commercial and non-commercial re-use to facilitate wider promotion of public access. The process should be accompanied by support to highway authorities in updating and improving their current records
- Addition of a basic evidential test for Schedule 14 applications to modify the definitive map
- Changes to the requirement to serve notices with Schedule 14 applications
- Introducing a new approach to recording and authorising limitations

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?

Key Points – our suggested changes include:

- **Improvements to legislation and procedures to provide for easier access along PROW**
- **Amendment of provisions in relation to short term closures of PROW e.g. for cycle races and sporting events**
- **Mechanisms to enforce increased compliance of land owners and managers with their responsibilities for public rights of access (e.g. compliance with scheme requirements for public rights of way within agri-environment schemes)**
- **Greater flexibility in relation to PROW threatened by coastal change**
- **Extending the scope of Rights of Way Improvement Plans (ROWIPs)**

Detailed Comments.

Power to replace restrictive limitations

Consideration should be given to providing local highway authorities (LHA) with a power to require the removal (subject to replacement with a more suitable structure) of unreasonably restrictive limitations even where they are recorded on a definitive map & statement, or otherwise authorised. There are situations where, by negotiation, stiles are removed from long lengths of popular paths but the reluctance of a single owner can prevent a through route for less able users being achieved. Consideration should be given to whether there should be provision for compensation or for the LHA to take on responsibility of the structure where any such power is used and whether the public should be able to formally ask the authority to use it.

Cycle races on bridleways

The specific exclusion of bridleways in the provisions for authorising cycle races under section 31 of the Road Traffic Act 1988 seems anomalous and should be reviewed. Consideration should also be given to including a provision to allow for the temporary diversion or closure of highways to non-vehicular users¹ after consideration of the safety and convenience of the public. Simply removing the restriction on bridleways under section 31(2) might create issues of safety and practicality if walkers, equestrians and cyclists are still able to pass and repass along the route. Furthermore, cyclists competing would be required to give way to equestrians and walkers if they are relying on the public right to use the bridleway². It would seem expedient to allow for temporary diversions or partial closures to facilitate the segregation of competitors and other users as part of an authorisation.

Maintenance responsibility

The maintenance and protection of PROW by local authorities is vital to ensure the availability and use of recreational and other routes. However, as the last published Local Government Performance Indicator for

¹ Section 31(5) of the 1988 Act already provides for the restriction of vehicular traffic.

² Section 30(1) Countryside Act 1968

PROW demonstrated, the delivery of PROW duties needs to be improved. However, there is currently severe pressure on local authority resources.

There may be merit in considering the introduction of a specific defence to notices served on local authorities under section 56 of the Highways Act 1980, in addition to that provided by s58 and specifically limited to public rights of way³, where the authority has followed a reasonable and published priority matrix. Such a special defence could make reference to the provisions in an authority’s statutory Rights of Way Improvement Plan and any associated policy statements.

There is arguably less justification for introducing such a definite defence against a s130A notice (as the resource implications are not likely to be as significant) although consideration may be given to adding to section 130B (c) which currently provides a defence where an authority can show “*that, under arrangements which have been made by the authority, its removal will be secured within a reasonable time, having regard to the number and seriousness of obstructions in respect of which they have such a duty*” the words “*and any material provisions in its Rights of Way Improvement Plan and associated published policy statements*”.

Maintenance of supporting structures subject to climate-related coastal erosion

There is increasing evidence that Wales is being affected by sea level rise and an increase in tidal surges. There are PROW on sea defence structures and cliff tops in several parts of Wales. Given the current ‘no active intervention’ approach to coastal retreat, a provision should be considered whereby authorities have powers, with appropriate safeguards for public access to coast, for such affected highways to be rolled back, diverted, or extinguished, if it can be shown that sea level rise makes the maintenance of the supporting structures of existing routes or defences unsustainable.

Support for enforcement.

According to Performance Indicator (PI) figures from local authorities in 2011/12, around 48% of PROW were (for whatever reason) not ‘easy to use’. In many cases this will be because land owners and managers do not meet their statutory responsibilities to keep paths open and available for the public to use. Local authorities need support to more effectively enforce compliance with PROW legislation by land managers.

We support the inclusion of public rights of way as a cross compliance condition of Basic Farm Payments as soon as possible and that the requirement should be for landowners and managers to comply with all of their statutory responsibilities for public rights of way and access.

The inclusion of this condition would:

- provide an incentive to landowners and occupiers to ensure their public rights of way are open for use,
- would support local authorities in carrying out their responsibility by sending a message to all of the importance which WG places on public rights and making Wales accessible, and by reducing the time and resources needed for local authorities in having to carry out enforcement work to remove obstructions from rights of way, which is both costly and time consuming.

We do not consider that there is a need to delay inclusion of public rights of way as a condition of cross compliance until such a time as the definitive map becomes digitised. Most local authorities have digital copies of maps, and this information, together with the definitive map, should provide sufficient information to support the implementation and monitoring of this under cross compliance. The inclusion of public rights of way as a cross compliance issue would also reinforce and benefit the work supported by the Minister for Culture and Sport for the implementation of the Rights of Way Improvement Plan funding programme.

In suggesting Welsh Government takes forward cross compliance in relation to PROW now, we would note that to secure the important benefits Welsh Government have identified, there will be a need for Welsh Government to work closely with local authorities’ PROW sections or departments to ensure active co-ordination, communication and action for the measure to be successful. To delay inclusion of public rights of way under cross compliance would contribute to the expense of both continued public inconvenience and the public purse.

Similarly, improvements to the operation of the requirements for land owners and managers within agri-environment schemes for complying with PROW and public access responsibilities (such as those within Glastir) could also more effectively support local authorities in improving land owners and managers’ compliance.

³ This might encourage the recording of unsealed ‘UCRs’ as BOATs or RBs which may be desirable, see response to Question 9

The above actions should be accompanied by more effective information, guidance / education for land managers and owners to raise awareness of how to meet their responsibilities. The resulting increased availability of public paths and areas for people to use, together with other measures, could provide increased benefits to health and well-being, tourism and potentially allow local authorities to invest in improved management and promotion of recreational access.

Valuing Ecosystem Services

Currently the economic benefits of public access only very indirectly accrue to the parts of the public sector (e.g. local authorities) that invest in them. Government should consider how better links can be made between the income from ecosystem cultural services (public access opportunities in this case) and the investment provided by the public bodies to incentivise and better resource their upkeep and improvement. Examples for consideration include voluntary pay-back schemes or local tourism taxes. Income from such measures could be re-invested for public benefit e.g. public access such PROW or open access land.

Rights of Way Improvement Plans (ROWIPs)

Consideration should be given to amending the statutory scope of ROWIPs to include other public access, not just local rights of way (ROW) within the Plans.

Where a National Park Authority undertakes ROW functions it should also have the duty to produce its own statutory ROWIP, in consultation with the local highway authority (LHA).

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?

Key Points – the changes we would like to see include:

- **Sustained resources to improve access networks and opportunities that best meet people’s needs for recreation**
- **Improved information and education for land owners and managers about their public access responsibilities**
- **Development and implementation of revised ROWIPs by local authorities**
- **Improvement to the recording and management of minor roads as part of recreational networks**

Detailed Comments

From our experience of managing recreational sites and programmes, e.g. as referred to for the Rhondda NRM trial [see Q2], people wish to see access opportunities which are available to use, clear and welcoming on the ground.

Whether or not new legislative measures are brought forward, there will remain a need for resources to manage and maintain recreational routes and sites, and to promote and engage people and visitors in Wales in their responsible use. Provision of targeted funding to support implementation of ROWIPs has been crucial to local authorities’ successfully delivering the plans and providing benefits to local communities.

Ensuring compliance by landowners and land managers with their PROW responsibilities is part of local authorities’ duties. The rate of non-compliance (for whatever reason) is a significant factor in the accessibility of PROW to the public. Including and improving the operation of PROW and public access provisions within the cross-compliance requirements of the Basic Payment [for farmers] or within agri-environment schemes (as with Glastir) would significantly support authorities in their enforcement role, help to better inform and incentivise land managers about fulfilling their responsibilities for PROW and public on their land, and provide benefits to the public and tourism interests by improving the accessibility of existing PROW networks.

NRW’s evaluation of ROWIPs (2013) found these to have been a significant success in Wales. The renewal by authorities of their ROWIPs over the next 2 years, supported by Government and NRW, should help to continue with improvements and guide a greater focus on engagement of people to use access. Integration of the Plans with the new/emerging Natural Resource Management Statements and associated spatial planning and prioritisation e.g. through NRW’s Good For People GIS toolkit, and the Green Space tool kit, will be important as part of the renewed Plans.

We believe there are considerable benefits that could be achieved from making generally available information and data about PROW and of related promoted routes. For example, by making authorities’ PROW maps available on the internet and also promoting the free use of PROW data by commercial and non-commercial interests e.g. to facilitate promotion of routes, or ‘Satnav-type’ route planning, using web-based or mobile IT devices.

Improvements to the recording and management of the network of minor roads, so-called ‘unclassified roads’ (UCRs), could make a significant contribution to recreational networks particularly for higher rights users. Many are significantly neglected by highway authorities yet can provide important links in the PROW network particularly for higher rights users. Initiatives to identify and manage some conventional minor roads as ‘Quiet Roads’ could also bring significant gains for all classes of recreational user. Management of UCRs and quiet roads by PROW/countryside access teams can help to develop their recreational value. Projects such as the National Cycle Network have shown the potential of combining new paths, PROW and minor roads to provide networks of routes that bring a range of benefits for recreational users and local communities.

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

Our response to this question draws on the ‘Report on the Review of LAF Working Practices’ which reported on the results of a questionnaire survey to all Local Access Forums (LAFs) between August and November 2013, 15 LAFs responded. In addition, we also draw on the records held by NRW in our role to support LAFs.

Our key points are:

- **The scope and role of LAFs in legislation and guidance should be aligned with WG’s guiding principles,**
- **LAFs should address the full range of the public’s interest in outdoor recreational access to green and blue spaces within their areas.**
- **They should also, where relevant to their overall purpose, be able to engage with other bodies and to address all outdoor recreational activities within their area**
- **The current requirements for the number and size of LAFs should continue.**
- **The regulations should allow greater flexibility in appointing members to ensure greater continuity in the working of LAFs**
- **In several cases, LAFs need to ensure they are balanced in terms of representation from different stakeholder interests and the local population of the area**

Detailed Comments

Purpose and role

We see significant potential for LAFs to support the practical delivery of WG stated guiding principles as set out in the Green Paper. In particular we see roles for the LAFs in achieving principles 1-4, 7 and 8.

Given the need for further integration of access resource and the steps made by WG through the Active Travel Act to increase sustainable travel (including to recreational sites) we feel that LAFs should be extended to access to public green and blue space within and close to urban areas as well as the public’s access to the wider countryside. They should also have flexibility to consider other access where relevant to their overall purpose e.g. Active Travel routes. They should also consider recreational activities as relevant to their area e.g. activities to and on water.

In addition LAFs should be given to the opportunity to become champions of and advocates for responsible recreation supporting the promotion of recreational access opportunities and fostering understanding, and increasing

coordination. They should also have scope to advise and work with other organisations in their area where relevant to their purpose e.g. 3rd sector, other interested groups, Community Councils

If a framework for wider access is sought, Welsh Government should also consider the function of the LAFs and the fact that they will need to be an active group focused on helping local authorities resolve access disputes and ensuring equitable opportunities for responsible recreation. The SNH report ‘Local Access Forums: A Guide to Good Practice’ gives useful consideration to the role and function of a LAF in this capacity.

The number of LAFs

The current number of LAFs (currently 23) broadly reflects the current local authority/national park authority areas. In our view the local authority is the appropriate geographical area at which LAFs should be engaged, as most duties for access and recreation are implemented at this level.

Local Government reorganisation is likely to result in the number of local authorities in Wales reducing with some current areas merging. Given the likely increase in size of authority areas LAFs focus should remain strategic as it will not be practicable for a LAF to have detailed local knowledge for the whole of its area. We would expect there to be at least one LAF in each authority area but with flexibility for authorities to appoint more than 1 LAF for their area.

The aim should be for the number of LAFs to be sufficient to provide a balance of interests (not just geographical coverage), take a strategic, overarching view of their areas, and establish liaison with local organisations, contacts and groups (e.g. in Community Councils or health boards) where there is a need.

Membership of LAFs

Size: The size of membership is currently permitted to be between 10-22 members and we see no reason to change this, as it provides flexibility for authorities to accommodate their own needs. In practice most LAFs have about 15 members with an average attendance rate of 66% (based on 2013 data).

Term: The current term of membership is 3 years, most of the LAFs (8) that responded to the questionnaire were satisfied with this arrangement. However, we note that a particular problem in some areas is the period of time (years in some cases) between the end of one LAF (after 3 years has passed) and the establishment of a new LAF.

Flexibility should be given for the appointment of new LAF members to be carried out by authorities concurrent with the existing LAF to ensure the transition from one LAF to the next is seamless. Consideration should also be given to providing flexibility to authorities to vary the length of appointments of LAF members to between 3 and 5 years as another way for authorities to manage the continuity of LAFs better.

Balance: The Countryside Access (Local Access Forums) (Wales) Regulations 2002 define the requirements to **ensure** have a balance [on the LAF] between the interests of users of local rights of way or way or the rights of access conferred by section 2(1) of the Act and of owners and occupiers of access land or land over which local rights of way subsist; and they **must have regard** to ensure, **so far as is reasonably practicable**, a fair balance between persons of different genders, races, ages, disabilities and other characteristics (our emphasis).

Our survey asked for the LAFs and LAF Secretary’s view of whether the LAFs were balanced, ‘On the whole respondents said that there was good or reasonable balance of representatives. However, most felt that there was some degree of underrepresentation. The main groups that were considered to be under represented were: disabled users (5 LAFs), access to water interests (5 LAFs) landowner interests (4 LAFs) young people (4 LAFs), business sector e.g. tourism interests (3 LAFs), motorised users (3 LAFs). Other groups not represented in particular (with 2 or less LAFs referring to them) walkers, cyclists, horse riders, climbers, ethnic minorities, gender imbalance, wildlife interests, geographic imbalance, forestry interests.’

However, our impression (from our work with LAFs) is that members are predominately white males of retirement age. This therefore suggests that they are not demographically representative, and that collectively the 2nd area of

balance being sought is not, in our view, being met across Wales. Further action is needed to understand and then address this.

Other matters: The requirement to produce annual reports and submit them to NRW is not being met. We suggest this requirement is reviewed with a view to making the requirement more relevant to the needs of LAFs and the appointing local authorities.

To ensure LAFs are relevant and effective, support is required from local authorities and NRW, and between LAFs themselves. We are working with LAFs and appointing authorities to develop actions for improving the sharing of information and existing good practice for LAF secretaries and LAF Chairs and members. These will need to be implemented in due course.

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?

Welsh Government has identified some of the key areas where there is currently a discrepancy between dog owner’s legal rights of access. We recognise the issues that dogs can at times cause to land managers and others.

Our key points in relation to rights and responsibilities surrounding dogs in the countryside are that:

- **Responsible dog ownership is important in positively affecting people’s participation in recreation**
- **The term ‘effective control’ should be used across all relevant legislation**
- **A more flexible framework is needed in order to restrict off-lead access for dogs e.g. for land management and nature conservation purposes**
- **More information should be provided about the places where people can take their dogs and let them off the lead**
- **There should be a Wales-wide approach to providing and informing about the public about ‘dual use’ bins for dog waste**
- **Information and sustained promotion about responsible dog use needs to be provided, including standardised signage relating to the control of dogs, so as to achieve more responsible control of dogs by their owners**

We provide more detail on these points below.

Legal definition of ‘control’

There is now a discrepancy between the definition of the right of access with dogs on CRoW access land in England and Wales. In England, the Access to the Countryside (Coastal Margin) (England) Order 2010 updated the definition in Schedule 2 of the CRoW Act to the need for dogs to be under ‘effective control’ on land in the coastal margins. This was accompanied by a clearer description of what ‘effective control’ means in practice. In Wales, the CRoW Act has not been updated in this respect and the only restrictions are for keeping dogs on a short lead between the 1st of March and the 31st of July (for nature conservation) and always around livestock.

The new definition used in England was developed through consultation with key stakeholders and is felt to be a more realistic position than was set out in the original CRoW Act and PRow legislation. The Countryside Code has already been updated to include this new definition and the new ‘Dog Walking Code’ (for England and Wales) also uses ‘effective control’ as the basis of its advice. The benefit of using this approach is that it has closer links to behaviour than ‘close control’ and is far less open to misinterpretation. We would recommend that the WG considers updating Schedule 2 of the CRoW Act in Wales to bring it in line with England, using the ‘effective control’ definition. We would also recommend that WG considers updating the Dogs (Protection of Livestock) Act and guidance covering dogs on Public Rights of Way to use the same definition.

Dog restrictions for wildlife

As well as harmonising the various legal definitions around a single definition of ‘effective control’, we would also recommend that Welsh Government reviews the way that restrictions are placed on dog walkers in relation to nature conservation. There is currently a blanket restriction on CRoW access land that requires dogs to be kept on a lead during the bird nesting season (as outlined in the Green Paper). However, this generic approach does not cover more specific issues such as the potential for disturbing overwintering birds in coastal areas. A more adaptable legal framework that can be used to restrict off-lead access at sensitive times and locations, on access land and rights of way, would benefit both dog walkers and site managers. In particular, restrictions could be adapted to better suit the potential threat to the feature that needs to be protected.

Off-lead access

Dog Walkers value places where they can safely take their dogs off the lead for them to run around, with 83% stating that off-lead access is an important part of their walk (Kennel Club, 2012). Some areas are well suited for this, such as some parks, publicly accessible woodland and beaches; however, there are some areas where this can impact on people or the environment (e.g. land with livestock). At present it is difficult for dog walkers to identify areas that are ‘off-lead friendly’. We recommend Local and National Park Authorities and other relevant public bodies should identify areas that are particularly suitable for off-lead access and make them known to the public. This will open a positive dialogue with dog walkers and help them make better decisions about where to go to have off-lead access.

Public space protection orders (PSPOs)

Local Authorities and other public bodies now have the ability to create PSPOs that restrict dog walkers to lead only access in stated areas (even if they are on permissive routes). This is a useful enforcement tool but could add to the general confusion amongst dog walkers regarding their rights and responsibilities, particularly as PSPO’s are more likely to be used in a rural setting than its predecessor the Dog Control Order. Welsh Government should consider how this power can be harmonised with the other rights and responsibilities surrounding dogs in the countryside. One possibility would be the introduction of nationally consistent signage, similar to the Highway Code symbols, which would identify the range of restrictions in place on any one area. Such an approach could also be used to identify those areas where dogs are welcome off lead.

Dog fouling

Many Local Authorities are moving towards ‘dual use bins’ for general waste and bagged dog waste. This saves money by reducing the need for specific dog mess bins and increases the number of waste disposal points available to dog walkers. Keep Wales Tidy and other organisations have also been promoting this approach with their ‘any bin will do message’. Currently this is a piecemeal intervention with no national consistency and only limited public awareness.

Subject to being able to ensure the residual waste stream is appropriately managed (e.g. to minimise odours) Welsh Government should consider mainstreaming this approach and providing a clear message and form of signage that can be used by all authorities and which is recognisable across Wales.

Commercial dog walking

Commercial dog walking can bring additional employment opportunities for local residents but can also create extra pressure on walking routes, as there is a tendency for dog walkers to visit the same sites repeatedly. WG should consider this audience as they look at the rights and responsibilities of dog walkers particularly on land that is classed as CROW access land, or any additional land or water that is designated under the same legal structure, as they are carrying out the activity for a commercial purpose. Scottish Natural Heritage (SNH) have developed some useful guidance that explores the needs of this audience and how their rights relate to wider access for dog walking: <http://www.outdooraccess-scotland.com/Practical-guide/public/commercial-dog-walking> .

Effectively Communicating Messages

There are clearly areas where rights and responsibilities surrounding dogs in the countryside can be harmonised, However, a clear regulatory system does not in itself lead to responsible behaviour. Many of the case studies of good management practice focus more on good stakeholder engagement and targeted communication than on regulatory enforcement. There is a real danger that any discussion about wider access rights in Wales may focus more on the regulatory stick than the behaviour that it is seeking to alter. Recent projects, such as the creation of a national Dog Walking Code, where a wide range of stakeholders agreed a common message about responsible behaviour, should be noted when looking at the goals for this development. As with other successful shifts in public perception (e.g. drink driving, smoking in public), regulation is only a small part of the overall strategy. Consistent promotion, education and public engagement should also be a key feature of communicating messages about responsible dog ownership.

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?

Key points:

There are a number of potential options for changing current legislation, these include

- Extending the use of PROW to a wider range of users;
- Amending Schedule 2 of CROW to allow more activities on existing CROW access land
- Amending Schedule 2 of CROW together with extending the land to which CROW applies
- Amending cycle tracks legislation, including recording of cycle tracks on definitive maps
- Further assessment of the benefits and impacts of such changes would be needed

Assumption of higher rights where practical:

We support the aim of providing greater recreational access for so-called ‘higher rights’ users (e.g. horse riding, cycling, carriage driving) within the legislative framework for Wales. However, an assessment of the impacts should be considered in developing specific options.

Within existing PROW legislative frameworks, any provision that assumes higher rights “*where reasonably practical and sustainable*” will require a robust record of lawful limitations and/or new procedures for removing or replacing restrictive structures. Introducing such an approach alongside the largely unregulated approach to limitations that currently exists could lead to a significant increase in the number of restrictive structures if landowners and land managers then attempt to limit legitimate use of routes on their land.

It also needs to be recognised that, as equestrian and cycle users will require a greater width than pedestrians, any provision that opens up existing footpaths to such users will have to consider the potential to create new public rights (the additional width they use) over previously unencumbered land.

The suitability of public routes to different users would frequently be unclear if higher rights are assumed. Currently, the legal status of public access gives a clear indication of suitability to a user, even if this may not be experienced in practice. Even if no maintenance liability for such higher rights was included with any change to legislation, we’d expect some demands from users, and at times land managers, to improve the quality of routes to meet the needs of higher rights users, to improve/replace path furniture or surfacing, to sign a route’s accessibility on the ground and improve information provision about the accessibility of different routes e.g. printed and on line information. It would also be likely to increase the management requirements e.g. to avoid or reduce impacts on nature conservation interests.

There are potential health and safety implications and problems for rural businesses where farm tracks which were previously subject to footpath rights only would be considered physically practical for use by equestrians and horse drawn vehicles. Where these routes are used by large farm machinery, or where normal farm vehicles use them regularly, meetings with horses and non-motorised vehicles will often be less manageable than meetings with pedestrians.

Basing a change to higher rights through powers/duties for access authorities to assess the suitability of the PROW network for higher rights would be a resource intensive approach. It would take a long time to bring about change at the Wales level. Such an approach could however, provide greater local flexibility and capacity to develop routes.

Schedule 2 of the CRoW Act performs a very similar legal function to the Scottish Outdoor Access Code (SOAC) and carries equivalent powers. Carrying out an activity highlighted in Schedule 2 in effect removes their right of access and any redress for this breach must be sought either through the civil courts or by using other forms of legal redress, as with the SOAC.

Relaxing the restrictions to activities listed within Schedule 2 of CROW could enable wider access from a wider range of recreational users to open country, registered common land and dedicated land. However, care will need to be taken in relaxing these restrictions. The research before the introduction of CROW was about the likely impacts to habitats and species of recreational access on foot. There is therefore no similar assessment of the

likely impacts introducing higher rights may have e.g. increased horse riding access in upland habitats. Relaxing Schedule 2 would of course limit increased access to areas defined under CROW.

Relaxation of CROW schedule 2 restrictions are likely to increase the burden on land owners and managers. We would also expect increase resource demands on Access Authorities (e.g. to provide pedestrian gates in place of stiles) and to NRW in relation to a probable increased number of exclusions or restrictions for land management purposes. [See Question 12 in relation to water related recreation and CROW]

Schedule 2 has also recently been updated in England by the Marine and Coastal Access Act to include more robust definitions of ‘effective control’ in relation to access with dogs. Therefore, an example has been provided for updating this part of the Act.

Current voluntary agreements in place for seasonal access for climbing on coastal and inland bird cliffs show that responsible access to sensitive nature conservation areas can be achieved. However, we’d expect extended rights to still require access arrangements to manage and control access in many places.

We would not expect any changes to the restrictions of motorised recreational access.

Changes to the land defined as CROW access land. NRW has recently completed a decadal review of access land under the Countryside and Rights of Way Act 2000 (CROW). A CROW mapping process to capture additional types of land, such as woodland, lakes, coastal cliffs and/or any other land type would be likely to take a minimum of 4 years to implement and require a similar level of resources to the original CROW mapping. This would require a new process (including associated mapping regulations and guidance) and a mapping exercise to identify relevant land, with representations and appeals potentially being submitted after the issuing of the draft and provisional map respectively. Such a process could also apply to inland waters [see Question 12 response below].

We would expect an increased resource and financial burden on NRW with regards to provision of advice and guidance if the proposal as set out was to be implemented. We would also expect an increase in applications for exclusions and restrictions.

In our post-mapping review, NRW has already advocated to WG that if CROW is to continue then the regulations should allow the conclusive map to be reviewed on a rolling, ‘real time’ basis with an appeals process led by the Planning Inspectorate. To prevent continuous vexatious applications/appeals there would need to be a 2 or 5 year gap between applications being allowed for the same piece of land to be added or removed. It should also be ‘light touch’, with a mainly online process without large consultation lists.

The CROW conclusive map could also be actively amended as common land boundaries change by requiring Commons Registration Officers to inform NRW of any changes in boundaries (rather than allowing representations/appeals on common land). This will tie in with the Electronic Registers of Common Land project currently being developed by Welsh Government.

We have not assessed the impacts of including higher rights [amending CROW Schedule 2] along introducing possible new CROW land types, although this would be akin to the situation with the Land Reform (Scotland) Act 2003.

Cycle Tracks

We would support an increase in the opportunities for cycling and agree that the current mechanism for upgrading public footpaths to cycle tracks is not effective.

Consideration should be given to amending legislation to allow Cycle Tracks to be recorded on definitive maps. However, in most cases preference should be given to recording routes as bridleways unless there are convincing reasons why horse riders need to be excluded. There may be merit in expanding the scope of public path orders under the Highways Act (and T CPA) to allow for the creation, extinguishment, and creation of *cycle tracks* and similarly it may be expedient to make changes allowing for long use by cyclists, without such use by equestrians, to lead to the dedication of a *cycle track* rather than a *restricted byway* as is currently the case. This latter amendment could be expected to find favour with both cyclists and land owners and managers.

If the current mechanism under the Cycle Tracks Act 1984 is to be maintained then consideration should be given to whether the following provision in section 3 of should be retained:

(2) A local highway authority shall not make an order under this section designating as a cycle track any footpath or part of a footpath which crosses any agricultural land unless every person having a legal interest in that land has consented in writing to the making of the order.

Given the provisions for compensation under section 5 (2) and the provisions for objections to such orders under the Cycle Track Regulations 1984, consideration should be given to removing this provision in Wales and replacing it with a requirement for the needs of land managers to be taken into account, bringing the procedure more into line with public path orders made under the Highways Act.

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

Key points:

- **Illegal motorised recreation is reported as an increasing problem on the NRW managed estate**
- **Greater clarity of rights, particularly of Other Roads with Public Access/Unsurfaced Unclassified Roads (ORPAs/UUCRs) will help clarify where motorised recreational users can legitimately go, as well as helping enforcement of illegal motorised use**
- **Provision of information and education about rights and responsibilities is needed in order to support enforcement against illegal uses**
- **Improved management of UCRs alongside other PROW can benefit a wide range of recreational users, not just motorists**

Detailed Points:

Our experience indicates that illegal motorised access is an increasing problem on the Welsh Government Woodland Estate (WGWE). There is demand over and above that accommodated by existing legal routes and sites. Deliberate illegal motorised access, as experienced on the WGWE, impacts on other recreational users, land managers and requires significant resources to manage.

The legal rights that exist on UUCRs are often hard to determine from LHA records and maps. On the ground the position is often confusing with UUCRs routes often lacking signposting. This makes legitimate use, management restraint and enforcement of illegal use more difficult.

Alongside partners on the Wales Off Road Motors Steering Group we have advocated continued support for: robust enforcement of illegal use; information and education about responsible motorised recreation; appropriate provision for existing ‘off-road’ recreational motorised use particularly mitigating damaging and illegal use.

Consideration should be given to providing in legislation for fixed notice penalties for off-road offences.

Many public routes are shown on Ordnance Survey mapping as “Other Routes with Public Access” (ORPAs). These are routes (also referred to as [unsurfaced] unclassified roads (UCRs)) that are recorded on the list of streets as highways maintainable at public expense but are neither maintained as part of the ‘normal roads network’, nor recorded on the definitive map and statement. Whilst many such routes could in fact be carriageways [for motor vehicles], the nature of the existing record can only be taken to demonstrate that there are, at least, public footpath rights. The uncertainty over the status of ORPAs is similar to that which surrounded RUPPs until they were eventually removed from Definitive Maps under the provisions of the CROW Act.

With some exceptions the NERC Act 2006 removed unrecorded mechanically propelled vehicular (MPV i.e. motor vehicle) rights over certain public rights of way. ORPAs were excepted from the blanket extinguishment by sub-section 67(2) (b) of the Act. However, the continued uncertainty over the status of ORPAs presents problems for users, landowners and local authorities. Whilst the logical solution would be the establishment of a status-based record for ‘normal roads’ such a proposal is probably outside the scope of this consultation. However, the problem could be significantly reduced if all those ORPAs that meet the definition of either *footpaths*, *bridleways*, *restricted byways* or *‘byways open to all traffic’* (BOATs) were recorded as such on the Definitive Map and Statement (DM&S).

Providing a defence against s56 notices for BOATs, restricted byways, bridleways and footpaths but not for other publicly maintainable highways (see section on ‘maintenance responsibility’ under Q4 above) might be a sufficient incentive to encourage authorities to review and record their ORPAs. Whilst this is technically achievable through existing Definitive Map Modification Order (DMMO) procedures, local authorities are unlikely to have the resources to make significant progress unless those procedures are significantly streamlined.

There would also be considerable value in encouraging more local highway authorities to manage such routes, where appropriate, as part of the recreational network.

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

Key Points:

The approach to planning new or improved access opportunities for existing local PROW and related public access is currently carried out by local authorities through their duties for Rights of Way Improvement Plans (ROWIPs) contained within the CROW Act. NRW is currently developing advice for Welsh Government for the revision of the statutory guidance for ROWIPs which will identify how we think those duties should be implemented to reflect and integrate with new requirements such as the Active Travel Act, the Wellbeing and Future Generations Act and the introduction of Natural Resource Statements under the proposals for the Environment Bill. Key elements of the proposed ROWIP guidance are:

- Assessments of public need for access
- Consideration in the ROWIPs of other publically available access (such as green space and active travel routes) - along with local rights of way
- Engaging people in the enjoyment of the outdoors for recreation
- Better management of *networks* of access opportunities
- Statements of Action setting out what and how the Plan will be delivered
- Spatial planning and prioritisation (e.g. supported by NRW’s Good for People planning tool and the Greenspace tool kit)

Alongside local authorities own resources, Welsh Government’s support for the implementation of ROWIPs has been a very important element in their successful implementation across Wales [see response to Q5 above]. Continued financial support will be important for their future implementation.

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

Key points:

- We acknowledge the potential benefits identified in the Green Paper which could arise from the introduction of new rights and responsibilities
- Opportunities would need to be provided and managed in a planned, flexible, and holistic way
- There would remain a need for an extensive, stable network of well-managed and signed public access routes and sufficient legislative measures will be needed to provide for this
- Suitable mechanisms and resources would be required to establish and embed such a legislative framework including for:

- **Implementation e.g. by local authorities, national park authorities, agencies (such as NRW) and the justice system**
- **Rules as to commercial use**
- **Protection for wildlife and natural resources**
- **Land management needs**
- **Statutory code and its promotion**
- **Revised planning mechanism for outdoor recreation [to replace ROWIPs]**

- **New rights and responsibilities would require sustained resources to manage the access opportunities new rights provided in order for them to best meet people’s needs, including welcoming, open and available public access opportunities close to home**
- **Addressing social and cultural barriers to recreational participation, improving information, promotion and engagement with people will remain a priority irrespective of the changes to access legislation**

In more detail:

Extra pressure on LAs, NPAs and the justice system

Welsh Government should consider the added pressure that any challenges to local access rights could put on Access Authorities and the court system. Within Scotland, land reform gave considerable extra duties to the Local Authorities and Sheriffs courts. Access Authorities have a duty to publicise the Scottish Outdoor Access Code (SOAC), uphold access rights and establish a local access forum. They also have powers to exempt land from access rights for short periods, make byelaws and remove prohibition signs, obstructions, etc. The Sheriff’s court has powers to issue a declaration over whether specified land is land where access rights are exercisable, a person is responsible in their exercise of access rights or their management of land where access rights are exercisable or a path is a right of way of any sort. The relationship between LAs and the Sheriff’s Courts is key to defining and agreeing sustainable local access provision and resolving dispute. In the roll out of the Scottish Land Reform Act (2005-2008), £8 million per year in additional funding was shared out amongst the Access Authorities.

Better protection for wildlife

We suggest that the Welsh Government should consider the Scottish model prior to making any future decisions on access rights. One of the areas where the Scottish land reform model has given more clarity is in the powers to close land (including water) to access for specific reasons, such as nature conservation. Under the Land Reform (Scotland) Act, local authorities and National Park Authorities (NPAs) can suspend access to a site for up to 6 days at a time without any wider consultation. For any period between 6 days and 2 years it needs to be agreed with Scottish Natural Heritage (SNH) and receive ministerial approval. SNH can also at any time use signage to mark areas where it is ‘irresponsible’ to access (under section 29 of the Act) to help manage protected habitats or species. Currently, in Wales an area of access land may be closed due to nature conservation concerns but an adjacent PRoW may still be accessible to the public.

Clearer definitions of commercial access

The CRoW Act currently prohibits "any activity which is organised or undertaken... for any commercial purpose" on access land. In practice this does not give sufficient legal clarity where commercial activities include other permitted activities e.g. commercially-led recreation activities. This part of the CRoW Act has also been compromised by the fact that there is no similar distinction made in PRoW legislation, therefore mass participation events can operate without any legal checks as long as they stick to rights of way, even if they have the potential to cause social or environmental impacts. This lack of clarity in the CRoW Act also raises questions about landowners’ liability for the safety of the participants as, if permission is given (or charged for) and the activity is recognised as commercial, all reduced liability under CRoW is lost.

In looking at new legal structures WG should carefully consider the definitions of 'commercial activities', recognising the social, economic and health benefits that formal outdoor groups and sporting events bring to the people of Wales, but also considering the need for these activities to be effectively managed. A more robust definition of the range of commercial activity that could be permissible on land and water can be found in the Scottish Outdoor Access Code <http://www.outdooraccess-scotland.com/>.

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

Key Points

We agree with the consultation paper’s analysis of the current legislative framework covering outdoor recreational access to inland waters and that there are at times considerable tensions between stakeholders. The situation will need to improve in order to deliver the aims and associated benefits that Welsh Government is seeking for this aspect of outdoor recreation. If WG brings forward options for change, further work will be needed to consider the benefits and impacts on the various recreational users, for the management of natural resources, on land / riparian owners and other rights holders.

Background evidence:

There are an estimated 22,000 acres of lakes, 2,400 miles of sea-trout rivers and 2,500 miles of wild brown trout rivers together with 750 miles of coastline, the vast majority of which is available to the travelling angler. Around 55,000 rod licences are sold annually in Wales raising around £1.2m. The value of angling on inland waters was estimated in 2005 to be around £74m (£32m Gross Value Added)⁴ bringing important tourism, socio-economic, health and well-being benefits. It also helps to support high quality river and still-water fisheries, and the network of clubs that are valuable to local communities.

Figures derived from the University of Brighton¹ and amended to reflect current Voluntary Access Arrangements (VAAs) indicate that about 4.6%² of the total main river length of Wales is available for paddle sports. Significantly less of this is suitable for disciplines that require a white water environment. In addition there are around 152km of navigable canals.

Between 2008 and 2011 the percentage of the Welsh population participating in fishing or non-motorised water sport activity showed no significant change with an increase from 10% to 12% for both activities.³

Welsh Outdoor Recreation Survey: Key Facts for Policy and Practice (May 2013) states that:-

‘There are also a substantial number of people taking part in more active pursuits, especially running, road cycling, outdoor swimming, or mountain biking. These are increasingly popular, often as a ‘lifestyle’ activity.’

‘More active pursuits were also amongst the top activities in terms of future preferences, in particular off-road cycling, road cycling and water sports’ ‘Encouraging these more active pursuits could provide significant health benefits to entirely new participants’³

‘The Economic Impact of Outdoor Activity Tourism in Wales 2014’ (Visit Wales) concluded that: *“The majority of visitors express an intention to return to Wales for activities, however, certain groups are discouraged from undertaking activities such as kayaking in Wales due to confusion and dispute over access to land and water. Access is therefore a key issue to be tackled in order to encourage further success of the sector in Wales”⁴*

Voluntary Access Agreements (VAAs): VAAs have been the Welsh Government’s preferred tool for improving access and reducing conflict over a number of years. VAAs have provided useful agreed access, although they are limited in extent and availability compared to the overall resource. Case studies of arrangements have been considered previously. The Evaluation of SPLASH Grant Scheme 2008 – 2012 stated that *‘few of the arrangements have provided meaningful new access.’⁵*

Taking forward significant numbers of new arrangements would be subject to:

- Provision of additional resources (time and money)
- Clear outcomes for such a programme of new VAAs (in line with Government’s aim of increased opportunities for more inclusive participation in responsible recreation near to where people live)
- The willingness of the different stakeholders to engage with establishing new arrangements
- Acceptance that it would take some time to negotiate significant numbers of new arrangements. There have been varying degrees of difficulty building a consensus between numerous stakeholders - given the position of different interests outlined in the Green Paper. The agreement of many riparian, rights and land holders is needed to put new arrangements in place

Radford, A.F., Riddington, G. and Gibson, H. (2007). *Economic evaluation of inland fisheries: The economic impact of freshwater angling in England & Wales*. Environment Agency. Bristol. ISBN 978-1-84432-851-2, 165pp.

- Uncertainty as to the permanence of VAAs – access arrangements are by permission and while many have been sustained over an extended period they can also be withdrawn or withheld at any time
- Variability in the terms of the access provided are locally determined – such as dates and time access is permitted; river levels considered acceptable; ingress/egress points. Such local variation does provides sensitivity to local conditions, other rights holders interests and providing protection for species or habitats

i) and ii) Lead Body: A lead body would require additional resources to increase its capacity and would still be subject to a number of the issues identified above.

In our view the starting point, before any other improvements, is a widely understood and accepted legislative framework [rather than the current position as set out in the Green Paper]. This is needed in order for any lead body to deliver significantly improved recreational access to inland waters. This is the case even if new legislation was limited to clarifying/asserting, unambiguously to all interests, the limits of the right of navigation to tidal waters and existing specifically named statutory navigations. From an accepted statutory position the taking forward of an approach based on providing more VAAs could flow. (The alternative of extending existing legislation or providing new access rights to inland waters is considered below).

Amended or new legislation could also establish the powers and duties for lead body[s] to develop, negotiate, implement and potentially manage the access, whether by VAAs or otherwise. Such duties and powers would need to provide for responsible recreation [see points elsewhere, notably Question 14] and for example, sustainable natural resource management, and protection of habitats and species as appropriate. Improvements in current access and participation will also require additional resources to deliver.

iii) Remove restrictions to be observed by people exercising rights of access: Opportunity may exist to *remove, relax, or change the general restriction in the Countryside and Rights Of Way Act (CROW) Schedule 2 (1) (b) and (i) that relate to water recreation related activities.* The precedent for this approach has already been set by the Access to the Countryside (Coastal Margin) (England) Order 2010 which has made changes to Schedule 2 of the CROW Act in England.

Such changes could facilitate activities like wild swimming in water bodies within open access land. Work would be required to identify the extent of appropriate and environmentally sustainable opportunities within existing CROW land. Alongside this change, defining in PROW legislation that ‘usual accompaniments’ could include carrying a non-motorised craft along a PROW to legitimately access adjacent water bodies, would help support improved access to water bodies.

In addition there could be clarification of ‘No. 648 The Forestry Commission Byelaws, 1982’ to set out that it is legal to carry a canoe, kayak, or [non-motorised] craft to an accessible waterbody located within CROW dedicated woodland estate managed by NRW.

iv) Revised Access – CROW: If WG was minded to revise CROW to include water consideration could be given to extend the definition of access land to include all larger streams and rivers e.g. to those defined as ‘main rivers’ in accordance with the Water Act 2014. ‘Main rivers’ are generally larger streams and rivers, but may also include smaller watercourses of local significance from a flood risk management perspective (these would need omitting). There are approximately 646 main rivers in Wales. Work would be required to ascertain if the stretches of watercourses designated as main river are appropriate and suitable for water recreation.

For many main rivers NRW would advise that managed access arrangements, additional to the CROW rights, would be required to protect the natural resources and manage potentially conflicting activities. Such access arrangements would avoid or more likely complement the variety of restrictions and exclusions that might be applied to CROW access ‘waters’, for varying periods of time, to control activities taking place. If and how the rights applied to commercial operations would need to be considered.

An example where an access arrangement is in place alongside new access rights is on the River Tay in Scotland. On the Tay, following the Land Reform (Scotland) Act 2003, the voluntary agreement restricts rafting companies from using a specific stretch of the river on 2.5 consecutive days during the salmon angling season. There is no restriction on commercial rafting during the closed season, and the agreement places no restriction on other water users such as canoeists and kayakers. An approach similar to that outlined above has the potential to make larger middle and lower courses of rivers across Wales available for inclusive water related activities more suitable for families and young children. However, the resulting impacts on other interests and the suitability of using defined main rivers for recreation purposes would need further investigation and careful consideration.

As an alternative, a mapping exercise could be undertaken to define the waterways and other inland water bodies as areas to which amended Schedule 2 activities could be undertaken, in a similar way to the current definitions and mapping of CROW open country. We would expect such an approach to require significant resources both to frame within legislation and regulations, and to identify and map appropriate sites individually. As outlined above there

would need to be further consideration of the benefits and impact on all interests. We would also expect significant resources to be required to implement a regime of exclusions and restrictions, to promote and inform people about responsibly accessing such areas for recreation, and to manage the access in practice e.g. provision and upkeep of ingress and egress points, signage etc.

v) Legislation to licence commercial craft: Should rights of access for water related recreation be extended across Wales, NRW would recommend considering the registration or licencing of commercial operators within Wales.

The Environment Agency Briefing note ‘Raising canoe hire standards in the River Wye’ ⁷ demonstrates why there is a need, and how this can keep people safe on the water, and promote consideration for the environment. Herefordshire Council made the decision in 2014 to introduce a mandatory licensing scheme in the county requiring operators to meet the British Canoeing approval standard or equivalent. Powys County Council’s current decision is not to progress with a Pleasure Boat Licencing scheme. ⁸

vi) - New rights and responsibilities: Wales has a population density of 148 residents/km² ⁶ (circa twice that of Scotland). In addition Wales is easily accessible from the large population centres of England. The accessibility of Wales to a significant proportion of the UK population, and the potential pressure this could place on the Welsh environment, land and riparian owners, and existing rights holders should contribute to the decision making process regarding extension or otherwise of rights or setting out of new rights and responsibilities

Any option to extend responsible access to all waters in Wales would need to be accompanied by a legally enforceable access charter similar to that in Scotland. The access charter would need to set out core principles to ensure the protection of the natural environment, wildlife, and features of cultural and historical significance, whilst ensuring no detrimental impact on land/riparian management, and whilst respecting the needs of other water users. [See also our response to Q14].

There should be opportunity to ensure guidance and good practice, including for invasive non-native species (INNs), becomes embedded within the charter of responsible recreation associated with new rights and responsibilities.

References

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2. Calculation: Main River 4681km / (PRON 120km + Dee, Wye, Usk, Glaslyn VAA total 97.5km) X 100
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6. <http://www.scotlandscensus.gov.uk/documents/censusresults/release1a/rel1asbfig8.pdf>
7. Environment Agency. Raising canoe hire standards on the River Wye. June 2014.
8. [Powys County Council. Planning, Rights of Way and Taxi Licencing Committee. 5th Feb 2015](#)

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

Key Points:

- **Government should consider the need for statutory provision for access to beaches and foreshore consistent with other changes to legislation**
- **Managed approaches such as that in Pembrokeshire offer potential to be expanded to other areas**

Access to beaches, foreshore and inshore waters. Although most beaches and foreshore are in practice accessible to the public, there is no general public right of access. The Crown Estate owns the majority of the foreshore and gives a "general permissive consent" for "non-commercial public access along the foreshore" it controls. Where the Crown Estate is not the land owner, access is by the implied permission of other landowners rather than explicit.

Current customary and permissive access provision to the foreshore and coastal waters does not raise significant concerns. However, if making changes to recreational rights elsewhere, Welsh Government should consider introducing statutory public rights to clarify and protect the public's interest in relation to existing common law and recreational access to the foreshore and inshore tidal water.

Any legislative framework should be consistent with the approach to other recreational access to land or water in Wales. Any legislation would need to allow for the protection and management of flood and sea defences, nature conservation and natural resource management interests. This could also allow for the re-alignment of public paths or routes in the interest of coastal or estuarine management.

In Pembrokeshire, the coastal forum has developed a zoning process to help identify and educate people about the most sensitive areas on that coastline. This model has been extremely successful with buy in from all the major tourism operators in the area. The British Mountaineering Council has also developed an effective voluntary restriction process for coastal climbing sites near sensitive colonies of nesting birds. The learning from these projects should be expanded to all highly sensitive marine and coastal sites in Wales, where there is concern of potential impact from the pressures of recreational activities.

Wales Coast Path: our experience is that in a few places, creation of public rights of way at or close to the coastal edge has not proved possible due to landowner objections and the reluctance of the local authority to instigate 'creation orders' where they have concerns about the high cost of legal cases and compensation payments.

These matters could be addressed by Welsh Government using its existing powers to create rights of way. Enacting the relevant sections of the Marine and Coastal Access Act in Wales to address these relatively limited issues is likely to be disproportionately resource intensive.

Extending CROW to include [amongst other things] coastal cliffs and coastal margin, or introduction of new rights to access land would, potentially, resolve such matters.

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

Key Points:

- **The benefits of a statutory code are dependent on the statutory rights framework**
- **A statutory code defines and underpins new rights and responsibilities developed within a Land Reform type approach**
- **A statutory code would best be built through an equitable and consensual partnership approach**
- **A statutory outdoor access code would rely on the existing justice system for its enforcement**
- **Any code needs a programme for promoting understanding of rights and responsible behaviours**
- **Significant resources would be required to establish and promote a statutory code in Wales**
- **It will take time to build awareness and understanding of a statutory code both in Wales and visitors to Wales**
- **Consideration should be given around how to make the duty to promote codes of conduct clearer in statute and/or how to make this function a higher priority for public bodies**

The advantages and disadvantages of a comprehensive statutory code of conduct will depend on the statutory duties Welsh Government define within a statutory code. There is a clear difference between having a statutory duty to promote a code of conduct and a code of conduct that defines a statutory right of access. The merits of these two approaches need to be considered separately as they are not mutually exclusive.

Detailed Points

A statutory duty to promote a code of conduct

As stated in the Green Paper, there is only a statutory duty laid on NRW to “issue, and from time to time revise, a code of conduct” in Wales. We note that there is wide support amongst stakeholders for giving a stronger focus to responsible recreation in Wales. Welsh Government should consider how to make the duty to promote this clearer in statute and/or how to make this function a higher priority for public bodies. We consider that additional resources would be required to more widely promote the Code.

By way of comparison, in Scotland, SNH has a statutory duty to “publicise” the Scottish Outdoor Access Code (SOAC) and “promote understanding” of it. Scottish Access Authorities also have a duty to “publicise” the SOAC as well as being responsible for using it to manage responsible access to the outdoors. SNH have invested a substantial amount of resources in promoting the code and making sure that it is recognised by Scottish people (this is monitored through the **Scotland's People and Nature Survey**). The SOAC has its own brand identity and publicity campaign that is not tied to the wider brand of Scottish Natural Heritage (SNH). This includes visual resources and branding that can be used by partners to create and publicise their own publications to promote the aspects of the SOAC that are most relevant to them.

A code of conduct that defines a statutory right of access

A statutory code that is used as a legal consideration may do more than just define responsible behaviour. It may also be used as an alternative to mapped access rights. This is the case with the SOAC and the models used in many Scandinavian countries. Welsh Government should first consider whether it is intending to follow a mapped based approach (like CRoW) or to go down a descriptive based approach to rights of access (as with the SOAC). This decision will have a great impact on the use and scope of a statutory code. For instance, if a statutory code was only applied to areas inside a mapped perimeter or on a linear network, as could be achieved by adapting Schedule 2 of the CRoW Act and in relation to PROW, it would lose its statutory powers as soon as the boundary is crossed. This could compromise the integrity of the message as it would have to spell out difficult legal definitions instead of simply focusing on defining responsible behaviour.

If Welsh Government is intending to take a descriptive approach to identifying the parameters of access, it should consider carefully how it defines accessible land and water. In cases in Scotland where the limits of access rights are questioned under the Land Reform Act, such as ‘reasonable privacy and disturbance zone around houses’, it is up to the Sheriffs Court to hear the case and resolve the dispute. These ‘privacy zones’ are still one of the main areas where the SOAC has trouble with agreement on the legal definitions. The Sheriffs have taken a long time to feel comfortable with the role that the SOAC plays in this, feeling concern that the code was ‘doing their job’ of interpreting law. Examples of case law surrounding the boundaries of access rights can be found at:

https://www.scotways.com/scotways_assets/files/045_ScotWays%20Case%20Law%20Publication%2014-09-2010.pdf.

If Welsh Government is considering taking this approach, they should carefully calculate the means they use to define acceptable boundaries around property and the method that this will be assessed if challenged in court. They will also need to consider the role of the justice system in the Code's development and implementation.

Some other key considerations if developing a code of conduct that defines a statutory right of access:

The creation of a new statutory code of conduct for Wales could take a significant amount of resources.

The process to draft, consult, create and implement the SOAC took over 10 years, with a roll it out budget (between 2005 and 2008) of £2 million. 12 dedicated SNH staff spent almost a year working on the consultation process (in 2003) and there was major input from stakeholder groups through the SNAF and LAFs. Even if this process is refined, the scale of investment needed to effectively produce and promote a statutory code of conduct for Wales should not be underestimated.

Having equitable rights is important for negotiating a statutory code

Defining a statutory code will be defining access rights so it is important that any negotiation is done without a wider argument about who has higher rights. In the SOAC model, the code was negotiated after the Land Reform Act gave all non-motorised recreation an equal legal right of access. This made it possible for SNH and the Scottish National Access Forum (the SNAF is a cross-stakeholder forum) to draft a code that was seen as a ‘social

contract’; giving something to everyone to bring them to the table and to make it worthwhile for them to buy in to the idea of responsible recreation. Welsh Government should consider that, ideally, a statutory code would need to be created in a situation where there is no longer any doubt or argument about who has the higher right of access. If an activity is to be included in the code then it should be clearly agreed by all parties what their rights are in relation to [non-motorised] access to land or water.

The creation of a new statutory code for Wales would rely heavily on effective partnership working

The clarity of the roles, between national and regional organisations, was a major factor in the success of the project in Scotland. These roles were reinforced via statutory duties as part of the Land Reform (Scotland) Act. This structure should be considered by WG as part of its review of recreation and access. The importance of an effective stakeholder group, through the SNAF, played a key role in the creation and consultation of the SOAC. The SNAF model in Scotland, i.e. providing a small ‘working group’ representing the ‘3 pillars’ of access, should be considered by Welsh Government if they are intending to move forward with a statutory code.

If altered or updated, a statutory code could lose its parliamentary assent

Part of the weight that a statutory code carries is the requirement for positive parliamentary assent; this needs to be carefully considered in the implementation and review process. WG should be mindful of what future adaptations of a statutory code would do to its status and consider whether making a statutory commitment to carry out a formal review would cause unnecessary complications – if no changes are required. In Scotland, SNH has been given the duty to carry out a review of the code but no timeframe was given as to when it should do this.

A statutory code only defines access rights and will still rely on primary legislation for enforcement or prosecution.

Breaching a Statutory Code may lead to an offence being committed under the legislation to which the Code relates e.g. breach of the SOAC may lead to an offence being committed under the Land Reform (Scotland) Act 2003. To prosecute anyone for breaches of the Code will therefore require primary legislation to be amended to create a duty on NRW to issue a code of conduct for outdoor recreation. In the SOAC model, the Code is classed as a ‘material consideration’ and does not offer the same legal weight as primary legislation. It has not always been clearly understood and sometimes been discounted completely by Sheriffs when trials have gone to court. Welsh Government should keep in mind the limitations of a statutory code as a means of policing responsible behaviour and the need to involve the justice system in its development and implementation.

A single comprehensive statutory code is not in itself a communication tool and is unlikely to influence behaviour change without additional interventions

The nature of a comprehensive statutory code means that it needs to be able to be used by courts to help them consider cases where responsible access is in question. It may also need to make links through to other relevant pieces of primary legislation to aid land managers and authorities make informed decisions about managing access rights. These functions may be compromised if the code both outlines access rights and is the sole communication tool used to try and educate stakeholders and the public about responsible behaviour in a way that they will engage with. A recent survey of LAF and NAFW members found that they viewed codes of conduct as only ‘fairly effective’ as a means of influencing behaviour. Consideration should be made to how information in a statutory code (or any recreational code of conduct) would be targeted at specific audiences or used as the basis for the promotion of key messages. If Welsh Government’s intention is to see more responsible recreation in Wales, they should recognise the limitations of a statutory code of conduct, on its own, at achieving this and accompany it with plans for bringing about behaviour change a comprehensive communication, awareness raising plan.

Awareness of a new statutory code would take time to ‘embed’ into the minds of the people of Wales and its visitors

The Countryside Code is well known in England and Wales. Evidence including from NRW’s Natural Resource Trials in Rhondda, indicate many people nevertheless don’t understand where they can go and what they can do. If a new statutory code of conduct is considered, it would be essential to provide sufficient resources to ensure that awareness superseded its predecessor. This could possibly be a generational shift and Welsh Government should consider the importance of including it in the school curriculum so that it became a key part of the education of young people as well as rising awareness of it amongst adults. In Scandinavian countries the governments have invested in ‘nature kindergartens’ to encourage early year learning about the outdoors and their ‘everyman’s rights’. Welsh Government should also consider how this awareness is monitored; we would recommend embedding questions in the National Survey for Wales.

If a new statutory framework is taken forward and these conditions can be met, there is a real advantage of having a single comprehensive statutory code of conduct for Wales. The clarity that a single agreed message could offer would build a strong foundation for promoting responsible recreation in a coordinated way. However, if these conditions cannot be met, attempting to create a single comprehensive code of conduct would be incompatible with a variety of access rights that exist and could create friction and confusion, having a detrimental effect on the people of Wales’ understanding of responsible recreation.

Statutory based code linked to CROW [and PROW]. Welsh Government may wish to see a more statutory based code of conduct for responsible recreation in Wales whilst retaining a CRoW/PROW mapped approach to defining rights (i.e. not introduce a non-map based approach to defining rights as used in Norway, Sweden and Scotland). One possible approach would be to add a section to Schedule 2 of CROW indicating that ‘In Wales, restrictions to be observed by persons exercising rights of access will be defined by [say] ‘the Welsh Outdoor Access Code’. This code would then carry the same legal status as the Scottish Outdoor Access Code, within the areas mapped under CRoW or as PROW. [In Question 14 we note some issues that may arise with access in areas not defined in maps of access rights.]

Other comments here:
