



**Cyfoeth
Naturiol**
Cymru
**Natural
Resources**
Wales



Llywodraeth Cymru
Welsh Government

Access Reform Programme

Problem Definition Paper: Expert Group 2
Flexibility on Public Paths

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 2: Flexibility on Public Paths

Policy Intent: Increase the range of activities that the public can undertake by right on public footpaths and to improve processes and reduce procedural burdens in managing temporary diversions, temporary closures and stock control related to public rights of way.

Public footpaths are currently only available to users on foot. Section 30 of the Countryside Act 1968 gave cyclists the right to use bridleways, provided they give way to walkers and horse riders. Expert Group 2 was tasked with considering the introduction of higher rights use (for horse riders and cyclists) to public footpaths (Reform 2A). They were also requested to consider the amendment of processes surrounding temporary diversions and stock control in relation to public rights of way (Reform 2B).

Reform 2A – Extend Activities on Public Footpaths

To enable cycling and horse riding to occur by right on public footpaths, providing cyclists and horse riders with more opportunities to access the outdoors.

The Expert Group met on the 4th February 2020 and were asked first to identify and then theme the key issues into six categories, and through a ‘carousel’ approach to provide detailed comments on each theme.

The 6 themes identified were:

- Legal
- Infrastructure
- Impacts
- Land Management
- Costs / Resources
- Information

The detailed comments under each of these headings are set out below:

Legal Issues

A significant legal issue to consider is that many Definitive Maps in Wales are incomplete; also, to what the extent the Maps need to be brought up to date before any changes are made to introduce higher rights use of public footpaths. The Definitive Map would be the key in understanding to which routes the higher rights apply and if this isn’t accurate and up to date then it would make both implementation and enforcement of new rights more difficult.

Landowners currently have the legal right to insist on retaining the type of structure that the path was dedicated by reference to, and cannot be compelled to alter this outside of a legal order. An unexpected consequence

that needs to be considered with is whether there could be a halting or rolling back of advances and improvements made in recent years to improve accessibility of paths in line with the principles of least restrictive access, if landowners insist on the installation of stiles to limit access for higher rights users. Local authorities may require additional powers to modify infrastructure and there would need to be clarification on future responsibilities for improved path furniture, such as gates and stiles.

Current legislation is somewhat vague on the required width of paths and any new legislation would need to rectify this and consider if there is to be a power for local authorities to increase the width of a path to accommodate higher rights users. There would be a need to consider the context of a path, such as its location and topography, and of course in some instances it would not be possible to increase the width of a path.

It was widely agreed that there would need to be a mechanism for excluding some paths from the application of new rights. Such a mechanism would need a format for management and an appeals process and it would have to be considered who would be responsible for these processes. Such processes would also need to consider the relationship between increased rights of access and private rights, such as shooting, and more general land management. However, this could dovetail with the considerations under Reform 2B and the ability to impose temporary restrictions or diversions.

Key Issues:

1. How can the rights and responsibilities that will apply to public footpaths best be defined in legislation?
2. How should new rights be applied to the public footpath network, and how should rights be disappplied, excluded and/or restricted?
3. Reform proposals need to take account of the significant backlogs in some local authority areas with their legal responsibilities, particularly PROW definitive map legal work. Consideration should be given to what needs to be done about this PROW legalistic area of work to implement the reform and support its policy intent? Matters to consider include outstanding legal orders, the defining of path widths, legal limitations, structures and s147 authorisations on paths.

Infrastructure

Surfaces

The requirement to maintain public rights of way isn't defined within statute. Common law doesn't link the duty to a particular class of user but instead describes it by reference to the ordinary traffic of the neighbourhood. If a statutory reform proposal seeks to alter the ordinary traffic, it could be expected that under common law the maintenance duty would alter accordingly. The reform legislation would need to consider this matter and

provide legal clarity. In any case, use of footpaths by cyclists and horse riders will inevitably cause additional issues with footpath surfaces, in particular, which will put increased pressure on local authorities to ensure footpaths remain suitable for walkers.

It was felt that a change of rights applied to all footpaths; there will inevitably be an increase in expectation by higher rights users that all routes are available and there will be pressure on local authorities to improve surfacing to accommodate all users. At present footpath surfacing tends to fit with the character of the surrounding landscape, and this proposal could lead to pressure for surfacing that would normally be considered inappropriate, such as tarmac on a rural path.

It was recognised that there could be positive as well as negative impacts from improving the surfacing of paths, especially the potential to improve access for those with mobility difficulties. However, it was also highlighted that erosion of paths from higher rights use could lead to footpaths being less accessible to, and less enjoyable for walkers and those with mobility difficulties.

Concern was also expressed that applying multi-use path standards to all paths might result in the transfer of liability for their maintenance from countryside teams to highways departments who would take a different approach, which might not always take landscape context and landowner relations into consideration in the same way as at present. Landowner goodwill, in particular, is essential to the effective management of public rights of way.

Gates and Stiles

There was concern that a change of rights applied to all footpaths would not take into consideration the suitability of different footpaths in relation to limitations, such as gates and stiles. There will be obvious limitations on which routes will be suitable and the reform will need to be clear whether local authorities will be required to upgrade such features to accommodate higher rights users. Introducing infrastructure for higher rights users could have adverse impacts on walkers, for instance where a path is narrow or steep. Some members of the group felt there may also be implications for the British Standard for structures on public rights of way (BS 5709).

Concern was expressed as to where responsibilities would lie, with the local authority or the landowner, for the replacement and upkeep of infrastructure to enable higher rights use.

Associated issues

The need to accommodate higher rights users with associated infrastructure was raised, with the provision of parking, especially for horseboxes. Parking for access to rights of way can be difficult in some locations and increasing use could exacerbate this situation. There was discussion that permitted

development rights should be reconsidered to facilitate the provision of facilities associated with higher rights use, such as parking and bike washes to allow landowners to obtain some benefit from the proposed changes.

Some areas currently have effective management agreements with higher rights users to allow them to use footpaths in honey pot areas. This allows better connectivity for higher rights networks and the impact of cyclists on path surfaces to be minimised, ensuring the enjoyment of the routes by all users, and has worked well for a number of years. Such agreements may have to be reconsidered if higher rights were generally applied to public footpaths.

Key issues:

4. How should the resource demands on LHAs and other stakeholders from changes to rights and responsibilities, and resulting use changes, be met and managed (such as resourcing the likely increased demands around the legal issues on footpaths, their upkeep and improvement),
5. How should the reform take account of the impact of changes on existing promoted footpath routes?
6. What LHA powers and duties are needed to sustain or improve footpaths for users as a result of Reform 2A? Should the duty to maintain a public footpath be defined in any new legislation and if so how?
7. How should the changes resulting from 2A take account of changes proposed within other ARAG reforms e.g. in the planning of access?
8. Will the reform 2A require changes to legislation regarding structures on PROW to ensure the policy intent of the reform is met? At the same time, how can the reform best ensure the network becomes more accessible to more users and does not significantly reduce accessibility to some groups of the public? How will historic structures/features be protected and retained?
9. What legislative and other provisions are needed to allow for associated facilities (such as car parks) to be provided, where appropriate, particularly for higher rights users?

Impacts

Interaction of Users

There was broad agreement that this Reform will bring a need for people to understand their new rights and their responsibilities. This will include considering how to communicate about and influence responsible behaviours, and at times enforce them. Whilst research may suggest that the fear of conflict amongst users is greater than actual occurrence, there still remains a feeling that walkers could experience actual threat or harm from higher rights

use on footpaths. Users need to be aware of suitable speeds and when to give way to other users, particularly vulnerable users, such as young children, older people and people with mobility problems.

Recreation pressures are changing rapidly, especially with the use of technology, such as Strava and social media to promote routes, and there is a real possibility that the quality of experience for walkers could be reduced by, for example, mountain bikers travelling at high-speed downhill.

The question was also raised regarding the use of e-bikes. These are becoming increasingly popular and it would need to be considered, given how a bicycle is defined in existing legislation, whether e-bikes should be excluded from this reform? Similar issues have been raised in Reform 1A and there would need to be co-ordination between implementation of both Reforms. Care would also need to be taken that reforms didn't result in greater access for mechanically powered vehicles using the public footpath network.

Path Management

Landowner goodwill was highlighted as a key part of rights of way management. The Reform approach should also consider how to allow for improvements to footpaths to be included in any new agri-environment scheme payments. The reform approach could consider the role that Local Access Forums and ROWIPs (or their replacement under Reform 3B) could play in the implementation and management of local higher rights access networks. However, it should be noted that higher rights can already be implemented on paths, albeit that is generally dependent upon landowner goodwill.

Impacts on Sensitive Sites and Designations

Impacts upon sensitive sites and designations would need to be considered on a case-by-case basis. There would need to be an assessment of the current impacts of walkers and the likely additional impact from horse riders and cyclists. Any approach would need to include a mechanism for restricting paths that are assessed as unsuitable e.g. due to condition, location or impact upon sensitive sites.

It will be hard to assess impacts upon sensitive sites, as numbers will not be known. However, reforms will need to make provisions to allow any impacts to be managed on sensitive sites without excluding higher rights users completely. There were also concerns raised about the likely increased need to be able to manage the impacts of commercial activity and events by higher rights users on footpaths. Currently, local authorities and landowners are often not consulted when an event is held, for example, running events on the Wales Coast Path, where there could be a high number of people using a path at once with little consideration for other users.

Key Issues:

10. How should the reform make provision for the health and safety of users and other stakeholders?
11. How can responsible recreation be promoted, influenced and, if necessary, enforced? How could this 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?
12. How will the relative impacts of higher rights use be assessed and would the impact of certain types of user be such that they should be excluded from the proposed changes? For example, electric bicycles?
13. As part of the 2A Reform, what, if any, changes are needed to existing duties and powers to protect, where required, nature conservation, heritage and other sensitive sites, against the impacts arising from the exercise of new rights?

Land Management Issues

Land managers have numerous concerns about the introduction of a network-wide increase of higher access rights.

If increased in this way they feel that there will be increased pressure to replace gates and stiles to allow easier access for higher rights users. This in turn could lead to:

- An increase in illegal activities – gates that allow access for horse riders and cyclists will make it easier for off-roading vehicles (especially motor bikes) from accessing their land. This could increase activities such as fly-tipping or scrambling, resulting in reduced tranquillity and a limitation to the enjoyment of the countryside by legal users, damage to wildlife and historic sites. Views were expressed that a case-by-case assessment would be needed of every sensitive site to assess impact.
- Increased vandalism – if higher rights users find their way blocked by a gate or stile at some point midway through their route, they could try to remove it or cut through adjacent fencing to allow themselves access. This could have serious concerns for stock management and control.
- If suitable gates are not installed (self-closing mechanisms) then there would be an increased likelihood of gates being left open leading to issues managing stock, such as stock escaping or mingling. This could have serious biosecurity issues where farms join, and economic impacts if, for example, rams are able to mingle with ewes.

The impacts upon farming businesses in particular could be significant, with economic impacts including:

- Higher insurance costs due to an increase in number of people potentially accessing their land, plus possible / perceived increase in vandalism and theft.
- Increase in need to repair and / or replace fencing, stiles and gates if users damage them.
- Damage to footpath surfaces that could affect farming practices. There could also be an increase in the area of land affected by a footpath. For example, where a path passes across a field and is currently required to be 1m wide. If this path became muddy and impassable by walkers, due to increased use by either horse riders or cyclists, then the width of the path could be widened as users try to pick a passible route. Over time a 1m path could become 2m or 3m impacting on the viability of a field for crops.
- Farmers could fall foul of scheme/cross compliance issues that they must comply with in order to receive their farm payments. For example, higher rights usage might lead to increased soil erosion or run off into watercourses reducing water quality, which would result in penalties for the farmer.
- How higher rights are included in legislation will determine the regulatory baseline and whether farmers can be paid for any improvements they make to the quality of access across their farms. At present only permissive access is eligible for payment under agri-environment schemes for this reason.
- Biosecurity risks would be increased, with the danger of stock mingling, but also from horse riders accessing land not currently accessible to them, particularly where horses are kept by the landowner / manager. This could also present a health and safety issue if stallions are present.

Land managers would have to carefully sign the difference between statutory rights of way and permissive access as the status of the user on the latter is different, that of a person invited onto the land as opposed to a public rights of way user and thus the landowners' liabilities are greater. If higher rights are introduced a landowner may not be willing to 'invite' these users onto their land. This could lead to a removal of permissive rights of access in some cases.

Any changes proposed could be used as an opportunity to rectify the situation where SUDs assessments are needed for any footpath surface improvements, something which is becoming an unnecessary barrier to maintenance work, especially on rural paths.

There may also be an opportunity for a change to Public Path Orders (PPOs) to allow greater powers to divert footpaths in light of the impacts of higher rights use.

Key Issues:

14. How will the introduced rights be restricted, or excluded? This should consider how to manage use and avoid, or mitigate, resulting impacts on PROW, land or other interests, while protecting the public's rights?

Costs / Resources

Concerns were raised about the liabilities arising from the increasing of rights to access footpaths. These liabilities included:

- Duties and powers for local authorities – how would these change and would any changes be adequately resourced?
- Who would be responsible for managing the implementation of the new rights? Would additional staff costs be covered?
- Who would be responsible for on the ground improvements? Would this lie with the local authority or with individual landowners?
- How would new signage needs be resourced? Different colours and way markers are currently used to differentiate between footpaths and bridleways, for example.
- Who would be responsible for providing additional facilities required to accommodate higher rights users (additional parking etc.)?

It was identified that there could be considerable extra work for local authorities relative to the increase in rights. These include:

- The actual cost of upgrading the network – whilst the Policy Intent said this wouldn't be included as a duty, the inevitable pressure from users would require local authorities to act. This coupled with the duty to maintain footpaths to a suitable standard for those on foot could lead to a considerable increase in workload at a time when resources are continuing to be cut with the loss of funding schemes, such as the ROWIP Funding Programme.
- Provision of information about suitable routes. Whilst users will be required to make their own assessment of the suitability of a route this will have to be based on information from somewhere, and it was felt to be inevitable that this responsibility will lie with the local authority. There will be a need for mapping, guidance, and new signage amongst other things.
- There will be additional enforcement and compliance issues to consider to protect the network and allow higher rights use to be implemented where suitable.
- There is likely to be a need to deal with current backlogs of legal issues particularly in relation to DMMOs and PPOs to ensure that records are up to date. This would require additional staff, particularly in legal departments, and will impact on current workloads – other work will suffer. Funding to improve rights of way is often focused on capital

improvements when actually additional staff (revenue costs) is a key priority of many authorities to enable work to be done.

Local authorities already feel under pressure to improve access for cyclists and horse riders. By bringing in higher rights on footpaths, they felt that this pressure would be increased with users demanding improvements to allow them to exercise their new rights of access.

Key Issues:

15. How should the legislation set out the roles and responsibilities for LHAs and land managers? Issues to consider include liabilities, maintenance, signage, authorising and providing structures on public footpaths and any associated facilities.
16. How can Reform 2A ensure compatibility with land management policies and programmes that will replace the EU Common Agricultural Policy (CAP)?
17. How should the Reform address likely changes in demand regarding LAs duties to legally record PRow, associated administration and protection?

Information

Information will be key to the success of any increase in rights of access, be they generally applied rights or a more selective approach. Users will need to find out information on what routes are available to them before they use them.

Information falls into two main categories:

- Information about where to go
- Information about how to behave

Where to go

It was felt that users would need to be able to find out information about individual paths to determine if it is suitable for use: the path's route, condition of the surface, furniture obstructions to their use, such as stiles and unsuitable gates, so that they can make an informed decision about a route beforehand. An inability to do this will lead to frustration, confusion and potential conflict between different types of user and between users and landowners. At present this level of information is not available on a consistent basis across the network and it would be very cost and time intensive to collate it to this level. There was also concerns about the accuracy of definitive map records that ultimately provide the mapped footpath information, authorities' capacity and resources to be able to improve and update their maps and the cumbersome nature of the procedures in order to do so.

Changes to rights would also need to be communicated to land managers and other organisations who promote routes across their land or in certain areas

of Wales. Some of these routes may be a mix of rights of way and permissive paths, which would have implications for higher rights users, and some land managers may choose to stop promoting some of these routes if they felt there was opportunity for confusion or that the routes were unsuitable for higher rights users.

There is often no information for a user to recognise the difference between a statutory right of way and a permissive path on the ground. Where a landowner did not want to apply higher routes to a permissive path this would need to be signed appropriately, but there would inevitably be instances where a higher rights user thought they had a right to use a path when in fact they don't.

Information on cross border issues would also be required.

An exceptions procedure would be required to exclude paths from the higher rights process, and this would need to be well communicated to the public. Traffic Regulation Orders (TROs) currently provide some powers. However, it was felt that without a bespoke exceptions procedure requests for such orders could increase considerably and there's a need to consider if this procedure is fit for the purpose.

An information campaign would be needed to provide guidance for people in Wales, and also visitors from England, and beyond, about their rights in Wales. This could also be a selling point for Welsh tourism and attract more visitors to the Welsh countryside.

Information on how to behave

There would need to be a process for raising awareness of rights and responsibilities for potential users of the network. There are a number of successful campaigns and codes of conduct that could be looked to for best practice including:

- The Scotland Code of Conduct
- The BHS 'Be Nice, Say Hi' campaign
- The 'Share the Space, Drop the Pace' campaign relating to dual walking and cycling use on tow paths

It was felt that communication was key to reducing any potential conflict between users.

Key Issues:

18. What key information will be needed for different stakeholders? This could include mapping information; information about accessibility of footpaths to cyclists and horse riders; on the ground information & signage, and guidance. What changes, if any, will be required to provide it?

19. How will the changes to rights and responsibilities following legislative change be communicated to users and other stakeholders, including visitors?
20. How should 'higher rights users' be informed of availability and suitability of the physical network (including structures and surfaces), and the approach to be taken to its future improvement for their needs?
21. What impact will changes have on permissive walking routes that are linked to or integrated with public footpaths [including promoted routes] and how should this be managed?
22. How should the resulting differences to the public's rights, compared to England, be communicated for people in and coming to Wales, including on the ground information for public access that crosses the border?

Other considerations

There are cross-cutting issues to consider about how to ensure the reforms from 1A and 2A join up and integrate public access for users, such as in provision of:

- accessible structures,
- information and signage on the ground,
- integrated planning and mapping of access,
- compatibility of exclusions & restrictions regimes, and
- PPO/DMMO changes to PROW.

Reform 2B – Temporary Provision to Facilitate Short Term Closures and Stock Control on PRow

To improve processes and reduce burdens associated with temporary provisions to facilitate short-term closures and stock controls on public footpaths and bridleways. Also, to allow for more flexibility in relation to controlling stock on and adjacent to public rights of way while making the network more accessible for the public.

For the purposes of discussion this reform was split into two parts:

- Temporary closures, and
- Stock control

For each part groups were asked to consider three questions:

- Why is the measure needed?
- What should it include?
- What would the implications be?

Temporary Closures

Why

A new system of applying for temporary restrictions, diversions or closures (from here on collectively referred to as temporary closures) could help to reduce the procedural burden associated with the current system, such as the cost and time required to advertise in a local paper, particularly where local papers are decreasing in number. A new system could also make it easier for land managers to apply for temporary closures.

While there are existing provisions, a number of reasons were identified where extending the ability to apply for a temporary closure might be useful. These include:

- Possible extension of environmental reasons for temporary closure, such as for nesting birds / breeding seasons, to make them applicable in more areas
- Other land management reasons, such as crop spraying
- Shooting of game or for pest control

What?

Any new system would need to be based on a least restrictive approach, be transparent, with clearly defined reasons for closures, and would have to include a requirement to show evidence of need for the closure. It should include a consultation process that is appropriate to the reason for the closure and should have clear time limits on the length of closure allowed.

Such a new system could allow local authorities to close public rights of way for longer to allow for land development. The current system allows for 6 months. If a closure is required to be kept in place for longer, then the permission of Welsh Government is required.

There could be a flexible approach according to, for example, the length of closure required. There could also be reduced ability to challenge a closure if it comes with an associated diversion. There would also need to be a clarification of liabilities if a right of way is closed and a member of the public uses it.

Implications

A new system could simplify the procedure for all parties. In particular, changes to advertising, which would be easier and cheaper for local authorities. However, additional resources would be required by local authorities to manage a new system. An easier application process and an increase in the reasons a path can be closed will likely lead to an increase in applications and impact on the public's rights. A consultation process would need to be included. Processes could consider how to accommodate annual occurrences, such as nesting birds or lambing, then consideration could be given to allowing a two or three year permission for a set number of days.

The impact of a closure should have to be considered. Provision for diversions should be required where suitable alternative routes are not available, as without diversions one closure could lead to the effective closure of a whole network of paths.

At present closures are managed largely through TROs as part of road traffic legislation and these procedures apply to the whole highways network (albeit distinctions are made between their application to PROW and highways of a higher status). Unlike PROW legislation, [other] road traffic legislation is not devolved and any changes to TROs would need to clearly only apply to public rights of way in Wales. However, separating an element of PROW management from highways management could affect relations between teams and lead to silo working.

An ability to temporarily close public rights of way could inadvertently lead to the closure of areas of CRoW Open Access land. At present any exclusions and restrictions on CRoW land do not apply to public rights of way, leaving public access across and through access land. However, this would change if PROW could also be more easily closed in conjunction with CRoW E&Rs.

There would need to be a clear means of communicating any temporary closures to the public so that they knew where to look to get up to date information on closures before they set out. There would also need to be a publicity campaign to ensure all users and stakeholders understood how the system worked and where to find information.

It was felt that whilst this could be a good tool for land managers it might be better to implement a trial system in the first instance to assess impacts and implications prior to introducing Wales-wide.

Key Issues:

23. What reasons should be grounds for restricting public access, how should they be defined and what should be considered when deciding such temporary closures?
24. What changes should be made to make procedures more flexible, quicker, simpler, and cheaper, for those involved, while balancing the interests of the public with those of others such as land managers?
25. What key stages must procedures have to retain a fair balance between different interests?
26. How can advertising and publicity of process stages be made simpler and cheaper while ensuring the public, and others with an interest, are made aware of proposed and actual temporary closures?
27. How should temporary closure processes affecting PROW be prevented from becoming long term closures, in practice or by default? What limitations should there be on temporary processes to protect the public's interests?
28. How should processes incorporate consideration of the impacts of any temporary closure[s] on wider public access, including on the PROW network, CROW access land and other public access?
29. How and to what extent should notices and/or applications for temporary closures, diversions or restrictions be permitted? How would they be assessed, with a particular focus on protecting the public interest?

Stock Control

Why

There have been a small number of incidents in recent years where walkers, usually with dogs, have been injured or even killed by cows with calves. It is important that processes to restrict public access balance the needs of the public with farmers' needs to better manage health and safety for rights of way users and the stock on their land. In particular, the ability to divert paths away from fields containing stock at certain times of year could help to do this.

At present the key issue preventing farmers from offering diversion routes when applying for closures are the implications for their liability to users of the diversion. When public are using a public right of way the liabilities of the landowner are limited. However, if they are using a temporary permissive diversion their status becomes that of a user invited onto the land and the landowner's liability is increased. If this user status was the same as a public rights of way user – in effect the diversion temporarily becomes the public right of way – then more farmers would be inclined to provide such diversions. As such stock control would become easier to manage. This would have beneficial knock on effects for land managers making it easier to manage things like disease control and could bring economic benefits increasing the

viability of a business. These benefits could be acceptable to users of public access if alternative provision (the diversion) is clear, safe and an improvement to the existing path (or at least not significantly less convenient or commodious).

Changes to stock control measures could also facilitate local authorities improving accessibility of paths by removing and replacing stiles where increased land management flexibility means they are considered no longer needed for stock control reasons. This would be particularly important if higher rights access, considered under reform 2A, were implemented.

What

An easy and inexpensive system for applying would be needed for farmers. This could link to temporary closures and diversions, making it easier to manage stock and land. Closures and diversions should be time limited both in terms of length and frequency of closure. However, a flexible system may be required where certain closures and diversions can occur without application. It was suggested that a licence system could be introduced where land managers could undertake certain elements without application, but which could be revoked if they do not adhere to the requirements of the scheme.

There would need to be a complaints system to allow users to report difficulties or paths that are closed for longer than permitted. Diversion routes would need to be clearly signed and be suitable for use. Signage would need to be removed by land managers as soon as the closure and diversion have ended to avoid confusion for users.

The Highways Act s147 would need reviewing, to allow for the removal of stiles where they are no longer needed (including revoking s147 authorisations), the installation of more flexible structures that allow higher rights users but also allow for stock control, the capability to replace some structures with more accessible alternatives and the ability to determine any maintenance liability for those structures.

The public rights would need to be protected in any changes.

Implications

If temporary diversions for stock control are allowed then there would need to be a system for communicating information to the public. A publicity campaign would help path users understand when to follow diversion signs and the implications of not complying with them. Equally, land managers would have to undertake to remove diversion signs upon completion to avoid doubt and trespass.

The respective rights and responsibilities related to the route of the diversion would need to be clearly defined.

The ability to replace stiles with more suitable gates would allow for higher rights use. However, it would be important to ensure that local historic features, such as stone stiles, or the coffin stiles found in the Vale of Glamorgan, are retained, and locally produced traditional gates are not replaced with standard designs.

Key Issues:

30. How should processes be amended to allow greater flexibility for stock control while protecting the public's access rights and the accessibility of the network?
31. How can procedural processes be made less burdensome and proportionate with the time and impact they will have on public access?
32. What limitations should there be on the use and assurance of new processes where made less onerous for land managers, including what enforcement measures should there be?

Other Considerations

It should be noted that work is already underway in England with regard to temporary diversions and stock control, to resolve health and safety issues. The CLA have been working with the HSE to develop a system to allow time limited temporary diversions. This may be worth investigating further as options are developed.