

# Access Reform Programme

Analysis Report: Reform 1A

New Activities on CRow Access Land

# Executive summary Reform 1A – Extending Rights on CRoW Access Land

## Summary of Policy Intent for Reform 1A

“To enable cycling, horse riding, hang-gliding, paragliding, bathing, using a water vessel or sailboard<sup>1</sup> to occur by right on land that has a right of access under the 2000 CRoW Act.”

Three options were considered to deliver the 1A Policy Intent. They were:

- i. Amend the Countryside and Rights of Way Act 2000 (CRoW) to extend the right to use existing CRoW access land to higher rights (cyclists, horse-riders, paragliders, hang-gliders, people bathing/swimming and for non-powered watercraft). Higher rights would not be extended to coastal access land under this Reform. Use the existing powers in CRoW to manage, exclude or restrict the resulting CRoW access rights.
- ii. Provide powers for local authorities and national park authorities to apply higher rights of access to selectively defined areas of CRoW access land based on an assessment of the land’s ‘suitability’. Apply existing CRoW legislation to manage the rights as extended.
- iii. Amend legislation to give powers to local authorities and national park authorities to selectively define linear routes/corridors through CRoW land along which Schedule 2 restrictions are lifted for stated activities. As a minimum the corridors would provide a right of access for cycling and horse-riding.

## The key common issues identified in the delivery of the 1A Options were:

- The 1A reform will need a consistent means to assess the suitability of land to apply higher rights and/or to restrict or exclude access rights, whether on a temporary or long-term basis.
- Reduced occupiers’ liability will apply to any newly provided 1A rights of access. Any change to reduce liability further should be consistently applied to all CRoW access land, including CRoW coastal access land if introduced.
- It will be important for the reform option to include a communication campaign to help ensure people understand and comply with the new recreation rights and responsibilities.
- Although the reform is feasible without introducing a new statutory access code, there is potential to link the 1A reform (as with other ARAG reforms) to reform of access codes to help manage rights and responsibilities, including strengthening enforcement measures and exclusion or restriction of access.

## Key issues raised that are specific to the various options proposed

- Option 1A(i) would apply to all CRoW access land and be easy to understand. Options 1A(ii) and 1A(iii) would selectively apply rights to relatively less access land.
- The Option 1A(i) statutory change to extend higher rights to CRoW access land would be the simplest and quickest to administer.
- The selective application of rights proposed in Options 1A(ii) and 1A(iii) may need to provide for landowner compensation.

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<sup>1</sup> These listed activities have collectively been referred to as ‘higher rights’ within the context of Reform 1A

# Introduction

The Access Reform Advisory Group (ARAG) was tasked with developing advice and recommendations to Welsh Government about the delivery of their policy intent for the reform of recreational access legislation in Wales.

The process established for the development of the advice is summarised below:



The legislative reform areas ARAG is considering are:

- **Reform 1A: Extending the rights to use existing Countryside and Rights of Way Act (CRoW) access land**
- Reform 1B: Changes to legislation extending CRoW access land to the coast
- Reform 2A: Extending the right to ride a cycle or horse on public footpaths
- Reform 2B: And temporary restrictions of public paths
- Reform 3A: Providing an integrated map of public access in Wales
- Reform 3B: Integrated planning of public access in Wales

For further information about the ARAG process and for the outputs from each of the stages to date, please go to: <https://gov.wales/access-reform-advisory-group>.

This Reform 1A analysis report of reform options has been produced following evidence and other contributions invited from:

- Local Access Forums [22]
- National Access Forum members [37 organisations]
- ARAG Expert Group members [28 representatives]
- Cadw
- Natural Resources Wales' (NRW) recreational access policy advisors provided specialist input together with specialists from across the organisation's remit, including nature conservation, marine policy and land management. A report of the responses can be found via the web link mentioned above.

Each reform area has an analysis report using the evidence and key responses from stakeholders to present an assessment of each reform option. This analysis consists of 3 main parts:

- **Criteria assessment table:** Comparing key facts and issues for each option against the established programme criteria
- **Commentary** about the options
- **Option revision tables:** Summarising matters for consideration with each option

Across the reform areas, 1A, 1B, 2A etc, there are themes to consider that arise within the options. These themes are:

- Responsible Recreation
- Equity, inclusivity and accessibility
- Local access forums' responsibilities within reform options

- Commercial Activity and Events

While these themes are being considered within each reform area, a separate cross-cutting analysis report addresses the common issues arising and how the themes apply across the ARAG reforms. The final cross-cutting analysis report will also be available through the Welsh Government website – see the link [here](#).

NB: at various points throughout reform 1A, Chapter 3 of Part 1 of the CRoW Act (sections 34 to 39) is mentioned with regard to facilitating access within access land. Having taken legal advice, NRW is not clear whether Chapter 3 satisfies this, so in this report we have assumed that Chapter 3 does not cover access within access land. Welsh Government will need to consider further whether or not sections 34 to 39 already provides the powers needed when taking forward the 1A reform.

## Reform 1A – New Activities on CRoW Access Land

Total number of responses received = 35; total number of organisations responding as of 20 July 2020 = 19; NRW internal responses = 16.

### Summary of Policy Intent for Reform 1A

To enable cycling, horse riding, hang-gliding, paragliding, bathing, using a water vessel or sailboard<sup>2</sup> to occur by right on land that has a right of access under the 2000 CRoW Act.

**Table 1: Reform 1A Option Titles & Outline Descriptions**

<b>1A: Outline Proposal Title</b>	<b>Summary Description of Outline Proposal</b>
i. Amended CRoW Schedule 2 Restrictions	Remove higher rights restrictions in CRoW Schedule 2 (excluding 1B coastal land). Use CRoW regime with exclusions and restrictions as is now/or changed. Strengthen responsible behaviours e.g. through a statutory code.
ii. Higher Rights <sup>3</sup> Applied Subject to Assessment of demand/suitability	Apply higher rights selectively to defined areas of CRoW land based on an assessment of suitability.
iii. Higher Rights on Defined CRoW Trails (corridor approach)	A defined linear route/corridor through CRoW land in which Schedule 2 restrictions are lifted for stated activities

<sup>2</sup> These listed activities have collectively been referred to as ‘higher rights’ within the context of Reform 1A

<sup>3</sup> Reference to higher rights users is as per the policy intent for Reform 1A unless otherwise stated

# REFORM 1A(i) OPTIONS

## Title: Amended CRoW Schedule 2 Restrictions

### 1A(i) Description:

Remove higher rights restrictions in CRoW Schedule 2<sup>4</sup> (excluding 1B coastal land). Use CRoW regime with exclusions and restrictions (E&Rs) as is now/or changed.

### Summary of Proposed Reforms within Option 1A(i)

Option 1A(i) provides for legislation to amend CRoW Schedule 2<sup>5</sup> to allow horse riders, cyclists, hang-gliders, para-gliders and water users (those who use a vessel, sailboard or bathe in any non-tidal water) a right to undertake these activities on land that is currently accessible under the CRoW Act 2000. However, they would not have the right if the land is excepted land (under CRoW Schedule 1<sup>6</sup>), there is an exclusion/restriction (under CRoW Part I, Chapter II)<sup>7</sup> or other legislation exclude the right (e.g. provisions under Covid-19 Regulations).

The option would not require new maps of CRoW access land to be prepared. There would be the current suite of CRoW notifications and exclusions to close access land. The maps would still be reviewed every 10 years, with landowners retaining their right to appeal. The current reduced occupiers' liability would include all users legally accessing CRoW land.

The powers to increase access points to access land would remain as it is, however, there would also be provision to allow improvements to access furniture following the least restrictive access ('gap-gate-stile') principle. All new furniture would have to meet accessibility standards, for example, British Standard (BS) 5709. The new Welsh Government post-Brexit agri-environment scheme would be approached seeking to include within its options access enhancements and other supporting infrastructure on CRoW access land.

There would be a statutory code to define the rights and responsibilities on access land [as revised]. The new code would be coupled with an education and promotion programme, as well as authorities having enforcement powers to ensure all comply with the code.

A new Open Access symbol would be developed. This would reflect the rights of users, in particular highlighting the rights of cyclists and horse riders. The Ordnance Survey and others, such as Harvey's Maps, would be asked to ensure their maps acknowledge that different CRoW Rights apply in Wales. Additionally, the difference in rights would be communicated to the relevant groups in Wales and England.

### Alternative key elements within 1A(i)

The option includes potential variations to the above proposals. These are:

- Implementing 1A(i) changes on coastal access land when 1B is implemented, however, these changes do not include powered water vessels.

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<sup>4</sup> Schedule 2 legislation text can be viewed here:

<https://www.legislation.gov.uk/ukpga/2000/37/schedule/2>

<sup>5</sup> For the text of Schedule 2 see: <https://www.legislation.gov.uk/ukpga/2000/37/schedule/2>

<sup>6</sup> For the text of Schedule 1 see: <https://www.legislation.gov.uk/ukpga/2000/37/schedule/1>

<sup>7</sup> For the text of Chapter II see: <https://www.legislation.gov.uk/ukpga/2000/37/part/I/chapter/II>

- Any 1B reform that includes coastal access land mapping automatically has reform 1A changes on it.
- Review and amend the exclusions and restrictions regime and apply it to any 1B coastal access land.
- The access code would remain voluntary.
- Local authority or local community funding would be looked at to provide furniture improvements.
- Liability on CRoW access land in Wales would be reduced to the same level as land accessible under the Marine and Coastal Access Act (MACA) in England<sup>8</sup>.
- Include in the changes the development of an easy spatial referencing system.

## 1A(i) Commentary of issues arising with the reform focussing on legislation

The primary proposal – the relaxation of parts of Schedule 2 (element 001) - is feasible and currently an option for those dedicating access land. This would result in all land that is currently accessible under CRoW having a right of access to horse riders, cyclists, hang-gliders, paragliders and water users (those who use an unpowered vessel, sailboard or bathe in any non-tidal water) (element 002). However, if this policy intent was to be implemented, there would be substantial concern about the impact on nature conservation. Such impacts could be mitigated through the exclusions and restrictions system which is detailed further below.

With the exception of its application to CRoW section 15 (S15) and section 16 (S16) dedicated land (see two paragraphs below) option 1A(i) is legislatively the easiest and simplest option. It would be a clear and readily understandable change and way to implement higher rights on CRoW access land. It would result in 379,699 ha of land with higher rights, with a further 75,836 ha if S15 land<sup>9</sup> is included. Whilst costs have not been determined, as the simplest approach it is reasonable to assume that option is also the cheapest for extending rights with the lowest level of bureaucracy.

The option in its simplest form would not apply to land that is accessible under other legislation ('S15 land') even though S15 land may be perceived as the same as CRoW access land and in places adjoin it. Some S15 land already allows some higher rights, but for all rights to be included there are two options:

- The legislation of the Acts that are referred to in S15 could be changed to allow higher rights.
- CRoW section 15 could be reviewed to consider if and how to apply higher rights to S15 land.

As S15 land rights of access are not provided by the CRoW Act, the CRoW exclusions and restrictions regime does not apply to S15 land. Legal advice would be required to confirm the best course of action and if an alternative regime is necessary and could be applied.

All CRoW dedicated land in Wales has been dedicated with a right of access on foot only. All this land, with the exception of the Pembrokeshire Coast National Park

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<sup>8</sup> i.e. also reducing occupiers' liability for 'any physical feature whether of the landscape or otherwise'. <https://www.legislation.gov.uk/ukpga/2009/23/section/306>

<sup>9</sup> For example, S15 land includes 'urban/metropolitan commons' see: <https://www.legislation.gov.uk/ukpga/2000/37/section/15>

Authority-owned Freshwater East, was dedicated by the Forestry Commission and this land (unless sold) is managed by NRW. There is a presumption, which would require their confirmation, that as public bodies NRW and Pembrokeshire Coast National Park Authority would not object to higher rights on dedicated land. Legal advice would be required about dedicated land which has been sold on prior to the reform taking effect. When land is dedicated there is an option to relax CRoW Schedule 2 restrictions, but to date no dedicated land in Wales has any relaxation of Schedule 2. Furthermore, evidence supplied showed that very little dedicated land in England has had Schedule 2 relaxed.

Evidence also highlighted the Forestry Commission Bylaw 648 regarding using watercraft on Forestry Commission land (i.e. NRW managed forestry land in Wales). Subject to legal advice of how this applies to NRW land, the bylaw would need amending to permit anything done pursuant to a legal right, including any right conferred by Part 1 of the CRoW Act. Likewise, a query was raised over what constitutes a reservoir and at what point they may be considered to be 'naturalised' and potentially included within the scope of open country definitions to be mapped as CRoW access land?

The 1A(i) option included an alternative element (001/ALT) which proposed extending the option to coastal access land resulting from reform 1B. However, this cannot be considered until the intention to include higher rights as part of reform 1B has been decided. A further part of the 001/ALT element proposed including powered watercraft in the new rights, to which the unequivocal response in the call for evidence was powered craft should not be included within the reform.

The alternative element, 002/Alt, proposed mapping of the coast, for example, by implementing section 3 of the CRoW Act. This is covered in reform 1B and the element should therefore be omitted from this option.

CRoW Part I Chapter II (exclusions and restrictions of access) applies to any land accessed under section 2(1). This means that CRoW exclusions and restrictions (E&Rs) could apply to any additional higher rights. Conditions can be specified, evidenced in section 21(3)(d)<sup>10</sup>, so different specific types of users could be excluded without further legislation. No evidence was given that there was a requirement for further reasons for E&R applications or notifications. Element 003/ALT was around amending exclusions and restrictions for coastal access. As coastal access is covered under reform 1B it should be omitted from the option.

CRoW Part I, Chapter III (means of access) would also apply to any amended Schedule 2 activities (option element 003). Chapter III could be amended to ensure that all improvements comply with BS 5709 or similar guidance for least restrictive access (see element 006) and this could also be carried forward regardless of the option progressed. Funding options (elements 006/ALT & 008) are considered necessary for implementing the legislative reforms in practice.

An access code was proposed (elements 004 and 004/ALT). However, whilst there was universal support, there were differing views on whether the code should be statutory (potentially with sanctions) or non-statutory (advisory only), with the additional resources needed for enforcement of a statutory code highlighted as an issue. Currently

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<sup>10</sup> <https://www.legislation.gov.uk/ukpga/2000/37/section/21>



NRW has a duty under section 20 of the CRoW Act to produce an advisory code (without sanctions) for all access under section 2(1). Lack of awareness about responsible recreation was raised as an issue. Therefore, education/information would be required (element 005) but has resource implications and would be additional to statutory reforms. Likewise, while new access symbols (element 007) and education/communication (010) would be highly beneficial, they are matters for the delivery of legislative reforms and will require additional resources to implement.

There was a proposal in the option for the development of a geospatial referencing system (element 011/Alt). However, the evidence is that this element is not needed because there are already available systems e.g. OS grid system, What 3 Words, Police Advanced Mobile Location, Mountain Rescue Phone Find and SARCALL can all geolocate mobile phones.

Element 009 proposed including an additional ‘window’ to appeal against land being mapped as CRoW open country or common land. Whilst there was some support for this, CRoW mapping is determined on land being ‘open country’ or common land not the type of rights that apply to it. The element would therefore reopen the CRoW mapping representation system, leading to draft, provisional and conclusive maps which, in effect, would act as an early decadal review. Reviewing the CRoW maps was not within Welsh Government’s (WG) policy intent for 1A.

A relaxation of Schedule 2 would retain the reduction in occupiers’ liability to all those who are legally using the land (element 011) - there was broad support for this. Reform could reduce liability further, such as to the level provided for on coastal access land in England by section 306 of the [England] Marine and Coastal Access Act 2009 (MACA)<sup>11</sup> and/or by reducing the liability owed by the keeper of animals, for example by an amendment to CRoW S13 (element 011/ALT).

## **REFORM 1A(ii) OPTIONS**

### **Title: Higher Rights Subject to Assessment of demand/suitability**

#### **1A(ii) Description:**

Apply higher rights selectively to defined areas of CRoW land based on an assessment of suitability<sup>12</sup>.

#### **Summary of Proposed Reforms within Option 1A(ii)**

Option 1A(ii) provides for legislation to allow for horse riders and cyclists the right of access under CRoW to some areas of access land. This would be done by altering CRoW Schedule 2 (e.g. paragraph 7(1) of Schedule 2 which currently requires landowner consent to relax general restrictions) so that the relevant general restrictions would be relaxed on distinct areas of CRoW access land that have been subject to an assessment of the land’s suitability. The discretionary powers to relax Schedule 2 restrictions would be held by the Access Authorities<sup>13</sup>. The powers would be further

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<sup>11</sup> See reference to reduced liability for occupiers introduced by the MACA earlier in the 1A(i) commentary above

<sup>12</sup> See page 3, Summary of Policy Intent for Reform 1A, for activities included within ‘higher rights’

<sup>13</sup> The *Access Authority* is the National Park Authority for access land in a National Park; for access land outside National Parks it is the local highway authority (LHA) for the area [LHA is a function of unitary authorities in Wales].



defined in Welsh Government regulations which would set out the suitability assessment criteria (including need/demand for access), the assessment process, and how it should be applied. The suitability of each CRoW access land site would be assessed and decided on by the Access Authority on a case-by-case basis; the process would include consultations.

The current suite of CRoW exclusions and restrictions (E&Rs) are applicable to higher rights so could be applied to such areas. There could be support given by the Access Authority to owners and occupiers about the use of E&Rs, if being considered because of increased rights of access on their land. The Access Authority would retain a discretionary power to enhance the means of access to access land so that horse riders and cyclists can use the areas with higher rights.

Areas of increased rights would be shown on NRW's online maps of CRoW access land. In addition, there would be powers for access authorities to put up signage associated with higher rights e.g. waymark disks, access point signs, and, if required, directional signage.

Once areas are identified as accessible for cyclists or horse riders the areas would then also allow access to water vessels, bathing/swimming and hang-gliders/paragliders. However, these activities would not form part of the assessment process.

Occupiers' liability to legal users could stay as it is for existing CRoW land or be reduced in line with that introduced by MACA in England (see reference above). Consideration could also be given to the reduction of liability owed to those exercising their CRoW rights by the keeper of animals.

### **Alternative key elements within 1A(ii)**

The 1A(ii) option included potential variations (alternative elements) to the above points. These are:

- Making it a duty (rather than a power) for Access Authorities to assess CRoW Access Land, either once or on a rolling review basis.
- The CRoW Relevant Authority<sup>14</sup>, rather than the Access Authority, carries out the assessment. Advice would be provided by Local Access Forums (LAFs) and Visit Wales to the Relevant Authority.
- Powers for CRoW exclusions and restrictions to be implemented so they are in force as soon as higher rights are applied.
- The requirements for mapping should be aligned with 3A, as well as there being a selective approach to an increased right of access – i.e. only horse riders or only cyclists to be allowed on some areas.
- Right of access would only be increased where there is proven demand and a means of access to and from the land, and the exclusions and restrictions regime would be reviewed

### **1A(ii) Commentary of issues on reform focussing on legislation**

The 1A(ii) option, providing discretionary powers for Access Authorities to assess CRoW access land for the application of higher rights of access, is achievable.

However, legal advice is required about the need to provide for compensation to owners

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<sup>14</sup> The Relevant Authority is the National Park Authority for access land in a National Park; Natural Resources Wales is the Relevant Authority for access land outside of National Parks

of access land where higher rights are designated on a selective basis. Wording of legislation could ensure that it becomes a discretionary power for Access Authorities to assess access land for higher rights and to review regularly (element 001), or as a duty to assess and review regularly (element 001/ALT). The option could also provide for a power without a requirement to review (element 003 and 004) or a duty without a requirement to review (element 003/ALT and element 004/ALT).

Evidenced concerns were raised about the impacts on nature and heritage conservation from extending higher rights on CRoW land. The evidence generally related to cycling or horse-riding impacts at specific locations or parts of routes rather than impacting extensive areas e.g. due to intensity of use or the sensitivity of habitat that the access is on. The CRoW exclusions and restrictions system (see further details below) and access management would provide a means to prevent or mitigate such impacts, although they would not eliminate the additional impacts altogether.

Concerns were raised if the proposed assessment process includes assessing the 'demand' for access (see element 011/ALT) in particular the difficulty with objectively measuring demand and the inherent problems with how to use such 'demand' information in making decisions e.g. in the light of concerns about negative impacts on nature and heritage conservation.

There were concerns about the extra resource demands on local authorities if there is a duty rather than a power to assess access land - and the resources implications for authorities. A number of responding local authorities also highlighted an issue with the assessment process being introduced as a power because authorities will prioritise different areas of access land for assessments and implementation of rights and work to different timescales. It was felt likely this would result in significant differences in how higher rights would be implemented across Wales and be particularly evident at local authority boundaries.

The 1A(ii) option proposes new CRoW Act regulations outlining an assessment/'suitability' criteria (elements 002, 005 and 014) and some degree of mapping to define the areas considered. There would also need to be provision for consultations, with the potential for representations (to add or omit land) and appeals about decisions. Such requirements would have significant new resource implications for Access Authorities and NRW.

The option considers two alternatives for introducing higher rights to assessed areas of land: either a full relaxation of Schedule 2 (element 010) or a selective relaxation (element 010/ALT). The latter of these two means that, for example, cyclists but not horse riders could be allowed onto an area of land. The responses highlighted that element 010 keeps consistency and is simpler to understand, whilst 010/ALT means that access can be more tailored to local circumstances.

An alternative to the process being led by the Access Authority is for the Relevant Authority (NRW and National Park Authorities) for an area to either have a duty or power to have responsibility for the process (element 005/ALT). Due to the local authorities' reduced resources currently, this was the preference of a number of responding Access Authorities, however, this would only shift the burden from one public sector area to another.

A CRoW exclusions and restrictions regime covers all legal users of CRoW Access Land. An exclusion/restriction could be implemented once a problem arises (element

006) or as a preventative measure (element 006/ALT). Natural England (NE) implemented immediate long-term conservation restrictions on some of the land on the NE-owned and dedicated National Nature Reserves. Despite this, care needs to be taken to ensure that the least restrictive E&R is applied. There is no legislative change required for these elements as the legislation is already applicable as needed. Also, the current E&R regime (element 012) was looked at to see if it needed amending (element 012/ALT), but no evidence was supplied indicating changes were needed (local access agreements for commercial operators were raised, but commercial use is already outside the scope of CRoW rights).

Resources for land management, operations, warden and monitoring are considered by element 007. Whilst a significant cost, the provision of resources would be a delivery matter rather than requiring legislative change. 007 element also includes powers to facilitate crossing existing field boundaries. As noted with the introduction legal advice is needed to determine whether CRoW Part I Chapter III (means of access) sections 34-38 provide Access Authorities with the powers needed or the legislation need to be amended.

007/ALT considers if the selective approach of this option complies with human rights legislation. No evidence was provided, so this requires legal advice to confirm (as would Option 1A(iii)).

There is broad agreement about having CRoW access maps online and aligning them with reform 3A (elements 008 and 008/ALT). Whilst page viewing figures have always been low, CRoW Regulations require NRW to show the maps online, where reasonably practicable, so this element does not need to be considered further as it is already required and can quite easily integrate with reform 3A.

New way mark discs, new access point signs and directional signage were raised (element 009). Whilst a new style of access symbol would be a matter for reform implementation, section 19 of CRoW does give Access Authorities the powers to erect signage.

Element 013 looked at facilitating access to and within CRoW access land. The former is already provided for, the latter (i.e. such as crossing boundaries and other features within CRoW access land) would need to be looked at, and especially in relation to large areas of access land to prevent damage from higher rights users crossing from one area to another.

A relaxation of Schedule 2 will extend the reduced liability to all those who are legally using the land (element 015). To reduce further, in line with land accessible under the Marine and Coastal Access Act or to include injury due to livestock, would require the amendment of section 13.

[N.B. The presumption is that 'CRoW land' includes land dedicated under section 16. See 1A(i) for more information on this presumption.]

## REFORM 1A(iii) OPTIONS

### Title: Higher Rights on Defined CRoW Trails (corridor approach)

#### 1A(iii) Description:

A defined linear route/corridor through CRoW land in which Schedule 2 restrictions are lifted for stated activities.

#### Summary of Proposed Reforms within Option 1A(iii)

Option 1A(iii) proposes legislation to allow for horse riders and cyclists a right of access under CRoW to defined linear routes/corridors within current CRoW access land. Welsh Government regulations would set out the process for defining corridors.

Access Authorities would, after consultation, have the power to define, determine and implement these corridors. The criteria used would include demand/need for access, route characteristics (e.g. corridor width), landscape characteristics and the impact of the access on nature or heritage conservation.

CRoW Part I, Chapter III (Means of Access – sections 34-38)<sup>15</sup> would be amended to facilitate, where necessary, access to and within access land for higher rights users and those who require mobility assistance.

Part I, Chapter II (exclusion or restriction of access – sections 21-33)<sup>16</sup> will be reviewed to ensure that routes can be restricted by activity. There will be a principle of onward travel with a variation of route/provision of an alternative route allowed. However, the least restrictive access principle used for exclusions and restrictions would continue to be applied to the varied route.

There would be a statutory code for corridor access with a range of possible sanctions for those who breach it. Also, there would be associated education and information resources to raise awareness about the new access with different interests.

#### Alternative key elements within 1A(iii)

The 1A(iii) option's key elements included potential variations to the above points. These are:

- Applying corridor routes across land given access under reform 1B.
- Making it a duty (rather than a power) for Access Authorities to assess CRoW Access Land for corridor routes.
- To consider using the route definition process used for the England Coast Path under the Marine and Coastal Access Act 2009 (but not the criteria used for the National Trail).
- The discretion to exclude certain classes of users, such as those using E-bikes.
- Retain (instead of review/amend) Part I, Chapter III – subject to it being fit-for-purpose.
- Have a statutory access code that covers all statutory access, rather than a code specifically for option 1A(iii) corridor access.

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<sup>15</sup> See legislation text here: <https://www.legislation.gov.uk/ukpga/2000/37/part/I/chapter/III>

<sup>16</sup> See legislation text here: <https://www.legislation.gov.uk/ukpga/2000/37/part/I/chapter/II>

### 1A(iii) Commentary of issues on reform focussing on legislation

The primary proposal is that Access Authorities have the power to define linear routes/corridors on CRoW access land for which Schedule 2 is relaxed so that horse riders and cyclists can use them (element 001 and 002). Whilst the element states 'higher rights', it was only proposed and discussed by the expert group as an option for horse riders and cyclists. (This is different to Welsh Government's policy intent for Reform 1A). The linear route/corridors could be on existing informal tracks, or on land where there is no obvious route at the point at which rights are relaxed. A suggestion made in the Expert Group was that the option could be developed by amending paragraph 7(1) of Schedule 2 which currently requires landowner consent to relax general restrictions<sup>17</sup>.

As referred to for options 1A(i) and 1A(ii) evidence was provided about the potential impact that introducing higher rights could have on nature and heritage conservation. Specific site or route impacts are capable of being addressed through the existing CRoW exclusions and restrictions (E&R) system, which is further detailed below, and also access management, although they would not always resolve impacts.

Evidenced concern was raised about whether amending CRoW was the best option for the selective creation of routes with a right of access almost identical to bridleways and if there would need to be a compensation requirement as there is with the creation of Public Right of Way.

Evidenced views raised concerns about the resource implications of implementing option 1A(iii) type powers given current budget pressures. It was felt the powers would be sparsely used by Access Authorities without additional resources - although, an estimation of implementation costs has not been carried out. If implemented, the proposal and assessment would be covered by Welsh Government regulations (potentially including a demand/need appraisal, detailed dimensions of route width, reduced liability, and means of access to/across land).

Element 002/Alt has 4 proposals. It proposes that the 1A(iii) option is also applied to the coast, however, this could only be considered once it is decided whether reform 1B should make coastal land accessible for higher rights under CRoW. Additionally, it suggests that the England Coast Path route definition could be used, for providing higher rights. However, a number of opinions felt that the approach is not workable. 002/Alt also proposes banning certain classes of user from designated corridors, such as e-bikes, but no evidence has been provided that e-bikes are inherently more detrimental, they are hard to identify, and NRW legal advice<sup>18</sup> was that such a measure could be considered as discriminatory under the Equalities Act.

Unlike options 1A(i) and 1A(ii), there would have to be major legislative changes to the exclusions and restrictions regime (element 003) with this option. Whilst current E&R legislation covers most of the option, to provide a temporary replacement corridor within statutory timeframes could mean that a comparable assessment to that originally carried out is not possible - this means that its legality could be challenged. As a minimum, any temporary replacement corridor would need to be on CRoW Access Land, public rights of way (which allow higher rights) and/or roads (with roads being the

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<sup>17</sup> See legislation text here: <https://www.legislation.gov.uk/ukpga/2000/37/schedule/2>

<sup>18</sup> Legal advice to NRW, September 2020

least preferred option). The reform would also need to consider scenarios where the preferred alternative route/corridor would be located on land in different ownership.

Studies have evidenced damage to linear routes caused by mountain bikes. Whilst these studies show that the main issue is perception of destruction, the activity does still cause some damaging impacts, and so there is the potential for corridors being closed for health & safety, land management or conservation reasons.

Whilst CRoW legislation currently allows for facilitating a means of access to access land (Part I, Chapter III), there is no right to cross existing field boundaries to and within CRoW access land unless there is an unlocked gate or a stile. It is likely that access infrastructure will need to be provided or improved for cyclists and horse riders where a corridor crosses an internal boundary or similar feature. This could be for an existing crossing point, a negotiated access point, or an enforced access point. Part I, Chapter III of the CRoW Act would need to provide Access Authorities with powers for such works (see element 004 and 004/ALT).

There is also a proposal (element 004 and 004/ALT) for providing guidance on least restrictive access. Part I, Chapter III gives the legal position on accessing access land and NRW already gives guidance on accessible access through our publication *By All Reasonable Means*<sup>19</sup>. No evidence was provided that this need isn't already being met through current NRW publications.

Section 20 of the CRoW Act gives NRW a duty to provide '*a code of conduct for the guidance of persons*' regarding rights of access under the CRoW Act and '*public rights of way on, and nature conservation in relation to, access land*'. The countryside code, which includes guidance related to access under the CRoW Act, provides this cross-access information (element 005/ALT). If a new statutory code was provided for all statutory access (with or without associated sanctions) along with new requirements to promote the code (see element 005), then the CRoW Act would need amending. Whilst promotion and education measures would not require legislative change, they would require additional resources – proportionate to the degree of promotion undertaken.

N. B The presumption is that 'CRoW land' includes land dedicated under S16. See 1A(i) for more information on this presumption.

## Criteria Assessments

The ARAG programme sets a number of criteria against which to assess reform proposals. Evidence provided by NRW and external responders has been used to develop the following assessment criteria table considering each of the options (see table below).

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<sup>19</sup> <https://cdn.naturalresources.wales/media/682681/gn004-by-all-reasonable-means-least-restrictive-access-to-the-outdoors.pdf>



Criteria:	Criteria Description & Measures	Option 1A(i) - Amended CRoW Schedule 2 Restrictions	Option 1A(ii) - Higher Rights Applied Subject to Assessment of demand/suitability	Option 1A(iii) - Higher Rights on Defined CRoW Trails (corridor approach)
Extent of access	<p>Amount of 'by right' access affected. Consider:</p> <ul style="list-style-type: none"> <li>• Totals [e.g. kms/ha; %];</li> <li>• Percentage changes;</li> <li>• Distribution: where and how distributed in Wales</li> <li>• Measures include absolute and/or relative amounts e.g. a change from a current position; relative to other options.</li> </ul>	<p>All CRoW land would have higher rights of access for equestrian/cyclist access. CRoW section 15 (S15) land is not accessible under CRoW and only has a presumed right of access for horse riders, so it is unclear what the position is with this, especially as it might fall under Open Country classification if it were not S15 land.</p> <p>Current statistics are:</p> <ul style="list-style-type: none"> <li>• Open Country - 162,343 ha</li> <li>• Common Land - 118,098 ha</li> <li>• Dedicated Land - 99,258 ha</li> <li>• S15 Land - 75,386 ha</li> </ul> <p>All CRoW land would be accessible to hand-/paragliders. Water body statistics are below, but it doesn't consider measurements like depth, etc. so may not be practical for swimming, canoeing and other water activities.</p> <p>Extent affected:</p> <ul style="list-style-type: none"> <li>• At least 613.9km of rivers on CRoW land.</li> <li>• At least 5388.11ha of lakes/natural bodies of water on CRoW land.</li> </ul>	<p>Only defined areas would have higher rights for equestrian/cycle access. Until a criteria is defined it's impossible to determine how much as-of-right access this will create.</p> <p>Presumed air sports/water access as in proposal 1A(i).</p>	<p>Only defined corridors would have higher rights for equestrian/cycles access. Until a criteria is defined it's impossible to determine how much as-of-right access this will create.</p> <p>Presumed air sports/water access as in proposal 1A(i).</p>
Quality of access	<p>Accessibility to users in terms of:</p> <ul style="list-style-type: none"> <li>• Physical condition</li> <li>• Usability [practicality of access provided by rights reforms]</li> <li>• Availability to different users</li> <li>• Proximity to population; [also an equity issue]</li> <li>• Presence of barriers to higher rights use and people with mobility problems;</li> <li>• Availability in terms of information including on site presence e.g. signage for the PROW or off-site;</li> <li>• Linkage to other public access of similar rights.</li> </ul>	<p>Access would apply to all CRoW access land (and probably S15 land):</p> <ol style="list-style-type: none"> <li>1. <b>PHYSICAL CONDITION</b> - no requirement to improve land for access but might be present - e.g. forest tracks.</li> <li>2. <b>USABILITY</b> – Access authorities (AAs) have the power to aid in access to access land, but there are sites with no access.</li> <li>3. <b>AVAILABILITY</b> - All land not under an exclusion or restriction is available 24/7 to users, however, there is a Forestry Commission byelaw that prevents those carrying a kayak from crossing their estate.</li> <li>4. <b>PROXIMITY</b> - As land is limited to open country, common land and dedicated land, there is variability to proximity with some areas (especially in South Wales Valleys) being very close to people.</li> <li>5. <b>BARRIERS</b> - The AA has powers to enable access and</li> </ol>	<p>Access would apply to all CRoW access land (and probably S15 land):</p> <ol style="list-style-type: none"> <li>1. <b>PHYSICAL CONDITION</b> - no requirement to improve land for access but might be present - e.g. forest tracks.</li> <li>2. <b>USABILITY</b> - Would expect criteria for suitable area to include the area being usable/accessible and avoiding certain land types (e.g. blanket bog).</li> <li>3. <b>AVAILABILITY</b> - All land not under an exclusion or restriction is available 24/7 to users who are allowed on that piece of land, however, there is a FC bylaw that prevents those carrying a kayak from crossing their estate.</li> <li>4. <b>PROXIMITY</b> - Proximity to population could be in the criteria, but by limiting amount of land accessible to higher rights, you are reducing the amount of land accessible to local higher rights users.</li> <li>5. <b>BARRIERS</b> - The AA has powers to enable access and</li> </ol>	<p>Access would apply to all CRoW access land (and probably S15 land):</p> <ol style="list-style-type: none"> <li>1. <b>PHYSICAL CONDITION</b> - potential for corridors to be on non-PROW improved surfaces - e.g. forest tracks.</li> <li>2. <b>USABILITY</b> - Could be a problem if corridors become unusable due to high amount of usage.</li> <li>3. <b>AVAILABILITY</b> - All land not under an exclusion or restriction is available 24/7 to users, however, there is a FC bylaw that prevents those carrying a kayak from crossing their estate.</li> <li>4. <b>PROXIMITY</b> - Routes linking communities could be in the criteria. By limiting access to corridors, access for local higher right users is limited to those corridors.</li> <li>5. <b>BARRIERS</b> - The AA has powers to enable access and would expect barriers to access to be part of the corridor assessment.</li> </ol>

		<p>this could be extended to higher rights users. They already must consider mobility issues; however, they have no powers to surface access land.</p> <p><b>6. INFORMATION</b> - There is an open access symbol, a new one, along with interpretation boards that could be developed. Currently, there is no duty on AAs to install either.</p> <p><b>7. LINKS</b> - As definition is on land type, any link is incidental, however there are many links off access land.</p>	<p>would expect barriers to be part of the criteria.</p> <p><b>6. INFORMATION</b> - There is an open access symbol, a new one, along with interpretation boards that could be developed where there are higher rights. Currently, there is no duty on AAs to install either.</p> <p><b>7. LINKS</b> - It would be areas of land accessible to cycle/equestrian access, so any link is incidental, however there are many links off access land.</p>	<p><b>6. INFORMATION</b> - There is an open access symbol, a new one, along with interpretation boards that could be developed. Currently, there is no duty on AAs to install either.</p> <p><b>7. LINKS</b> - The corridors would link area with a defined start/finish point.</p>
Permanency	<p>'By right' access in perpetuity, or permissive? Situation for different rights users?</p> <ul style="list-style-type: none"> <li>• Absolute position and relative to other options [see extent and quality].</li> <li>• Qualified to significant degree.</li> </ul>	<ul style="list-style-type: none"> <li>• Access to all users would be in perpetuity on dedicated land (or until a long-term lease expires).</li> <li>• Common land and open country could change at the next review. This would not apply to exempt land or land where there is an active exclusion/restriction (potentially only affecting some users).</li> <li>• section 15 land status is unresolved.</li> </ul> <p>N.B. As all dedicated land is publicly owned (1 area is owned by PCNPA, the rest is Welsh Government Woodland Estate), it is assumed that access to higher rights users would be given.</p>	<ul style="list-style-type: none"> <li>• Access to walkers/'water users'/air-sport users would be classed under 1A(i). Access to horse riders' on S15 would be the same.</li> <li>• Potential access to cyclists on 'approved' areas of S15 land is to be decided.</li> <li>• Access to cyclists/horse riders on 'approved' areas of land would be in perpetuity on dedicated land and subject to review on other CRoW land (and also subject to exclusions/restrictions and excepted land).</li> </ul> <p>N.B. As all dedicated land in Wales is publicly owned, it is assumed that access to higher rights users would be given.</p>	<ul style="list-style-type: none"> <li>• Access to walkers/'water users'/air-sport users would be classed under 1A(i). Access to horse riders' users on S15 would be the same.</li> <li>• Corridors accessible to cyclists on S15 land are to be decided.</li> <li>• Access to cyclists/horse riders on corridors would be in perpetuity on dedicated land and subject to review on other CRoW land (and also subject to exclusions/restrictions and exempt land.)</li> </ul> <p>N.B. As all dedicated land in Wales is publicly owned, it is assumed that access to higher rights users would be given.</p>
Clarity & Certainty	<p>Clarity of rights:</p> <ul style="list-style-type: none"> <li>• Simple or complex to understand</li> <li>• Understandable what can do and cannot do, where and when, to all interests.</li> <li>• If and how will option be subject to change (temporary or permanent e.g. E&amp;Rs)</li> <li>• Communicability of relevant access information.</li> </ul>	<ul style="list-style-type: none"> <li>• Simplest option to understand - i.e. higher rights on all access land (S15 land still TBA, assume dedicated land is included - see above.)</li> <li>• Changes due to E&amp;Rs will be signed by Relevant Authority (RA) if over 6 months (applicant has the option to sign E&amp;Rs under 6 months.)</li> <li>• Access to land that the owner/occupier believes is exempt under Schedule 1 stays as it is.</li> <li>• Communication of information would be by signage on the ground, a potential new access symbol and via NRW's website.</li> </ul>	<ul style="list-style-type: none"> <li>• More confusing option to understand as equestrian/cycle access would be limited to certain areas.</li> <li>• Changes on any area due to E&amp;Rs will be signed by RA if over 6 months (applicant has the option to sign E&amp;Rs under 6 months.)</li> <li>• Access to land that the owner/occupier believes is exempt under Schedule 1 stays as it is, but the criteria would probably exclude any area that is currently exempt.</li> <li>• Communication of information would be by signage on the ground, a potential new access symbol, via NRW's website, Ordnance Survey Explorer-scale mapping, and any new mapping provided by Reform 3A.</li> </ul>	<ul style="list-style-type: none"> <li>• More confusing option to understand as equestrian/cycle access would be limited to certain corridors.</li> <li>• Biggest issue is width of corridor and how that is communicated/enforced.</li> <li>• Changes on any area due to E&amp;Rs will be signed by RA if over 6 months (applicant has the option to sign E&amp;Rs under 6 months.)</li> <li>• Access to land that the owner/occupier believes is exempt under Schedule 1 stays as it is, but the criteria would probably exclude any area that is currently exempt.</li> <li>• There is the potential for corridors being cut due to E&amp;Rs or land newly classified as exempt.</li> <li>• Communication of information would be by signage on the ground, a potential new access symbol and via NRW's website.</li> </ul>

<p>Cost</p>	<p>Estimated costs of a proposal for different sectors: actual, indicative or comparative estimates.</p> <p>Consider administration implementation ongoing costs in terms of:</p> <ul style="list-style-type: none"> <li>• Financial</li> <li>• Resources</li> <li>• Relative to current position</li> <li>• Relative to other proposals</li> </ul>	<p>The implementation of this is the cheapest.</p> <p>Implementation costs include:</p> <ul style="list-style-type: none"> <li>• Confirmation of compliance with all legislation, including Habitat Regulation Assessment (HRA).</li> <li>• Implementation of any essential long-term restrictions (5-year period before re-application).</li> <li>• Communication of new rights.</li> </ul> <p>Ongoing costs include:</p> <ul style="list-style-type: none"> <li>• Probable increase in applications and notifications.</li> <li>• Continued communications costs.</li> <li>• Development of new branding and access symbols.</li> <li>• Potential new access points.</li> <li>• Any other additional access management that arises.</li> </ul>	<p>The implementation of this is potentially the middle cost of the 3 options.</p> <p>Implementation costs include:</p> <ul style="list-style-type: none"> <li>• Confirmation of compliance with all legislation, including HRA.</li> <li>• Criteria development and mapping of proposed areas including potential representation/appeals system. Based on the decadal review, this is 3 central staff (2 x G6 &amp; 1 x G7) and 5 x 0.2 (G6) regional staff time. Decadal review costs in 2013-14 were circa £183K.</li> <li>• Implementation of any essential long-term restrictions (5-year period before re-application).</li> <li>• Communication of new rights.</li> <li>• New access point (AA responsible).</li> </ul> <p>Ongoing costs include:</p> <ul style="list-style-type: none"> <li>• Probable increase in applications and notifications.</li> <li>• Continued communications costs.</li> <li>• Development of new branding and access symbols.</li> <li>• Potential ongoing management of higher rights access areas – depending on which elements are taken forward.</li> </ul>	<p>The implementation of this is potentially the most expensive of the 3 options.</p> <p>Implementation costs include:</p> <ul style="list-style-type: none"> <li>• Confirmation of compliance with all legislation, including HRA.</li> <li>• Criteria development and mapping of proposed corridors including potential representation/appeals system. Based on the decadal review, this is 3 central staff (2 x G6 &amp; 1 x G7) and 5 x 0.2 (G6) regional staff time. Decadal review costs in 2013-14 were circa £183K.</li> <li>• Development of how corridors would be seen.</li> <li>• Implementation of any essential long-term restrictions (5-year period before re-application).</li> <li>• Communication of new rights.</li> </ul> <p>Ongoing costs include:</p> <ul style="list-style-type: none"> <li>• Probable increase in applications and notifications.</li> <li>• Continued communications costs.</li> <li>• Development of new branding and access symbols.</li> <li>• Ongoing maintenance of corridors so that they remain accessible.</li> </ul>
<p>Monitoring &amp; Enforcement</p>	<p>Enforcing rights and responsibilities, in terms of:</p> <ul style="list-style-type: none"> <li>• Ability to enforce;</li> <li>• Demand/need for enforcement actions;</li> <li>• Likely impact on compliance with rights and responsibilities;</li> <li>• Ability to monitor option and implementation.</li> </ul>	<ul style="list-style-type: none"> <li>• There is currently little enforcement available on CRoW access land.</li> <li>• Section 14 - it is an offence to display a notice which deterring people.</li> <li>• Section 2(4) - if a person becomes a trespasser, they cannot re-enter the parcel of access land for 72 hours.</li> <li>• The extensive nature of CRoW land means that enforcement is hard, so education in advance and at principle access points would be the best answer.</li> <li>• With conflict possible, especially between walkers, horse riders and cyclists, and swimmers, water vessels and anglers, there may be the demand for a voluntary or statutory code.</li> </ul>	<ul style="list-style-type: none"> <li>• There is currently little enforcement available on CRoW access land.</li> <li>• Section 14 - it is an offence to display a notice which deterring people.</li> <li>• Section 2(4) - if a person becomes a trespasser, they cannot re-enter the parcel of access land for 72 hours.</li> <li>• The extensive nature of CRoW land means that enforcement is hard, so education, in advance and at principle access points would be the best solution.</li> <li>• With conflict possible, especially between walkers, horse riders and cyclists, and swimmers, water vessels and anglers, there may be the demand for an updated coded - either voluntary or statutory code. This would need to include updated guidance/advice, along with responsible recreation information.</li> </ul>	<ul style="list-style-type: none"> <li>• There is currently little enforcement available on CRoW access land.</li> <li>• Section 14 - it is an offence to display a notice which deterring people.</li> <li>• Section 2(4) - if a person becomes a trespasser, they cannot re-enter the parcel of access land for 72 hours.</li> <li>• The extensive nature of CRoW land means that enforcement is hard, so education, in advance and at principle access points would be the best answer.</li> <li>• There is the possibility that cyclists and horse riders leave the corridor, because of erosion, using the corridor just as a means of access, or to complete a circular route.</li> <li>• With conflict possible, especially between walkers, horse riders and cyclists, and swimmers, water vessels and anglers, there may be the demand for a voluntary or statutory code.</li> </ul>



Equity of Access	<p>To assess the positive or negative effects on equity of access the following must be considered:</p> <ul style="list-style-type: none"> <li>• Overall population</li> <li>• People with protected characteristics</li> <li>• Specifically, for those with mobility problems; social inequalities;</li> <li>• Differential impacts: on land holders</li> <li>• Different impacts: on classes of user;</li> <li>• Scale/extent of impacts on the preceding</li> </ul>	<ul style="list-style-type: none"> <li>• <b>POPULATION</b> - Walking is the most equitable of activities as there is no specialist equipment required. However, it will significantly increase the amount of access others have for recreation.</li> <li>• <b>P. CHARACTERISTICS</b> - 80% of horse riders are women (sciencedaily.com), Approximately 70% of cyclists are men (cyclinguk.org). However, here is little information about any effects on protected characteristics and if increased types of use would negatively or positively impact on any groups.</li> <li>• <b>LAND HOLDERS</b> - As with CRoW this would give other types of user a right to access land without compensation payable. However, it would reduce an owner/occupier's liability.</li> <li>• <b>IMPACTS OF OTHER USES &amp; SCALE</b> - Walkers may be negatively impacted by horse riders or cyclists (Pembs CC has signage on restricted byways about who has priority over who.) The scale of this would vary, but popular narrow routes would obviously be the biggest issue.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>POPULATION</b> - Walking is the most equitable of activities (no specialist equipment required.) Depending on the criteria it will increase the amount of access others have for recreation.</li> <li>• <b>P. CHARACTERISTICS</b> - 80% of horse riders are women (sciencedaily.com), Approximately 70% of cyclists are men (cyclinguk.org). However, here is little information about any effects on protected characteristics and if increased types of use would negatively or positively impact on any groups. But a by-product is that Trampers etc might have more access if gates are equestrian.</li> <li>• <b>LAND HOLDERS</b> - As with CRoW this would give other types of user a right to access some land without compensation payable. However, it would reduce an owner/occupier's liability.</li> <li>• <b>IMPACTS OF OTHER USES &amp; SCALE</b> - Walkers may be negatively impacted by horse riders or cyclists (Pembs CC has signage on restricted byways about who has priority over who.) The scale of this would vary, but popular narrow routes would obviously be the biggest issue.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>POPULATION</b> - Walking is the most equitable of activities (no specialist equipment required.) Depending on the criteria it may will increase the amount of access others have for recreation.</li> <li>• <b>P. CHARACTERISTICS</b> - 80% of horse riders are women (sciencedaily.com), Approximately 70% are cyclists are men (cyclinguk.org). However, there is little information about any effects on protected characteristics and if increased types of use would negatively or positively impact on any groups. But a by-product is that Trampers etc might have more access if gates are equestrian.</li> <li>• <b>LAND HOLDERS</b> - As with CRoW this would give other types of user a right to access a corridor without compensation payable. However, it would reduce an owner/occupier's liability.</li> <li>• <b>IMPACTS OF OTHER USES &amp; SCALE</b> - Walkers may be negatively impacted by horse riders or cyclists (Pembs CC has signage on restricted byways about who has priority over who.) The scale of this would vary, but popular narrow routes would obviously be the biggest issue.</li> </ul>
Greater efficiency & transparency	<ul style="list-style-type: none"> <li>• Better and/or reduced process requirements for stakeholders;</li> <li>• Reduced time taken, including for administration processes [see also costs];</li> <li>• Improved access to processes by stakeholders</li> </ul>	Whilst not a cost reduction, this is the cheapest option with a simpler transfer of rights onto access land.	This could have a significant initial cost impact. The criteria would be open and available to all to see.	This could have a significant initial and ongoing cost impact. The criteria would be open and available to all to see.

Criteria:	Criteria Description & Measures	Option 1A(i) - Amended CRoW Schedule 2 Restrictions Option 1A(ii) - Higher Rights Applied Subject to Assessment of demand/suitability Option 1A(iii) - Higher Rights on Defined CRoW Trails (corridor approach)
Ecosystems and ecosystems resilience	Positive, negative or neutral impacts. Factors to consider if evidence allows re impacts on species and habitats:	<p>Usage would increase (albeit unevenly.) The main concerns are across all three options as they all have a similar impact depending on where the rights are; many of these could be mitigated by E&amp;Rs and 1A(ii) and 1A(iii) could avoid areas of real concern.</p> <p>The factors that determine the impacts are:</p> <ul style="list-style-type: none"> <li>• Evidence that increase levels of use will increase disturbance to habitats and species, but despite concerns, this didn't happen with CRoW.</li> </ul>

	<ul style="list-style-type: none"> <li>•Extent: changes to area/length rights would apply and impacts will occur [including extent protected sites and species that would be impacted]</li> <li>•Change to levels and type or character of impacts;</li> <li>•Change to distribution of impacts;</li> <li>•Resilience to impacts [of habitats/species]</li> <li>•Provision adequate to prevent or mitigate impacts.</li> </ul>	<ul style="list-style-type: none"> <li>•Higher rights users generally have a greater impact, but there are less of them with the type disturbance being different to access on foot.</li> <li>•Compared to pedestrian access, equestrian access (and to a lesser degree cycle access) can have a much greater erosional impact, which is of particular concern to upland areas and certain vulnerable sites.</li> <li>•There will need to be consideration of HRA etc (as happened prior to the implementation of CRoW).</li> <li>•There has only been one (seasonal) E&amp;R for nature conservation reasons, which was due to breeding ospreys.</li> </ul> <p>E&amp;Rs can also be allowed due to heritage preservation.</p>
Sustainable land and water management	<p>Factors to consider if there is a positive, neutral or negative impact on land or water management:</p> <ul style="list-style-type: none"> <li>•Disturbance to livestock and livestock management;</li> <li>•Agricultural and other land management impacted;</li> <li>•Significant biosecurity implications;</li> <li>•Increased use of land potentially [scale of demand.]</li> </ul> <p>NB: Considerations for ecosystems to be included in preceding consideration above.</p>	<p>See other criteria for general impacts.</p> <p>The below specific comments cover all three options:</p> <ul style="list-style-type: none"> <li>• <b>LIVESTOCK</b> - Access on open country and common land means land is not intensively managed with space for livestock to move away. Access is generally along desired lines (and would be a corridor for 1Aiii). Access to water could be an issue if there is a high demand from users to small areas and few water points available. When using CRoW access land, dogs must be kept on a fixed lead of less than two metres in the vicinity of livestock and at all between 1st March and 31<sup>st</sup> July.</li> <li>• <b>LAND MANAGEMENT</b> - Not extensively managed. Range of E&amp;R notifications/applications available.</li> <li>• <b>BIOSECURITY</b> - Covid-19, foot &amp; mouth etc regulations overrule CRoW. Other big issue is dogs re. Hydatid disease, but they are already allowed under CRoW. Killer shrimp, floating pennywort, Himalayan balsam etc can be an issue with regards to access to water.</li> </ul> <p><b>INCREASED LAND USE</b> - increased risks &amp; perception of risk along with potential increased liability from non-natural features due to different users &amp; increased use. Potential increase in E&amp;Rs. Equestrian gates could increase number of unauthorised petrol/electrically propelled vehicles on land.</p>
Health & wellbeing	<p>Factors to consider if there is a positive, neutral or negative impact on physical and mental wellbeing:</p> <ul style="list-style-type: none"> <li>•Changes to use and benefits derived</li> <li>•Impact on different population groups e.g. relatively disadvantaged.</li> </ul>	<p>These comments are across all three options as all they all refer to higher rights users.</p> <p>Positive:</p> <ul style="list-style-type: none"> <li>• Increased access for higher rights users (physical and mental health benefits)</li> <li>• Less risk of injury for horse riders IF they are accessing land instead of riding on a road</li> <li>• Potential less risk of injury to cyclists from traffic IF they are accessing land instead of riding on the road</li> </ul> <p>Negative:</p> <ul style="list-style-type: none"> <li>• Potential stress on owner/occupiers caused by increased access</li> <li>• Potential fear/reduced pedestrian usage because of cyclists/horse riders due to speed and areas become non-walkable due to higher rights</li> <li>• Increased injury to cyclists due to uneven terrain</li> <li>• Reduced use by anglers due to access to water rights</li> </ul>
Community cohesion	<p>Factors to consider if there is a positive, neutral or negative impact on community cohesion. Consider:</p> <ul style="list-style-type: none"> <li>•Changes to local use and accessibility within area;</li> </ul>	<p>Positive:</p> <ul style="list-style-type: none"> <li>• Potentially more equestrian/cyclist (depending if 1Ai, 1Aii or 1Aiii are chosen and if the latter two, where the cyclist/equestrian access is).</li> <li>• Also, higher rights use requires a financial outlay, so not everyone will partake in it, therefore demand is variable.</li> </ul> <p>Negative:</p> <ul style="list-style-type: none"> <li>• Potential of conflict of users either due to cyclist/equestrian speed compare to access on foot or due to surface damage.</li> </ul>

	<ul style="list-style-type: none"> <li>• Changes to local wellbeing and economic benefits;</li> </ul> <p>Likely impact on community interests.</p>	
<p>Successful and responsible business</p>	<p>Factors to consider if there is a positive, neutral or negative impact on responsible business, Consider:</p> <ul style="list-style-type: none"> <li>• Impact on economic opportunities</li> <li>• Impact of changes on economic activity on different sectors</li> <li>• Distribution [see extent]</li> </ul> <p>NB: evidence of actual costs or overall impact [positive, negative, etc] may be difficult to assess at this stage.</p>	<p>Dependent on where enhanced access and the demand is (increase in numbers and/or increase in frequency). The exact outcome is hard to determine.</p> <p>Positive:</p> <ul style="list-style-type: none"> <li>• Potentially increased use of local businesses (food, drink, cycle shops, cycle hire) with increased visitor spend.</li> <li>• Potential for increased demand for accommodation/livery services from higher rights users.</li> </ul> <p>Negative:</p> <ul style="list-style-type: none"> <li>• Potential increase costs to owner/occupiers (especially NRW as it has surfaced tracks) &amp; AAs (e.g. gates, toilets &amp; car parking demand).</li> </ul> <p>Increased use of local business facilities (e.g. car parking and toilets) without buying anything.</p>



## Key Elements Tables

The set of three tables below outline the key elements proposed by the 'expert group' during the options identification stage. It also highlights the revisions that have been proposed to these key elements following the analysis above and consultation with the expert groups.

### 1A(i): considerations for Revision or further development of the Option Proposal and Key Elements

Key Element Ref No.	1A(i) Required element for outline option proposal	Revisions for consideration to improve option KE
001	<p>Amend CRoW Act Schedule 2 legislation for non-coastal access land to allow for additional recreational activities on current access land as per Policy Intent:</p> <ul style="list-style-type: none"> <li>Cycling, horse riding, hang-gliding and paragliding;</li> </ul> <p>On CRoW waters (excluding reservoirs):</p> <ul style="list-style-type: none"> <li>Non-mechanically propelled vessels; bathing/ swimming.</li> </ul>	<p>Omit 001/ALT – Include in 1B reform.</p> <p>Will S15 land is to be considered and legal advice on options.</p> <p>Legal advice required on S16 land.</p> <p>Legal advice needed about FC Bylaw 648.</p> <p>Non-mechanically propelled vessels should be specifically excluded.</p> <p>One way of enacting the actual right is by removing landowner consent from Schedule 2, paragraph 7(1).</p>
002	Existing CRoW mapping would apply (i.e. no requirement to re-map CRoW access as access land mapping was only according to defined types of land – mountain, moor etc).	Omit 002/ALT [because it is Included in 1B reform].
003	<p>CRoW legislation would apply, including:</p> <ul style="list-style-type: none"> <li>Rights of access (including mapping - see above)</li> <li>E&amp;Rs regime</li> <li>Means of access</li> </ul>	Omit 003/ALT – Included in 1B reform and no evidence provided that E&Rs need to be amended.
004	Apply statutory access code to define rights and responsibilities.	004/ALT – An advisory code is already provided for in CRoW Act S20.
005	Education and promotion for code of conduct. Enforcement linked to statutory code with measures, such as Fixed Penalty Notices [excess money used for CRoW Access costs].	Retain but note education and promotion are a matter for implementation stage.

Key Element Ref No.	1A(i) Required element for outline option proposal	Revisions for consideration to improve option KE
		Debate about practicality/enforcement of Fixed Penalty Notices.
006	Provision to allow improvements for accessibility (mobility) of gates and stiles. All furniture to meet accessibility standards, such as BS5709 standard when replaced.	<p>Note for 006/ALT that funding sources are important but are matters for implementation rather than legislative reform.</p> <p>Could tie in with element 002 – means of access.</p>
007	New Open Access symbol for on the ground signage (e.g. way marker) – new design needs to incorporate all users. OS and other mapping notation to recognise different CRoW rights apply in Wales.	<p>Retain 007.</p> <p>Any new symbol would be developed following legislation change. We can only request mapping companies to convey the different rights of access under CRoW.</p>
008	Agri-environment funding to be made available for access enhancements and supporting infrastructure.	Retain 008 – although will need consideration as part of facilitating implementation of reforms rather than legislation reform.
009	Landowner – review their right to appeal definitions within current legislation.	Omit 009 – outside scope of WG reform intent.
010	Communication of changes in Wales, and England, especially in relation to cross-border impact.	Retain 010 – supportive, note that is a matter for implementation stage.
011	<p>Reduced landowner liability reduced in line with existing CRoW access relation to all users.</p> <p>(i) Impact on cycling/horse riders may be higher.</p>	<p>[011/ALT - Apply [relatively lower] MACA or another level of occupiers' liability for all CRoW access land in Wales].</p> <p>CRoW liability applies to all those accessing land legally, MACA-level or another level of liability could be introduced.</p>

## 1A(ii): considerations for Revision or further development of the Option Proposal and Key Elements

Key Element Ref No.	1A(ii) Required element for outline option proposal	Revisions for consideration to improve option KE
001	<p>Discretionary powers included in CRoW Act Part I for access authorities (AAs) to consider the suitability of defined CRoW access land for Schedule 2 restricted activities within their area.</p>	<p>(001/ALT - Duty for AAs to assess all CRoW access land in their area on a rolling basis).</p> <p>Legal advice required on implications of for selective process for identifying CRoW access land for higher rights.</p> <p>This is a higher cost option and AAs have highlighted their budgetary constraints.</p> <p>Can combine with elements 003, 003/ALT, 004 004/ALT and 005/ALT as they all cover the same area of the option.</p> <p>Decision needs to be made early on whether it's a duty or power and if it's the AA or RA who it applies to.</p> <p>KE needs to clarify that this was only seriously discussed as an option for horse riders and cyclists.</p> <p>A simple way of enacting the actual right would be by removing landowner consent from Schedule 2, paragraph 7(1).</p>
002	<p>Powers to define in regulations:</p> <ul style="list-style-type: none"> <li>• Suitability assessment criteria for higher rights access to apply to access land.</li> <li>• Assessment processes and how applied (including defining an 'area of access land' for assessment purposes).</li> </ul>	<p>Regulations supporting the Act amendments would be the best option.</p> <p>Also includes elements 005/ALT (consultative bodies. impact and honeypot sites) and 014 – but there is concern about what 'suitability' is, especially if it's linked to 'ability to use' as technical ability of users varies.</p>

Key Element Ref No.	1A(ii) Required element for outline option proposal	Revisions for consideration to improve option KE
		Also includes element 011/ALT if 'demand' is one of the criteria definitions
003	Powers for AAs to assess CRoW access land for suitability for application of higher rights.	[003/ALT - Duty for AAs to assess CRoW access land for suitability for higher rights]  See element 001 as this relates to overarching provision
004	Assessments carried out at discretion of AA.	[004/ALT - Duty for AAs to assess CRoW access land for suitability for higher rights]  See element 001 as this relates to overarching provision
005	<p>Case-by-case review on each assessment site/'area of access land'</p> <p>Define who carries out assessment– Access Authority</p> <p>Other bodies to be consulted about specific assessment relevant to functions e.g. NRW, CADW etc.</p> <p>Criteria for making assessment based on need/demand:</p> <ul style="list-style-type: none"> <li>• Existing and/or latent demand</li> <li>• Remote + popular areas</li> <li>• Evidence for demand, e.g. monitoring; Strava</li> </ul> <p>Duty – Sustainability – Impacts on:</p> <ul style="list-style-type: none"> <li>• Land management</li> <li>• Wildlife</li> <li>• Historic heritage</li> <li>• Others to be defined</li> </ul>	<p>005</p> <p>All things that need to be investigated and could make their way into element 002.</p> <p>005/ALT – Alternative to Access Authority is for assessment by Relevant authority.</p> <p>Broad power within element 001.</p> <p>Alt. for other bodies to consult on assessments - Advisory role for LAF, Visit Wales.</p> <p>NB: could excessive demand/ impact be a reason to refuse and how is 'demand' determined as it can vary over time?</p> <p>Could create honey pot sites.</p>
006	CRoW E&R's regime would apply. Any restrictions would be considered if/where needed after higher rights applied.	(006/ALT - Provide powers for protective restrictions based on clear criteria within revised E&R regime at assessment stage.)

Key Element Ref No.	1A(ii) Required element for outline option proposal	Revisions for consideration to improve option KE
		Both 006 and 006/ALT are allowed within current CRoW legislation – this element is largely for confirmation only – could be omitted.
007	<p>Landowner/management</p> <ul style="list-style-type: none"> <li>• Resources to carry out processes</li> <li>• Warden resources to support practical management</li> <li>• Powers to monitor and consider impact on land management</li> <li>• Powers to facilitate crossing of field or other boundaries, obstacles</li> </ul>	<p>(007/ALT - NB: any approach requires compliance with human rights / non-discriminatory approach. Consider if a selective approach compatible with HRA).</p> <p>Acknowledge high budgetary cost of element.</p> <p>Legal advice needs to confirm CRoW ss34-38 provide for improving access within access land (e.g. boundaries).</p> <p>Legal advice required on if this option contravenes HRA.</p>
008	<p>CRoW mapping duty continues to apply, including provision of mapping as now through online mapping. Mapping depiction should differentiate between rights associated with different CRoW areas.</p>	<p>(008/ALT - NB: requirements for mapping etc aligned with outcome from Reform 3A – Integrated Access Mapping.</p> <p>Broadly support, with link to 3A as it covers all 1A(i), 1A(ii) and 1A(iii).</p>
009	<p>Powers to provide associated signage; new higher rights open access symbol/logo for waymarks and signage</p> <ul style="list-style-type: none"> <li>• New waymark discs?</li> <li>• New access point signs?</li> <li>• Directional signage?</li> </ul>	<p>AAs already have this power under S19, so not a legislative change. New signage would be required,</p>
010	<p>Change Schedule 2 as per policy intent for any assessed access land areas</p>	<p>010/ALT - Amend Schedule 2 on more limited basis than policy intent, allowing variations as to higher rights applied to areas on selective basis e.g. only to cyclists and/or horse riders.</p> <p>Mixed views on the merits of both element 010 and 010/ALT.</p>

Key Element Ref No.	1A(ii) Required element for outline option proposal	Revisions for consideration to improve option KE
011		<p>[011/ALT - 'Enhanced' Access by demand</p> <ul style="list-style-type: none"> <li>• Role for Unitary Authority/LAF to determine</li> <li>• Also requires appropriate means of access</li> <li>• Schedule 2 relaxed]</li> </ul> <p>See element 002 as this relates.</p>
012	E&Rs to remain as currently.	<p>(012/ALT - Review and revise E&amp;Rs to adapt regime for new higher rights).</p> <p>012 and 012/ALT could be omitted as there is no evidence that new E&amp;R reasons are required, so <i>status quo</i> remains. Note as consideration / advice.</p>
013	Revise powers to allow enhancement of means access to and within access land for higher rights and applicable to CRoW access land generally. Would be applied at discretion of AA.	<p>AAs already have powers over access to access land. Further legal advice required to confirm whether ss34-38 legislation provides for improving access within access land; presence of already accessible internal boundaries could be part of the assessment process for corridors.</p>
014	<p>'Enhanced' Access by suitability</p> <ul style="list-style-type: none"> <li>• Can the land cope with the pressure?</li> <li>• Can the land be accessed?</li> <li>• Demand???</li> </ul>	See element 002 as this can be incorporated.
015	<p>Liability/E&amp;Rs to help owner/occupiers</p> <ul style="list-style-type: none"> <li>• Reduced liability stays during E&amp;R?</li> <li>• Liability (same as England – MACA)?</li> <li>• Liability reduced due to injury caused by livestock?</li> <li>• Poaching around 'honey pot' or access points?</li> </ul>	CRoW liability applies to all accessing land legally, a different level of liability could be introduced along the lines of the [England] Marine and Coastal Access Act 2009 (MACA).



## 1A(iii): considerations for Revision or further development of the Option Proposal and Key Elements

Key Element Ref No.	1A(iii) Required element for outline option proposal	Revisions for consideration to improve option KE
001	<p>Amend CRoW Act to provide powers for access authorities to define linear routes/corridors of CRoW access land to which higher rights apply.</p>	<p>Legal advice required on implications of selectively defining corridors of CRoW access land for higher rights, notably any compensation requirements</p> <p>Note, this is a higher cost option and AAs have highlighted their budgetary constraints.</p> <p>Amend KE to state that this is considered as an option for cyclists and horse riders [differs from policy intent].</p> <p>The simplest way of enacting the actual right is by removing landowner consent from Schedule 2, paragraph 7(1).</p>
002	<p>Powers for Access Authorities (AAs) to define CRoW higher rights routes would be applicable to all existing access land designated or dedicated under CRoW.</p> <p>Higher rights to be applied to identified corridors would be part of defining process and subject to AA to determine. Include presumption for Least Restrictive Access.</p> <p>Powers for regulations to set process of defining new higher rights corridors including AA discretionary consideration, application, assessment of proposed route, determination of proposed route and implementation. Proposal/assessment process to define areas to which new higher rights could be applied including:</p> <ul style="list-style-type: none"> <li>• Proposal by application (individual, LAF); or</li> <li>• Proposal by and at discretion of AA</li> <li>• Assessment of proposal against set criteria</li> <li>• Consultation requirements (to include LAFs]</li> </ul>	<p>Omit 002/ALT – as this is a matter to consider within context of Reform 1B.</p> <p>Legal advice required on selecting corridors of CRoW access land for higher rights. If progressed, this element would need advice on the legal process for identifying, defining and implementing routes (along with any compensation). MACA in England maybe a template for this.</p> <p>Element 002 covers potential regulation, (whereas element 001 covers the change to the Act), the wording of this element could be simplified so the next KE is easier to read.</p>

Key Element Ref No.	1A(iii) Required element for outline option proposal	Revisions for consideration to improve option KE
	<ul style="list-style-type: none"> <li>• Recommendation</li> <li>• Determination by CRoW AA</li> <li>• Implementation of route (including means of access to and within land)</li> </ul> <p>Criteria to be defined in regulations including demand/need, route characteristics (including dimensions of corridor) existing access rights, physical characteristics, nature/heritage conservation.</p>	
003	<p>Review and develop existing CRoW E&amp;R legislation to provide for CRoW higher rights routes; include power to restrict CRoW routes by activity and for prevention of or recovery of damage resulting from impacts of specific activities.</p> <p>E&amp;R restrictions to CRoW routes to include presumption of onward travel and to allow variation of route or provision of alternative route for such onward journeys.</p>	<p>First paragraph can already be done under CRoW (subject to least restrictive option).</p> <p>There are legal timescales in applications to allow an onward travel corridor without going through the very comprehensive assessment above could leave us open to challenge, so legal advice is required.</p> <p>Powers to provide onward travel corridor would have to be for a route on CRoW access land (either the same or another landowner)/ PROW's/ roads. Legislation would have to ensure that this process could be expediated if CRoW land without HR is to be used.</p> <p>This could be by amending Schedule 2 7(2)(b) so that the RA or AA could specify a period (assuming Schedule 2 7(1) is amended as per 001 above).</p> <p>Not all routes will be through routes – e.g. they may be to a viewpoint.</p>
004	<p>Review and amend CRoW sections 34-38 to provide powers for AA to facilitate the means of access to and within access land for higher rights users [and for people with mobility problems] where necessary.</p>	<p>[004/ALT - Retain ss34-38 as they are if legal interpretation is that they are already suitable.</p> <p>Duty to provide such guidance.</p>

Key Element Ref No.	1A(iii) Required element for outline option proposal	Revisions for consideration to improve option KE
	Powers to provide guidance and advice about the type of provision for facilitating higher rights and for considering Least Restrictive Access.	Legal advice need to decide if ss34-38 already provide powers needed for facilitating access <u>within</u> access land as well as access to access land.
005	<p>Introduction of statutory code setting out responsibilities and rights in relation to new rights. Powers to include breach of code resulting in 'removal' of rights and/or provide sanction. Powers to enforce to include local authorities/NPA [National Park Authorities] nominated officers [including fixed penalty notices (FPNs)] - as well as courts and police.</p> <p>Provision of resources to develop and support code, including information, education and promotion for people in Wales and visitors.</p> <p>Duty to promote the code for WG, NRW, and all AAs.</p>	<p>[005/ALT - Statutory access code developed in relation to all statutory access].</p> <p>S20 allows for advisory code.</p> <p>Need advice over what sanctions would be allowed &amp; this is a resource heavy option.</p> <p>Enforceable statutory access code could be developed within specific code reform work.</p> <p>Reform is not dependent on information and promotion element. It would have resource implications at the reform implementation stage.</p>

### Next Steps Summary

After the analysis report has been finalised by implementing the suggestions of Steering Group members, revisions will be made in time for the Minister's Review in November. In January 2021, the final Expert Group sessions will take place, and these will be the Option Selection meetings. After which, the final report will be written to be presented to the Minister at the end of March 2021.

## Annex 1: 'Call for Evidence' Responding Organisations

Representatives from the following organisations responded to the ARAG 'call of evidence' request sent out in the Summer of 2020:

Arfon and Dwyfor Local Access Forum, Gwynedd  
Brecon Beacon National Park Local Access Forum  
Brecon Beacon National Park (*Expert Group representative*)  
British Horse Society (BHS) (*Expert Group representative*)  
The British Mountaineering Council (BMC) (*Expert Group representative*)  
Cadw  
Canoe Wales  
Carmarthenshire County Council (*Expert Group representative*)  
Ceredigion Local Authority (*Expert Group representative*)  
Country Land and Business Association (CLA) (*Expert Group representative(s)*)  
Cycling UK (*Expert Group representative(s)*)  
Flintshire and Wrexham Joint Local Access Forum  
Institute of Public Rights of Way & Access Management  
Ministry of Defence (MOD) (*Expert Group representative*)  
National Representative, Welsh Local Access Forums  
Open Spaces Society (OSS) (*Expert Group representatives*)  
Pembrokeshire Coastal National Park Authority (*Expert Group representative*)  
Powys Local Access Forum  
Rhondda Cynon Taf Local Access Forum  
South Wales Outdoor Activity Providers Group (SWOAPG)  
Swansea City and County (*Expert Group representative*)  
Wales Adventure Tourism Organisation (National Access Forum Member)  
Vale of Glamorgan County Borough Council (*Expert Group representative*)

Natural Resources Wales Internal Responses

- Evidence, Policy and Permitting (EPP) Team
- Knowledge and Evidence, EPP
- Land Management Team
- Marine and Coastal Ecosystems Team
- Marine and Coastal Policy and Planning Team
- North West Wales Operations
- North East Wales Operations
- North West Wales Sites Team
- Outdoor Access and Recreation Team
- South Wales Central Operations Team
- Sustainable Management of Natural Resources (SMNR) Team
- Sustainable Places – Land and Sea Management Team
- Well-being and Integration Team