

# National Assembly for Wales

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National Assembly for Wales Circular 31/2001

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15 February 2002

## **COUNTRYSIDE AND RIGHTS OF WAY ACT 2000**

### **Introduction**

1. The Countryside and Rights of Way Act received Royal Assent on 30 November 2000. Some of its provisions (those specified in section 103(1)) came into force on that day while certain others automatically came into force on 30 January 2001 (those set out in section 103(2)). Section 103(3) of the Act provides a power for the National Assembly for Wales to commence, as respects Wales, the other provisions in the Act. Two orders have been made bringing into force several other provisions on either 30 January<sup>1</sup> or 1 May 2001<sup>2</sup>. This circular provides guidance to local authorities on these sets of provisions, and also gives brief details of other provisions in the Act which will affect local authorities on which more detailed guidance will be issued in due course.
2. Copies of the Act and the accompanying Explanatory Notes may be obtained from The Stationery Office or accessed at their web site.<sup>1</sup>

### **Part I: Access to the countryside**

3. Part I introduces a new right of access for open-air recreation to mountain, moor, heath, down (collectively described as open country) and registered common land. There will be restrictions on the new right, including restrictions on dogs and provisions for landowners to exclude or restrict access for any reason for up to 28 days a year without seeking permission. There is also provision for further restrictions on access for reasons of land management, conservation, fire prevention and to avoid danger to the public. The Act also includes a power to extend the right to coastal land by order, and enables landowners voluntarily to dedicate irrevocably any land to public access.

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<sup>1</sup> The Countryside and rights of Way Act 2000 (Commencement No.1) (Wales) Order 2001 (S.I. 2001/203 (W.9) (C.10))

<sup>2</sup> The Countryside and Rights of Way Act 2000 (Commencement No.2) (Wales) Order 2001 (S.I. 2001/1410 (W.96) (C.50))

<sup>3</sup> [www.hmso.gov.uk/acts/acts2000/20000037.htm](http://www.hmso.gov.uk/acts/acts2000/20000037.htm)

4. The Act provides for certain functions in respect of access land to be exercised by ‘access authorities’, i.e. National Park Authorities for their areas and local highway authorities elsewhere. These functions include powers to make byelaws (section 17), appoint wardens (section 18) and to erect and maintain notices indicating boundaries etc (section 19). Access authorities will have the power under section 35 of the Act to negotiate agreements to provide means of access and to undertake the necessary works themselves if agreement cannot be reached.
5. The new access rights will not come into force immediately – maps of access land, regulations, guidance and other important preparatory work is needed first. The National Assembly for Wales is aiming to implement the right of access across Wales by 2004/5. The National Assembly for Wales will look to commons registration authorities to assist the Countryside Council for Wales in fulfilling its statutory mapping duties by providing the CCW with data from the common land registers and commenting on maps of common land produced by the CCW.
6. Although most of the provisions mentioned in paragraph 4 (except the power to appoint wardens) came into force on 30 January 2001, local authorities are advised that they need to take no action under them at this stage. This is because the powers can only be exercised in relation to land which is access land for the purposes of section 1(1) of the Act. Whilst some land qualified as access land from 30 January (land over 600 metres and registered common land), most land will not qualify as access land until it has been shown on conclusive maps issued by CCW. The National Assembly does not consider that it will be necessary for access authorities to use the powers available to them in Part I until the right of access to access land is commenced by Order, or in anticipation of the right being commenced. We shall issue further guidance to access authorities before any such commencement Order is made.
7. The function of determining applications for restrictions and exclusions of access to land falls to the ‘relevant authorities’, i.e. National Park Authorities as regards their areas and the Countryside Council for Wales elsewhere. Where land that is dedicated to access under section 16 is woodland, the Forestry Commission is the relevant authority. Local Authorities will be expected to maintain effective liaison with the above organisations on issues arising from approved restrictions and exclusions and give appropriate direction to their wardens.

## **Part II: Public Rights of Way, Common Land and Traffic**

8. The provisions contained in Part II of the Act change the law of rights of way in a number of respects and will affect local authorities' functions in relation to rights of way. Many of these provisions will be brought into force when the necessary regulations have been made and further guidance issued.
9. Guidance is given, in this section of the Circular, on those provisions in Part II which either came into force on 30 January 2001 (by virtue of section 103(2) of the Act) or which were commenced by an order that came into effect in Wales on 1 May 2001<sup>2</sup>. Authorities should continue to refer to Welsh Office Circular 5/93 for matters not affected by the provisions which came into force on either 30 January 2001 or 1 May 2001.

### **Restricted byways**

10. The Act creates a new category of highway – restricted byways. These will carry a public right of way on foot, on horseback or leading a horse and for vehicles other than mechanically propelled vehicles. On the commencement of sections 47 and 48 of the Act, highways which are shown in definitive maps as roads used as public paths (RUPPs) will instead be treated as being shown as restricted byways and will be subject to restricted byway rights. Supplementary provisions are contained in sections 49 to 51. All of these provisions will be brought into force by commencement order at a later date.
11. However, section 52 of the Act, which enables the Secretary of State (and, in some cases, the National Assembly for Wales) to amend, by regulations, existing legislation in relation to restricted byways, took effect on 30 January 2001. This section enables the Secretary of State (or, as the case may be, the Assembly) to scrutinise the legislation relating to highways and determine which provisions should or should not apply to restricted byways or how those provisions should be modified as a consequence of the introduction of the concept of restricted byways.
12. The Act requires that regulations made by the Secretary of State under section 52 be approved by both Houses of Parliament. In exercising his functions under section 52, the Secretary of State is required to consult the National Assembly for Wales before making provision which affects Wales and to obtain the Assembly's consent before expressly amending or revoking secondary legislation which the Assembly has made. The Assembly is also entitled to submit proposals to the Secretary of State on how his regulation making power might be exercised.
13. The Assembly's power to make regulations under section 52 relates to the power to amend certain classes of legislation relating to Wales. These classes are any local or private Act passed before or in the same session as the 2000 Act and relating only to areas in Wales, and any secondary legislation made before the passing of the Act which the Assembly has the power to amend or revoke as respects Wales.

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<sup>2</sup> The Countryside and Rights of Way Act 2000 (Commencement No.2) (Wales) Order 2001

14. When section 47 of the Act is brought into force, section 54 of the Wildlife and Countryside Act 1981 will cease to have effect and so surveying authorities will no longer be under a duty to reclassify RUPPs. Until then, however, the duty under section 54 still applies and authorities should continue to review their RUPPs and make reclassification orders. Any such orders, or applications for orders modifying the status of a RUPP, which are made before section 47 is brought into force are to be processed to a final determination. Section 48(9) requires that provision is made for this in the relevant commencement orders to be made under section 103(3).

### **Applications for public path creation orders for purposes of Part I of the Act**

15. Section 58 enables the Countryside Council for Wales to apply to the National Assembly for Wales to make a public path creation order, in order to obtain or facilitate access to land where the public may walk under Part I of the Act. Before making an application, the Countryside Council for Wales is required to have regard to any rights of way improvement plan for the area, prepared by the relevant local highway authority under section 60 of the Act.
16. If requested by the Countryside Council for Wales to use its reserve powers to make a public path creation order, the National Assembly for Wales would consider carefully whether the circumstances warranted such action. Before making an order, the Assembly would be required, by section 26 of the Highways Act 1980, to consult with local authorities in whose areas the new path would be located. Generally, it will be for local authorities, where necessary, to enable the public to reach access land, either by negotiating permissive access with landowners or by using their existing powers under the Highways Act 1980 to create rights of way by agreement or by order.

### **Effect of Part I of the Act on powers to stop up or divert highways**

17. Section 59 relates to powers, whether or not by order, to stop up or divert highways. It prevents an authority, when exercising such powers, from regarding the existence of the new right of access under Part I as, for example, reducing the need for the highway, the need for an alternative highway or the need to reserve a public right of way. In addition, when deciding whether to stop up or divert a highway, it may be necessary for an authority to consider the extent to which that highway is likely to be used when the statutory right of access is not exercisable for whatever reason.
18. The purpose of section 59 is to prevent the new right of access from being used to support a case for stopping up or diverting highways except, for example, where a diversion may be required to help people reach access land.

### **Wilful obstruction of a highway**

19. Section 64 of the Act inserts a new section 137ZA into the Highways Act 1980. The new section empowers a magistrates' court, when convicting a person of an offence under section 137 of the 1980 Act of wilfully obstructing a highway, to order that person to remove the obstruction. Under the new section 137ZA(3), failure to comply with a court order, without reasonable excuse, is an offence punishable by a

fine not exceeding level 5 on the standard scale (currently £5,000). Further fines, not exceeding one-twentieth of a level 5 fine, may be imposed for each day the offence continues after conviction.

20. A person who has been ordered to remove an obstruction may not be prosecuted again, under section 137 of the Highways Act 1980 in respect of that obstruction, during the period set by the court under section 137ZA for removing it. Neither may the person be similarly prosecuted during any period set under section 311(1) of the Highways Act 1980 for complying with the directions of the court.
21. Highway authorities have the powers at common law to remove unlawful obstructions in certain circumstances. Where authorities choose to exercise these powers after a person has been convicted under section 137ZA(3), subsection (4) of section 137ZA, in conjunction with section 305 of the Highways Act 1980, allows authorities to recover their costs through the magistrates' court.

### **Vegetation overhanging bridleways**

22. Section 154 of the Highways Act 1980 enables certain authorities to require owners and occupiers of land, whose trees, shrubs or hedges overhang highways to the extent of endangering or obstructing the passage of vehicles or pedestrians, to cut the vegetation back. Section 65 of the 2000 Act extends section 154 to apply to vegetation which endangers or obstructs the passage of horse-riders. Authorities will be able to require that vegetation overhanging bridleways or carriageways is cut back to a height which is suitable for horse-riders.

### **Traffic regulation orders for purposes of conserving natural beauty**

23. Local traffic authorities have powers under the Road Traffic Regulation Act 1984 to make traffic regulation orders to prohibit, restrict or regulate traffic using particular highways. The National Assembly for Wales has similar powers in respect of trunk roads. The 1984 Act sets out the purposes for which traffic regulation orders may be made and many of these are also listed in paragraph 13 of Welsh Office Circular 5/93.
24. Section 22 of the 1984 Act enables authorities to make traffic regulation orders in respect of the use of roads in certain areas for the purpose of conserving or enhancing the natural beauty of the area, or of affording better opportunities for the public to enjoy the amenities of the area. In Wales the areas concerned include:
  - National Parks
  - Areas of Outstanding Natural Beauty
  - Country Parks
  - Areas where the Countryside Council for Wales are undertaking experimental projects
  - Nature Reserves
  - Nature Trails
  - Land belonging to, and held inalienably by, the National Trust.

25. Section 66 of the 2000 Act extends section 22 to include Sites of Special Scientific Interest. The section also inserts a new section 22A into the 1984 Act. The new section enables traffic authorities to make orders to control vehicular traffic on unclassified roads and byways in areas not covered by section 22 of that Act for the purposes of conserving or enhancing the natural beauty of the area. Conserving the natural beauty of an area is to be construed as including the conservation of flora, fauna, geological and physiographical features of the area.

### **Unauthorised Driving of Mechanically Propelled Vehicles elsewhere than on Roads**

26. Schedule 7 to the 2000 Act makes a number of changes to the prohibition of driving motor vehicles, elsewhere than on roads, contained in section 34 of the Road Traffic Act 1988. The Schedule substitutes a new section 34. It also inserts a new section 34A into the 1988 Act. The latter provision will be brought into force by order in due course.
27. Section 34 currently relates to the driving of a “motor vehicle”, a term which is defined in section 185(1) of the 1988 Act. The Act extends the offence to cover mechanically propelled vehicles which are not intended or adapted for use on roads. Schedule 7 makes similar amendments to section 21 of the 1988 Act which relates to the offence of driving or parking “motor vehicles” on cycle tracks.
28. The new offences under section 34 and section 21 of the 1988 Act do not apply to certain classes of vehicles such as invalid carriages, mechanically propelled vehicles controlled by pedestrians used for cutting grass and electrically assisted pedal cycles.
29. As before, the new section 34(1)(b) prohibits driving on footpaths and bridleways but the offence is extended to restricted byways.
30. The recording of a way, in a definitive map, as a footpath or bridleway (or, when the relevant provisions are in force, a restricted byway) does not mean other rights do not exist over the way in question. It does not mean, for instance, that there are no public rights to drive mechanically propelled vehicles over the way. However, section 34(2), which is a new provision, specifies that - for the purposes of the offence - where a way is shown in a definitive map as a footpath, bridleway or restricted byway, it is to be presumed to be a way of the kind shown unless the contrary is proved. It is, accordingly, presumed to carry only those public rights which a footpath, bridleway or restricted byway carry. Once the prosecution have proved that a highway is shown in a definitive map as a footpath, bridleway or restricted byway, the burden of proof would be on the defence to prove on the balance of probabilities that the way carries public motorised vehicular rights.
31. Section 34(2) will be subject to the new section 34A of the 1988 Act when the latter is brought into force. However, until then, the presumption under section 34(2) applies without being subject to section 34A.
32. Section 34A provides for the presumption in section 34(2) to be rebuttable only in those circumstances which are expressly set out in it or in regulations made under it. Consequently, except where those circumstances apply or the defences in section 34

succeed, the offence under section 34(1)(b) is committed where the way being driven on is shown in a definitive map as a footpath, bridleway or restricted byway. This is irrespective of whether there are public rights of way to drive mechanically propelled vehicles.

### **Provisions in Part II to be brought into force by Commencement Order**

33. The National Assembly for Wales has made a commencement order under section 103(3) of the Act to bring certain other provisions in Part II into force. These are section 57, in relation to paragraphs 18(a) and 19 of Schedule 6, section 72 (which provides a number of definitions for the Interpretation of Part II), and the repeals in Schedule 16 to the Act.
34. Furthermore, section 70(2) and (4) came into force, by commencement order, on 1 May 2001. Section 70(2) amends section 134 of the Highways Act 1980. Section 134 confers a right to plough or otherwise disturb the surface of a footpath or bridleway which crosses agricultural land, but subject to a duty to make good the surface of the highway and to mark out its width. Failure to comply with that duty is an offence under sub-section (4). Currently, sub-section (5) restricts the categories of person who may bring proceedings for that offence to highway authorities and certain councils. Section 70 removes that restriction by causing sub-section (5) to be repealed. This means that any person will be able to prosecute the offence under section 134(4) of the 1980 Act but, under the terms of the commencement order, only in respect of offences committed on or after 1 May 2001.
35. Section 70(4) amends section 21(2)(b) of the Road Traffic Act 1988. The amendment provides highway authorities with a defence against prosecution for driving or parking mechanically propelled vehicles on cycle tracks when this is done to prevent or remove obstructions or in the prevention or abatement of any other interference with the highway. The amendment arises out of a judgement by the House of Lords in *Goodes v East Sussex County Council* [2000] 3 All ER 603, which would appear to mean that the current provisions in section 300 of the 1980 Act and section 21(2)(b) of the 1988 Act do not cover the removal of obstructions or the abatement of nuisances. This is because a narrow interpretation was given to the meaning of “maintenance” that appears to exclude the removal of obstructions and such like.
36. Sub-section (3) of section 70 amends section 300 of the Highways Act 1980 and similarly provides highway authorities with immunity from prosecution for driving mechanically propelled vehicles on footpaths and bridleways. However, the operation of the amended section 300 depends upon amendments being made to secondary legislation and section 70(3) will be brought into force at a later date when those amendments have been made.
37. Section 72 and Schedule 16 – Section 72 provides a number of definitions for the interpretation of Part II. Section 72 and the repeal in Schedule 16 to the Act relating to section 22 of the Road Traffic Regulation Act 1984 came into force on 30 January 2001.

### **Part III: Nature conservation and wildlife protection**

38. Part III of the Act amends the law relating to nature conservation and the protection of wildlife, and includes provision on the conservation of biodiversity and the protection of sites of special scientific interest. The following paragraphs summarise the key implications for local authorities.

#### **Biodiversity**

39. Section 74 of the Act places new duties on the National Assembly for Wales in respect of the conservation of biodiversity. Local authorities are not covered by these duties. However, the National Assembly for Wales may include local authorities in exercising the duty to promote the taking of steps by others to further the conservation of the habitat types and species of principal importance for biodiversity. In practice the National Assembly for Wales expects the lists of habitat types and species of principal importance to be largely consistent with those that are already the subject of action plans under the UK Biodiversity Action Plan.
40. Local authorities' responsibilities for preparing their own Local Biodiversity Action Plans do not rely on the provisions of this Act. These plans are amongst the elements local authorities should build upon when preparing the overarching community strategy required by section 4 of the Local Government Act 2000<sup>2</sup>. Local wildlife sites will be important components within Local BAPs.

#### **Sites of Special Scientific Interest**

41. Schedule 9 substitutes significant new provisions regarding the notification, protection and management of Sites of Special Scientific Interest (SSSIs), in place of section 28 of the Wildlife and Countryside Act 1981. Existing notifications made to local authorities under that section remain valid, but the very few remaining notifications under section 23 of the National Parks and Access to the Countryside Act 1949 cease to have effect. The Countryside Council for Wales will write to individual authorities about these sites. The National Assembly for Wales will issue further advice, in a revised Code of Guidance containing recommendations, advice and information for the guidance of those exercising responsibilities under the new section 28, but the effect of the new provisions is briefly described below.
42. The revisions to section 28 enable the Countryside Council for Wales to refuse consent for operations listed on the site notification as likely to damage the special interest. (Previously, the ability to refuse consent had effect for only a limited period.) They also include powers for the Countryside Council for Wales to vary the notification, in relation either to the details of the notification, or the area of land covered; and to remove the notification from land that is no longer of special interest. They must notify the local planning authority of any such changes.
43. The Countryside Council for Wales has new duties to advertise notifications in local newspapers and to include in the notification, a statement of views about the

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<sup>2</sup> Preparing Community Strategies: draft guidance to local authorities from the National Assembly for Wales 2001.



management of the land; and new powers to formulate management schemes for conserving the special features on an SSSI, and to serve management notices requiring owners and occupiers to carry out work in accordance with a management scheme. There are rights of appeal to the National Assembly for Wales against refusal of consent and against management notices. The National Assembly intends to issue Appeal Regulations, together with an accompanying Circular describing the new arrangements more fully, in due course.

44. A fine of up to £20,000 in the Magistrates' Court (or an unlimited fine, on conviction on indictment) may be imposed, where an owner or occupier carries out potentially damaging works without notifying the Countryside Council for Wales or, having notified, without receiving consent. In addition, any person who intentionally or recklessly damages or destroys an SSSI, or intentionally or recklessly disturbs any of the fauna for which the site is notified, may incur a similar penalty; and the Courts may require the restoration of the site to its former condition. The Countryside Council for Wales may also make byelaws for the protection of an SSSI. As a consequence of these additional measures, the power of the National Assembly for Wales to make nature conservation orders under section 29 of the 1981 Act has been repealed. Existing orders cease to have effect, and new operations must be the subject of an application for consent.

#### **Duties on public bodies in relation to SSSIs**

45. New section 28G, inserted in the 1981 Act, imposes an important new duty on public bodies, exercising statutory functions that may affect SSSIs, to take reasonable steps, consistent with the proper exercise of these functions, to further the conservation and enhancement of the features for which the site is of special interest. Public bodies specifically include local authorities and the duty applies wherever they are exercising their functions. The National Assembly for Wales expects public bodies to apply strict tests when carrying out functions within or affecting SSSIs, to ensure that they minimise adverse effects, and to adopt the highest standards of management in relation to SSSIs that they own.
46. Where a public body, having had regard to this duty, nevertheless proposes carrying out operations likely to damage the special features on an SSSI, new section 28H requires that it must notify the Countryside Council for Wales. This applies whether or not the operation is taking place on land included in an SSSI. The Countryside Council for Wales must give notice within 28 days indicating whether or not they assent to the operation. If they do not assent, but the public body decides it must proceed with the works, it must give CCW not less than 28 days notice of its decision to proceed, and explain how it has taken account of any of their advice. In addition, in carrying out the works it shall give rise to as little damage to the SSSI as is reasonably practicable, and if damage does occur, shall restore the site to its former condition, again in so far as is reasonably practicable. It is an offence, liable to a penalty on summary conviction of a fine of up to £20,000, or on conviction on indictment an unlimited fine, if a public body fails to comply with the requirements of section 28H.
47. An authority (including a planning authority) that has the power to grant permission for other parties to carry out proposed operations, or change the way that land, or

buildings on it, are used, must consult the Countryside Council for Wales where such operations are likely to damage an SSSI. This applies whether or not the operation etc would actually take place on the SSSI. It must then wait for 28 days before deciding whether to issue its consent, unless CCW has notified it earlier that it need not wait, and must take account of its views, including views on attaching conditions. If the public body decides that it will issue a permission against the Council's advice it must notify the CCW, and then allow a further period of 21 days before the operation may commence. Once issued, a planning permission granted on an application under Part III of the Town and Country Planning Act 1990 constitutes a 'reasonable excuse' for the purpose of new section 28P(4) should damage occur to the SSSI during the legitimate exercise of that permission.

48. Where an owner or occupier wishes to exercise permitted development rights on an SSSI, and the works involved are listed on the SSSI notification as operations likely to damage the special interest, then he or she must apply to the Countryside Council for Wales for consent under section 28 in the usual way. If the Countryside Council for Wales refuse consent for such works it will not be possible to exercise the permitted development rights. In such cases, or where the Countryside Council for Wales attach conditions to a consent the applicant may appeal to the National Assembly for Wales. Alternatively, the owner or occupier may apply to the local planning authority for planning permission under Part III of the Town and Country Planning Act 1990. Such applications will be considered by local planning authorities in the normal way; likewise, the normal arrangements would apply to any appeal against a local planning authority's refusal of an application for planning permission, or against conditions attached to an approval.

### **Ramsar sites**

49. Section 77 of the Act requires the National Assembly for Wales to notify the Countryside Council for Wales when it has designated, under the Ramsar Convention, a wetland for inclusion in the list of wetlands of international importance. The Countryside Council for Wales must then notify the local planning authority as well as owners and occupiers of the land, and other relevant bodies.
50. In Wales, this provision has been supplemented by policy guidance on the protection and management of Welsh Ramsar sites, issued in February 2001, giving them a level of protection equivalent to that currently afforded to European sites (as defined in the Conservation (Natural Habitats &c) Regulations 1994). This gives guidance to local planning authorities and other public bodies on issues which should be taken into account in making decisions on development proposals likely to impact on sites which are listed as wetlands of international importance and the exercise of their duties under new section 28G. If, unusually, consent is given to development on or affecting such sites, lost wetlands interests will have to be replaced, by restoring and recreating habitats. The National Assembly for Wales also expects that developers will have normally to bear the cost of these Habitat compensatory packages, under the polluter pays principle.

### **Limestone Pavement Orders**

51. Unitary planning authorities continue to have powers under section 34 of the 1981 Act to make limestone pavement orders prohibiting the removal or disturbance of limestone on land covered by the order. Under section 78 of the Act the penalty for an offence under such an order has been increased to £20,000, in line with the penalty for damaging SSSIs.

### **Wildlife Enforcement**

52. Part III also contains measures to strengthen the enforcement of the provisions in the Wildlife and Countryside Act 1981 relating to the protection of certain wildlife species. Section 25 of the 1981 Act already requires local authorities to bring Part I of that Act to the attention of the public, and empowers them to institute proceedings for offences committed in their area.
53. Schedule 12 of the Act makes certain offences ‘arrestable’ – this will bring with it stronger search and seizure powers for the police; it creates new reckless disturbance offences; it gives increased powers to the police and government wildlife inspectors – they will have the power to enter premises to check species sales controls and can require tissue samples to be taken from wildlife species for DNA analysis; and it enables Courts to impose heavier fines and prison sentences for virtually all offences under Part I of the Wildlife and Countryside Act 1981.

### **Part IV: Areas of outstanding natural beauty**

54. Part IV of the Act introduces provisions to help secure the better management and protection of Areas of Outstanding Natural Beauty (AONBs). It requires the preparation and publication of a management plan for every AONB. It also places a duty on ‘relevant authorities’ when exercising or performing any function in relation to, or so as to affect, land in an AONB, to have regard to the purpose of conserving and enhancing the natural beauty of the AONB (see paragraph 60 below). It provides for the creation of conservation boards for individual AONBs by means of an establishment order made by the National Assembly for Wales. It also consolidates the AONB provisions previously contained in the National Parks and Access to the Countryside Act 1949.
55. The new duties imposed by Part IV include the requirement for local authorities having land in an AONB to participate in the preparation and publication of a management plan for the AONB. A management plan must be in place for each AONB by 30 April 2004.

### **AONB Management Plans**

56. Section 89 of the Act requires a management plan to be prepared and published for each AONB. The responsibility for doing so rests with the local authorities having land within the AONB, except in cases where an AONB conservation board comes into existence (see paragraphs 61-66). Local authorities within an AONB will therefore need to establish a mechanism for joint working in preparing, publishing and

reviewing these plans. Non-statutory management plans already exist for many AONBs and there is already experience of joint working mechanisms among the local authorities.

57. The National Assembly for Wales wants the introduction of AONB management plans to raise the profile of AONBs and to demonstrate the commitment of local authorities and other stakeholders to the management of the AONB. The Countryside Council for Wales expects to issue detailed guidance on the preparation and content of management plans during 2001; the guidance is being produced in close co-operation with the Welsh Local Government Association and the Association of AONBs and will draw on experience in the National Parks, which already have a statutory duty to produce management plans. Local authorities preparing AONB management plans will be aware of the need for consistency with the content of other plans they are required to produce, including Community Strategies under the Local Government Act 2000. Community participation should underpin the preparation and implementation of Management Plans.
58. As noted above, management plans must be prepared and published by the responsible local authorities within three years of the commencement of the relevant section on 1 May 2001. An existing non-statutory plan which has been proposed by a local authority or joint committee (within the last 2/3 years) may be reviewed and adopted as the AONB management plan. Once a plan has been published, it must be reviewed at intervals not exceeding five years. The National Assembly for Wales is providing increased funding to local authorities to implement CROW Act provisions in Wales. This will help enable local authorities to carry out core functions in each AONB in Wales including the production of management plans. In addition, the Assembly is providing increased funding to the CCW from 2001/2002, which inter alia, should assist it in contributing to core funding and in making grants available for appropriate projects within AONBs consistent with the management plan.
59. AONB management plans will not form part of the statutory development plan system. However, those elements in an AONB management plan which relate to the development and use of land, and supplement and support the policies set out in the development plan, may be material considerations to be taken into account in determining a planning application and, where appropriate, adopted as supplementary planning guidance.

## **Duty on Public Bodies**

60. Section 85 of the Act places a duty on any relevant authority, in exercising or performing any function in relation to, or so as to affect, land in an AONB, to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. 'Relevant authority' is defined as any Minister of the Crown, any public body, any statutory undertaker or any person holding public office. 'Public body' includes any local authority. This section is modelled on the similar duty towards National Park purposes which was introduced by section 62(1) of the Environment Act 1995. The duty ensures that relevant authorities take account of AONB purposes when coming to a decision or carrying out their activities relating to or affecting land within the AONB. Relevant authorities will be expected to be able to demonstrate that they have fulfilled this duty. They will wish to consider whether they could usefully make references to it in their annual reports. It may sometimes be the case that the activities of certain authorities outside an AONB may have an impact within the area. In such cases it will be important to ensure mutual co-operation across AONB boundaries, particularly in planning and highway matters.

## **AONB Conservation Boards**

61. Section 86 of the Act enables the National Assembly for Wales to establish conservation boards for individual AONBs by means of establishment orders. Conservation boards are expected to be most suitable for some of the larger AONBs in England and Wales which cross a number of local authority boundaries, and where unified management of the AONB would bring benefits. The CCW does not believe that Conservation Boards are currently appropriate in Wales and the Assembly has no plans to initiate any at this stage .

## **Part V: Miscellaneous and supplementary**

### **Local access forums.**

62. Section 94 places a duty on highway authorities and national park authorities to establish local access forums to advise on the improvement of public access for open-air recreation and the enjoyment of the area. Relevant authorities under the Act will have to have regard to forums' views in reaching decisions, for example in relation to draft maps, the imposition of byelaws, and proposals for long term closures of access land (under Part I), as well as on wider access issues contained in new rights of way improvement plans (under Part II). The duty will not arise until regulations are made by the National Assembly setting out the constitution and functions of the forums. Draft Regulations have been issued for consultation and it is anticipated that the regulations on Local Access Forums will come into force in January 2002. The regulations must provide that membership of forums will include users of rights of way and the new right of access, landowners and occupiers, together with any other interests especially relevant to the area. Local Authorities will be encouraged to co-operate with neighbouring authorities in establishing local access forums which best serve their areas and communities. Local Authorities should consider the advantages of establishing provisional non-statutory local access forums in advance of the regulations to advise on the development of regulations and procedures.

## Management agreements

63. Section 39 of the Wildlife and Countryside Act 1981 enables local authorities to enter into management agreements with the owner of land in the countryside for its conservation (and for other related purposes). Section 96 of the 2000 Act amends section 39 in order that the Countryside Agency, the Countryside Council for Wales, and conservation boards in areas of outstanding natural beauty, may also enter into such agreements, and to enable agreements to be made in respect of any land, whether or not it is in the countryside. These amendments will allow these bodies, for example, to make agreements with the owner of land both for its dedication to access, and the long term conservation of access (by ensuring that dedicated land cannot become excepted land for the purposes of Schedule 1).

## Town and Village Greens

64. Section 98 of the Act revises and clarifies the third limb of the definition of town and village greens contained in section 22 (1) of the Commons Registration Act 1965.
65. Under the first part of the revised definition the land will be regarded as village green provided that it is land on which for not less than 20 years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right. The implications of this are that the commons registration authority will need to be satisfied only that a significant *number* of local inhabitants have used the land in a qualifying manner. Use by people not from the locality will therefore be irrelevant. Furthermore, use of the words “.. any locality, or neighbourhood within a locality...” is intended to clarify that a locality does not necessarily equate to an administrative area, e.g. an entire community council, but rather to a suitable area which the land in question might reasonably be expected to serve as a green.
66. The second part of the revised definition provides that the local inhabitants must either continue to use the land in a qualifying manner or must have ceased to use the land within any period prescribed in regulations. These regulations may also require that specific procedures relating to the process of applying to register land as a green are followed.
67. The revised definitions contained in this section came into effect on 30 January 2001. The National Assembly for Wales is considering what provisions should be contained in subsequent regulations.