

Access Reform Programme

Problem Definition Paper: Expert Group 1
Changes to Open Access CRoW Land

Preface

In 2017 Welsh Government issued the Sustainable Management of Natural Resources (SMNR) Consultation, which included proposed reforms relating to access to the countryside. The Government's approach to the SMNR Access proposals, stated that:

- Our Natural Resources Policy illustrates that nature-based solutions can support physical and mental health. That is why we are committed, as a Government, to increasing both access to and enjoyment of our countryside for people – to take advantage of the many health and wellbeing benefits that getting outside can bring.
- An accessible countryside supports our efforts to boost Wales as a tourism destination.

On 4 April 2019, the Deputy Minister for Housing & Local Government published a Written Statement setting out the Government's response to the access proposals within Chapter 4. In this statement, seven proposals were identified that required more detailed consideration of the way in which they should be taken forward. The Deputy Minister subsequently established an independent '**Access Reform Advisory Group**' (ARAG), consisting of a Steering Group and three Expert Groups, to consider these proposals further and make recommendations on their implementation.

The BRO Partnership was commissioned in December 2019 to:

- Review a number of the key responses to the 2017 consultation.
- Plan and deliver facilitated workshops for each of the three Expert Groups.
- Produce three draft **Problem Definition Papers** for consideration by the ARAG Steering Group.

[Please note: this paper is to inform the development of access reform proposals as part of the Access Reform Advisory Group process; the content should not be considered as the policy position of Welsh Government, NRW or the other participating organisations.]

Expert Group 1 - Changes to Open Access CROW land

Policy Intent: To increase the range of activities permitted on CRoW access land (including water bodies mapped under CRoW) and create new access land in coastal areas.

With the introduction of Open Access under the Countryside and Rights of Way (CRoW) Act 2000, the public were given the right of access on foot to land classified and mapped as 'open access land' under the Act.

Expert Group 1 met on the 3rd February 2020 and was tasked with considering how CRoW access rights should be extended to horse riders, cyclists and other specified recreation users on open access land (Reform 1A), and how CRoW provisions should be extended to allow the designation of coastal land as open access land to provide 'spreading room' adjoining the existing Wales Coast Path (Reform 1B).

Reform 1A – New Activities on CRoW Access Land

To reduce the restrictions on non-mechanically propelled recreational activities permitted on open access land. This includes the following:

- Cycling
- Horse riding
- Hang-gliding and paragliding;

and on, or in, inland bodies of water (excluding reservoirs) within open access land:

- Non-mechanically propelled vessels
- Bathing / swimming

It is anticipated that the following Schedule 2 restrictions will be retained:

- *Restrictions on organised games and camping*
- *Restrictions on sailing and bathing in or on man-made bodies of water*

The Expert Group identified and themed into 6 categories the key issues with implementing Reform Proposal 1A, and then provided detailed comments on each theme.

The 6 themes identified were:

- Legal / Definition issues
- Operational/Practical issues
- Providing information and guidance for the public and landowners/managers
- Possible impact on the environment
- Visitor management, including potential conflict between users
- Impact on farming practises.

A summary of the issues raised under each of these headings are set out below:

Legal / Definition issues

It was felt that there is a need for clarity on what would be and wouldn't be permissible and where, including in relation to any newly defined CRoW access land. A particular example of this was paragliding on CRoW land, where the participant may not be able to accurately predict where they will land, thus potentially resulting in trespass issues. Definitions of elements, such as inland water, would need to take

into consideration discussion currently underway at the National Access Forum but also need to be clear to the user on the ground to identify where they can go to ensure that there is no ambiguity. Similarly, it was felt that there would need to be a consideration of the definitions of organised games and organised events.

Exclusions from the Reform were also discussed and in particular whether carriage drivers should be included and whether increasingly popular electric bikes should or shouldn't be included.

Other legal anomalies raised related to the relationship between CRoW land and common land and how to ensure new users know where their rights would extend. This raises the question of excepted land and whether this would need to be reviewed to take into account additional user rights. For example, would some land be accessible to some users but not others?

A general point was raised in relation to how the changes would be applied: the choice between removing all restrictions at once, and then imposing controls on a case-by-case basis where problems are arising; as opposed to an approach based on lifting restrictions on [say] an application basis, where it can be demonstrated that there will be no significant adverse impacts. This is a fundamental point, which is discussed further at the end of this paper and may arise within proposed options.

It was noted that electrically assisted pedal cycles (EAPC) conforming to regulations are pedal cycles for the purposes of existing legislation and would therefore be included in higher rights for cyclists unless specifically excluded.

Key Issues:

1. How can the rights and responsibilities that will apply to CRoW access land best be defined in legislation and how applied?
2. How will the CRoW land rights and responsibilities be most effectively communicated to people including visitors? Are the current provisions of mapped information, on the ground signage and guidance adequate?
3. Would the impact of certain types of user be such that they should be excluded from the proposed changes? For example, electric bicycles?

Operational / Practical Issues

A number of practical issues were raised in terms of ingress and egress to access land for different users, in particular, how to get boats to inland water and also the provision of additional parking facilities for horse boxes.

Other issues related to the need for users to enjoy a coherent and accessible network without internal boundary features, which would prevent their onwards journeys. There is also a need for CRoW land to connect to wider routes for it to be accessible, particularly for horse riders and cyclists. Whilst not explicitly related to this reform, it is an important point to highlight as a change will result in more call for links to Open Access land and pressure on local authorities.

No assessment has been made of the proportion of CRoW land that would be suitable for additional categories of user nor any research into where, when and how such users might want to use CRoW land. It is unclear how the use of CRoW land by horses and cycles, might occur, in practice, the extent of land used and the impact on certain routes across access land. Identifiable routes could become overused and eroded, thus reducing the enjoyment of walkers, as well as horse riders and cyclists themselves. Repairing and maintaining surfaces, especially in upland areas, is costly and this could be an additional burden for land managers and

local authorities. The use of CRoW land for horses and cycles will also put pressure on local authorities and land managers to change gates and stiles along certain key routes and this will be an additional cost. If CRoW land is not accessible for horse riders and cyclists, then this may result in damage to fences and boundaries. Changes to gates and stiles to accommodate horses and cyclists might also lead to unlawful activities, such as off-roading motor vehicles and fly-tipping.

Key Issues:

4. What duties and powers will be needed as a result of the changes to allow facilitation and management of access both within and to access land for all users, and for mitigating impacts where they arise?
5. What changes are needed to ensure that new rights will be exercisable on the ground? What duties will be required to be able to address issues arising for access and land management?
6. How will the changes accommodate the planning and assessment of needs of access management to facilitate access, or manage any resulting problems on the ground, including between people?
7. How will the costs and increased resource requirements arising from the changes for both the management of access and land be assessed?

Providing information and guidance for the public and landowners/managers

Horse riders and cyclists will need to know a number of practical issues before embarking on their journey, e.g. where to park, access points to and within access land, and whether there will be structures, such as cattle grids, gates and stiles, which they cannot get through. This also applies to paragliders, hang gliders and those planning to take non-mechanically propelled vessels to inland water bodies.

As well as knowing how to get to a location, it will be important that public information is clear about the restrictions on the activities that can be carried out, their extent, and what is not permissible. The point raised above in relation to where paragliders can land is an example of the need for clear communications.

Horse riders, cyclists and other users covered by this Reform may inadvertently cause additional problems, such as impacts on farming, felling or wildlife. It will be important that any such impacts are understood and if necessary a review of exceptions, as well as the scheme for exclusions and restrictions may be required. If such changes are made then there will be a need for additional communications so that the public are clear on where they can go and what they can and cannot do at certain times.

Discussion also focussed on the need for clear guidance for the public about responsible recreation, and for that guidance to be widely distributed and understood. Including such information within the national curriculum to encourage responsible behaviour at an early age should be considered. Whilst this might not be a direct implication of any proposed changes it is an additional consideration that will require funding. Additional communication may also be needed to cover cross-border CRoW land.

Other consequences of this Reform could include some farmers and land managers experiencing problems which affect their businesses. It will be important, therefore,

that they are aware of changes that the new Reform permits and who they should consult if they are experiencing problems, e.g. boundaries being pulled down on CRoW land.

Key Issues:

8. What exclusions and restrictions regime changes will there need to be with changes to access rights?
9. How will E&Rs best be communicated, both on the ground and elsewhere.
10. How can appropriate behaviours (including rights and responsibilities) best be communicated, achieved and where necessary enforced with the public and stakeholders?

Possible Impact on the environment

It was noted that there is a lack of research and evidence to assess what additional disturbance or erosion could be caused by new users. A Regulatory Impact Assessment will be needed for proposed legislative changes to assess and evaluate any potential impacts, it may also be necessary to undertake other environmental impact assessments. The potential impact on wildlife as a result of Reform 1A will be difficult to predict, though it is likely that this will be largely related to key sites for wildlife and to be seasonal. Water related activities could impact on nesting birds, for instance, especially if there are say large numbers taking part.

As a starting point, there may be some merit in looking at experiences in Scotland to see where and when any such impacts have arisen.

Key Issues:

11. Will additional powers and duties be required to ensure the protection of the environment and sensitive sites against the impacts arising from the exercise of rights and, if so, what changes will be needed?
12. How should environmental impacts be assessed in applying E&Rs for environmental reasons?

Visitor management, including potential conflict between users

As noted above, Reform 1A could result in higher levels of erosion in certain areas and this would impact on the enjoyment of walkers. There is no baseline survey of the impact of walkers to build upon to be able to adequately assess the additional impact of this Reform.

There are also a number of health and safety issues that may arise, e.g. mountain bikers coming downhill at high speeds and causing a danger to others. There could also be potential conflict between horse riders and cyclists, especially in confined areas and along certain routes. Some users may not be aware of the potential dangers, for instance, horse riding and cycling going through undergrowth and bracken areas where the ground is uneven.

There are also clear health and safety implications of swimmers and boating activities taking place in relatively remote inland waters where there is no safety equipment.

It was felt that promotion of responsible behaviour will help, but it may be inevitable that problems arise. Since recreational activities and pressures are changing very rapidly, any code or guidance on responsible recreation will need to be flexible and adaptable.

There will be a need for access managers and landowners to collaborate and be proactive in assessing where conflict may arise and at what times of the year. This has resource implications, which could be significant in some areas.

Visitor management issues are more likely to occur when users are frustrated that they cannot complete their journey. For instance, cyclists crossing CRoW land and discovering half way across that their way is blocked by a gate or stile and they cannot easily cross without danger of personal injury or damaging the boundary. Other health and safety risks may arise from users crossing land with hefting stock. This issue was covered in several of the discussions on Reforms 1 and 2.

Key Issues:

13. How should the reform changes provide for the health and safety of users and other interests?
14. How could a responsible recreation behavioural guidance/framework be adaptive enough to stay in line with changes in recreation, and effective enough to be a useful tool for visitor management?

Impact on farming practices

There were a number of concerns relating to the potential impact on farming practices, notably:

- Stock control, through gates and stiles being left open or boundaries pulled down. This could have a devastating impact for the farmer, e.g. a ram getting into a field of ewes.
- There is also an issue in terms of farm animals being disturbed by fast moving horses or cyclists, this is particularly relevant for ewes when they are lambing.
- Again, as cited in some of the other discussions, it was noted that unless new gates and stiles are installed which can accommodate horse riders and cyclists, there will inevitably be a risk that boundaries are pulled down, which will incur substantial costs for the farmer.
- There could be additional biosecurity issues arising from horses crossing agricultural land and spreading infectious diseases.
- As noted above, there are issues relating to ingress and egress to and from access land for horse riders, cyclists and boat owners, particularly in terms of where they can park.
- Some inland water bodies are used as private water supplies, will these be excluded?

A general point arose relating to the potential economic costs to the farmer - through damage, higher insurance and potential liability costs. There may also be an impact on existing businesses. For instance, if a farmer has a horse-trekking operation on their own land, which is also CRoW land, the reform could lead to new commercial operations benefiting from the farmer's asset. However, it should be noted that

CRoW excludes commercial activities from the rights, including the ability of third parties to charge for an activity they carry out on someone else's land.

In the same vein, it was felt that new commercial activities, including large scale events, should be clearly defined and remain excluded in any reform. This would be in line with the emerging policy direction for farming support post CAP, where there will be encouragement for farmers and landowners to diversify. In other words, outside commercial interests should not be benefiting from land without the permission of the landowner and any other required permissions.

The implications of any additional liability issues need to be very clear. At a time when farmers are already under considerable economic pressures, it will be vital that these new rights do not result in established businesses closing, although it should be noted that landowner liabilities should decrease in relation to extended rights.

It was also raised that, if this (and Reform 2A) are introduced before new agricultural funding streams are established, they cannot be regarded as additional public goods, and farmers and landowners would have to pick up the costs, without receiving any recompense.

Key Issues:

15. What exclusions and restrictions will be required to meet the needs of both users and land management?
16. How will exclusions apply to certain types of water mapped within open access land; and to which types of water and activities should this apply? What definitions should be used to be consistent with definitions used elsewhere?
17. How should changes allow for the provision of facilities to enable access, and to mitigate or avoid problems with new rights?
18. How should 'commercial use', 'events' or 'organised games' be defined as part of the reform and how applied?

Reform 1B – Coastal Access

To extend CRoW access land to the coast, coastal cliffs and foreshore. Consideration is to be given to the merits of including the Wales Coast Path as part of the definition of new CRoW coastal access land.

The Group identified the following themes:

- Definitions / scope, including relationship with Wales Coast Path (WCP)
- Relationship with CRoW land
- Comparison with England
- Visitor management
- Coastal change
- Additional Impacts.

These are elaborated on below:

Definitions / scope, including relationship with Wales Coast Path (WCP)

There is a need to define the coastal land being considered, both in terms of inland boundaries and the seaward extent and whether this includes all of the foreshore, extending between low mean and high mean water marks.

In some ways this will be enshrining *de facto* access in legislation, but in other areas there will be new access rights created. Related to this is the need to take into account the character of the coast, ranging from tidal, muddy estuaries to coastal cliffs and dunes. Defining the extent of coastal access land across these very different landscape types is not straightforward. The inclusion of vertical elements, such as cliffs or quarries, also needs careful consideration since they cannot be easily defined.

If the new coastal access is *anchored* to an existing linear feature, such as the route of the WCP, then it could provide some clarity. In other words, 'coastal access land' could be defined as being on the seaward side of the WCP's alignment. However, in several sections of the coast the WCP is aligned inland and indeed some distance from the coast itself. In many cases these sections have been planned to avoid dangers to the public, wildlife areas, built up sections, military facilities, port and other coastal developments. In other areas they have arisen as a result of a failure to secure agreements for a route with private landowners. Creating coastal access land on this principle alone could, therefore be very difficult. Certain land types could be excepted, but often this will require clear signage on the ground, so that visitors are aware of where they can and cannot go.

There is also an issue in relation to the inclusion of islands, which vary widely in terms of size, use and ownership.

The coast is also constantly changing, with some areas eroding or falling into the sea, whilst land is being built along other sections, as well as coastal defence and/or management issues. Defining a coastal access land reform will need to take this into account.

Key Issues:

19. How can reform legislation clearly define CRoW access land so it can be readily identified on the ground. How can this include recognisable boundaries for the landward limit, and potentially include the Coast Path route?
20. How should legislation define the types of land to which rights do or do not apply, and those land types that should be excepted land (e.g. consider islands, cliffs, quarries, inter-tidal zone, other foreshore, estuaries, dunes, mud flats, salt marshes)?
21. How can definitions and processes for coastal open access land be flexible so they can respond to natural and human-made coastal change, including providing for continuity of public access?
22. How should legislation provide for the mapping of vertical features such as cliffs and quarries, and for the activities permitted in these locations?

Relationship with CRoW land

A key point considered here was whether Reform 1A for CRoW land would also apply to new coastal access under Reform 1B. They could be developed as two separate forms of access, but this would require careful and clear explanation of rights and responsibilities. Alternatively, the new rights enshrined in Reform 1A could also apply to 1B. This would mean that cyclists and horse riders, for instance, could access coastal areas, including the WCP; as well as swimmers and non-mechanically propelled craft users possibly accessing what are now private beaches and shorelines.

If cycling and horse-riding rights were applied, there are clear health and safety implications, for instance, cyclists using areas with steep cliffs, or travelling at speed and impacting on walkers. There is also the issue of the impact on the value of coastal properties being reduced as a result of new public access to previously private land.

The coastal zone is, generally, more intensively used than existing CRoW land. The issue of providing suitable ingress and egress access points for horses and cyclists, could therefore be intensified in the coast zone.

The use of Exclusions and Restrictions on coastal access land will need to be defined and should not impede existing access rights for walkers where they exist.

Key Issues:

23. How should legislation make explicit the user rights that apply to defined coastal land.
24. What mechanisms are needed to exclude or restrict access to coastal land types and/or types of use, while retaining the overall intention to ensure continuous onward journeys along the coast?

Comparison with England

It is relevant to consider how any proposals for Wales would sit alongside the work being undertaken in England, where coastal access provisions are being taken forward, but without an as yet fully completed coast path that mirrors the WCP.

There is an opportunity to learn from the experience gained in England.

One of the benefits of CRoW-based coastal access is that it can provide *spreading room*, and in some cases take the pressure off the existing coast path. It can, however, lead to health and safety risks in the public attempting to climb on cliffs or

going across dangerous tidal areas. Coastal access could in some cases make it easier to agree *roll back* of the WCP to accommodate coastal erosion.

Visitor management

The Expert Group identified a range of additional visitor pressures, which could arise as a result of the Reform.

- There could be an increase in anti-social behaviour, including littering and fly-tipping in some coastal areas. There could also be localised issues in terms of more off- roading and mountain biking in sensitive areas.
- Coastal access could lead to more illegal camping and fires, especially in dunes.
- Many popular beaches restrict dogs during the summer, so there would need to be an alignment with the rights enshrined in coastal access.
- There will be many potential implications and impacts on agricultural land, including damaging boundaries or disturbing animals. This will require visitor management, and will have cost implications for local authorities and the two coastal National Park Authorities.
- If Reform 1A also applies to coastal access land, the pressures of cyclist and horse riders on the surfacing of the WCP and other coastal rights of access could be significant in places - and this will lead to considerable increases in costs for NRW and local authorities.

There will also be a need for visitor information so that the public know where they can go and how to behave responsibly. For instance, if there is conflict between existing walkers and horse riders /cyclists along narrow sections of costal path, how should people behave and how should this be managed?

There will also be a need to manage visitor expectations and to ensure that there are clear messages on what people can and cannot do. Creating coastal access by right, does not necessarily mean that you can walk or ride along certain sections in practice, unless the appropriate infrastructure and facilities are in place. There will also be a need to communicate the level of risk involved in undertaking certain activities along some sections of the coast.

Coastal Change

Specific consideration was given to the impact of coastal change. This is particularly relevant in terms of the need to *roll back* the alignment of the WCP to compensate for cliff falls etc. This is an issue that will be dealt with on a case-by-case basis, but it will still require detailed guidance and the adoption of consistent procedures. For instance, what will be the situation regarding compensation for the loss of farm land, or for the construction of new fences? A question was raised as to whether such arrangements could be funded under a future agri-environment scheme.

There will also be a need to ensure that reformed coastal access arrangements dovetail with the management of coastal defences and the coast through Shoreline Management Plans.

Additional impacts

And finally, the Expert Group considered a range of additional impacts which had not been covered previously. These included: wildlife, economic interests, additional pressures on land managers and farmers, and the costs to the public sector.

These are summarised below:

Wildlife: pressures could include wildfowling on estuaries, or the impact of coastering and large-scale commercial events on marine life, such as seals and pups. Climbing on cliffs during the nesting season could also have an impact. Many of these activities are currently controlled through a series of individual management agreements, which generally work well and encourage responsible behaviour. A more open rights-based approach could lead to more irresponsible behaviour which damages wildlife interests. This could be managed through seasonal restrictions, but these might be numerous and involve a considerable workload.

Economic Interests: as noted previously, new coastal access rights could impinge on the amenities of residential properties, reducing their privacy and value. There could also be an impact on fishing, cockling and coastal renewable energy plants.

Impact on farming: many of these have been covered in previous sections, but additional coastal access and new user groups could bring further pressures on agricultural land and practises. For instance, replanting and revegetation schemes along the coast, as well as crop spraying, could be affected. Also, grazing regimes may need to alter to prevent conflict with visitors. Clarity would be needed on any additional liabilities imposed on farmers as a result of coastal access land being established.

Costs to public sector: these would include providing additional and/or modified ingress and egress points, visitor management, communications and public information, and dealing with legal anomalies in relation to byelaws and other coastal regulations.

Key Issues:

25. How should the areas of coastal access land, and the activities that are permitted and not permitted, be clearly communicated to different interests?

In addition to the Key Issues identified specifically for Reform1B, the following Key Issues identified for Reform 1A could also apply to coastal access reform:

Key Issues from section 1A:

- 1A-4. What duties and powers will be needed as a result of the changes to allow facilitation and management of access both within and to access land for all users, and for mitigating impacts where they arise?
- 1A-5. What changes are needed to ensure that new rights will be exercisable on the ground? What duties will be required to be able to address issues arising for access and land management?
- 1A-6. How will the changes accommodate the planning and assessment of needs of access management to facilitate access, or address problems on the ground, as well as dealing with on the ground issues to land and between people?
- 1A-7. How will the costs and increased resource requirements arising from the changes for both the management of access and land be assessed?
- 1A-8. What exclusions and restrictions regime changes will there need to be with changes to access rights?
- 1A-9. How should the reform changes provide for the health and safety of users and other interests?
- 1A-10. How can appropriate behaviours (including rights and responsibilities) best be communicated, achieved and where necessary enforced with the public and stakeholders?

1A-13. How will the changes ensure the health and safety of users and other stakeholders?

1A-14. How could a responsible recreation behavioural guidance/framework be adaptive enough to stay in line with changes in recreation, and effective enough to be a useful tool for visitor management?

Other Considerations

In developing option proposals for Reforms 1A and 1B the following issues should also be considered:

- The relationship between Reform 1A and 1B, and if the additional rights proposed under 1A will also be extended to 1B;
- The implementation of *coastal spreading room* in England and the opportunities arising from the Marine and Coastal Access Act 2009;
- The relationship between Reforms 1A and 1B, and also those proposed under Reform 2A to allow higher rights access to public footpaths. In particular, any implications for access to *spreading room* for horse riders and cyclists and / or any health and safety issues arising.