



# Access Reform Programme

Analysis Report: Reform 2A

Extending the right to ride a cycle or horse  
on public footpaths

# **Executive summary Reform 2A – Extending the right to ride a cycle or horse on public footpaths**

## **Summary of Policy Intent for Reform 2A**

“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”.

Three options were considered to deliver the 2A Policy Intent. They were:

- i. Legislate so that cyclists and horse-riders can use all public footpaths by right, with an associated caveat or clause on the requirement for responsible use.
- ii. As for option 2A(i), legislate for the application of cycling and horse-riding rights to all public footpaths. Powers would also be provided for local highway authorities to assess public footpaths for their unsuitability for such rights. The additional rights would be excluded where footpaths were assessed to be unsuitable. ‘Unsuitability’ would be determined on the basis of a formal assessment process and criteria.
- iii. Higher rights would be applied on a case-by-case basis and assessment process, by local authorities that apply standard criteria linked to the Rights of Way Improvement Plans (ROWIPs). and management of the coastal access rights.
- iv. Use CRoW section 3 powers to define coastal access land as open country. NRW would use CRoW procedures to produce maps of the coastal access land to which CRoW rights on foot would apply. Coastal access land would be managed under legislative provisions within CRoW, modified where necessary.
- v. Extend CRoW section 3 to coastal land (as outlined in 1B(ii) above), with higher rights applicable through amendments to CRoW Schedule 2 applying to coastal land.

A fourth option was identified at the analysis stage to replace option 1B(iii):

- vi. Apply higher rights<sup>1</sup> to coastal access according to the approach developed and decided for Reforms 1A and 1B.

## **The key issues identified in the delivery of the 2A Options were:**

- Powers will be needed for local authorities to improve the accessibility of shared footpaths for additional rights users, and to apply exclusions or restrictions of access rights in some places.
- Provision of a process and methodology for the assessment of suitability and unsuitability of cycling and horse-riding on public footpaths will be needed, including consideration of statutory undertakers' needs and the exclusion or restriction of access rights.
- Applying rights by statute across the public footpath network will extend the rights of way available for horse-riding and cycling by over 26,000 kms.

- Any 2A reform should include measures to help communicate the new rights and responsibilities and also the suitability of footpaths with rights for cyclists, horse-riders and people on foot.
- As with other reforms, introducing an enforceable statutory access code would help to manage the resulting rights and responsibilities although reforms are not dependent on such changes.

### **Key issues raised that are specific to the various 2A options proposed:**

- A selective approach to the application rights in 2A(iii) will result in less cycling and horse-riding rights on public footpaths and be dependent on the resources available to local authorities.
- The application of rights across public footpaths through option 2A (ii) and particularly option 2A(i) will not indicate the suitability of the path for cycling and horse-riding.
- Further legal advice will need to inform what legislative provisions will be required to take forward either a selective (2A(ii) or 2A(iii)) or network-wide (2A(i)) approach to reforms e.g. provisions in the reforms for compensation or appeals.

# 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 CRoW legislation extending access land to the coast, coastal cliffs and foreshore
- **Reform 2A:** *Extending the right to ride a cycle or horse on public footpaths*
- **Reform 2B:** 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 2A analysis report of Reform Options has been produced following evidence and other contributions provided by:

- 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 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 three 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) a number of common themes have been identified:

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

While these will be 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 be also be available through the [Welsh Government Access Reform Advisory website](#).

## Reform 2A – Extend Activities on public footpaths

### Summary of Policy Intent for Reform 2A

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.

**Table 1: Reform 2A Option Titles & Outline Descriptions**

2A: Outline Proposal Titles	Summary Description of Outline Proposals
i. General application of higher rights to footpaths [section 30 approach <sup>1</sup> ]	Roll out the general application of higher rights to footpaths, using a 1968 Countryside Act section 30-type approach <sup>2</sup> , with an associated caveat or clause on the requirement for responsible use.
ii. Higher rights applied to footpaths with powers to exclude based on unsuitability	Higher rights applied across the footpath network. Powers would be provided for local highway authorities to assess paths for unsuitability of higher rights. Paths could be excluded where rights were assessed to be unsuitable. 'Unsuitability' would be determined on the basis of a formal assessment process and criteria (titled, an unsuitability assessment).
iii. Selective application of higher rights to footpaths applied on a case-by-case basis	Higher rights would be applied on a case-by-case basis and assessment process, by local authorities that apply standard criteria linked to the Rights of Way Improvement Plans (RoWIP).

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<sup>1</sup> For section 30 of Countryside Act '68 see:

<https://www.legislation.gov.uk/ukpga/1968/41/section/30>

<sup>2</sup> i.e. using a similar approach to section 30 of the Countryside Act 1968, legislate so that all public footpaths, can be used by right by cyclists and horse riders as well as by footpath users. (See link to the legislation in footnote 1 above)

# **Analysis of Reform Options**

Each of the options (2A(i), 2A(ii) and 2A(iii)) were proposed by the expert group as possible ways to deliver the Welsh Government's policy intent for the reform. The following sections provide an expanded description for each proposed option. The descriptions were set out in tabulated form in the option identification papers – see tables below.

## **REFORM 2A(i) OPTIONS**

### **Title: General application of higher rights to footpaths [section 30 approach]**

#### **2A(i) Description:**

Roll out the general application of higher rights to footpaths, using a 1968 Countryside Act section 30-type approach, with an associated caveat or clause on the requirement for responsible use.

#### **Summary Description of Proposed Reforms within Option 2A(i)**

Option 2A(i) provides for legislation to allow horse riders and cyclists (what will also be referenced as *higher rights* in this report) to ride on all public footpaths in Wales by right. In doing so, higher rights users would have to give way to pedestrians. There would be no requirement to maintain or improve such footpaths for higher rights users and definitive maps and statements would be appropriately amended to provide legal clarity about the provision of the higher rights on definitive footpaths. The liability owed by landholders to legitimate users of all public rights of way (PROW) would be reduced to be equivalent to that for Countryside and Rights of Way Act (CROW) access land.

Local authorities would have powers to alter structures and provide additional signage on public footpaths to improve the way for any users. Authorities would also have the power to restrict the use of public footpaths where needed e.g. to prevent damage or for health and safety reasons. Users that act irresponsibly endangering other users, causing damage to the way or other stated interest, could have their rights suspended for a period of time.

The proposed changes would be reflected in revised codes of conduct for all users and communication materials would be developed ensuring all interests are made aware of the changes before and after implementation.

#### **Alternative key elements within 2A(i)**

The 2A(i) option includes potential variations to the above points including providing for carriage of non-mechanically powered craft on PROW [see Key Element referenced 001/Alt]; requiring the maintenance of footpaths for higher rights use [see

002/Alt]. This alternative option also proposes clearing of the backlog of Definitive Map Modification Orders (DMMOs) prior to or in parallel with the introduction of higher rights [004/Alt] and linking improvement of footpaths for higher rights and for future payments for land use.

An alternative element proposes a statutory code of conduct to enable action to be taken against irresponsible recreational behaviours.

## **Summary Description of Proposed Reforms within Option 2A(ii)**

Option 2A(ii) has a number of the same provisions that are included in option 2A(i). As for 2A(i) option 2A(ii) provides for legislation to allow horse riders and cyclists (higher rights users) to ride on all public footpaths in Wales by right. In doing so, higher rights users would have to give way to pedestrians. There would be no requirement to maintain or improve such footpaths for higher rights users.

A significant difference with the 2A(ii) option is that local highway authorities would be required to formally assess definitive public footpaths to assess their unsuitability for higher rights use. The Senedd (Welsh Parliament) would be able to make regulations to define the unsuitability process, issuing associated guidance as a result (including such matters as taking forward an assessment, the assessment methodology and criteria, consultation requirements, decisions and appeals).

As for 2A(i), definitive maps and statement regulations would be appropriately amended to provide legal clarity about the rights that subsequently apply to any definitive footpaths.

The liability owed by land holders to users of all PROW, including higher rights users on definitive public footpaths, would be aligned with that owed to the access rights of users on CRoW access land.

Local authorities would have powers to alter structures and provide additional signage on public footpaths to improve the way for any users. Local authorities would also have powers to restrict use of public footpaths by users where local highway authorities formally assess the path as unsuitable for higher rights or where they consider it necessary to prevent or mitigate damage. The process would require authorities to consult specified interests (including landowners, local access forums and recreational user groups) with discretion to make decisions and for those decisions to be subject to appeal. For example, routes could be designated as unsuitable either permanently or subject to periodic review.

Users that act irresponsibly endangering other users, causing damage to the way or other stated interest could have their rights suspended for a period of time.

The proposed changes would be reflected in revised codes of conduct for all users and a programme of communications developed to make all interests aware of the changes before and after implementation.

## **Alternative key elements within 2A(ii)**

The 2A(ii) option includes potential variations (alternative key elements) to the above points including providing for carriage of non-mechanically powered craft on PROW

[see Key Element referenced 001/Alt]; requiring the maintenance of footpaths for higher rights use [see 002/Alt]. An alternative option also proposes clearing of the backlog of DMMOs prior to or in parallel with the introduction of higher rights [004/Alt] and making improvement of footpaths for higher rights eligible for future payments for land management.

An alternative element proposes a statutory code of conduct to enable action to be taken against irresponsible recreational behaviours.

## **Summary Description of Proposed Reforms within Option 2A(iii)**

The 2A(iii) option proposes a power for local highways authorities to designate public footpaths to have additional rights to ride a cycle and horse. There would be flexibility to also include rights for carrying unpowered watercraft to enable access to water.

Legislation would provide for regulations to set out the process to be followed when assessing the suitability of a footpath for higher rights, including consultations, the methodology assessment and criteria and to be used. Legislation would provide for recording the amended rights on definitive PROW maps and statements.

Associated with new rights, enhanced powers would be provided to local highway authorities to manage designated footpaths. For example, amending structures and signage to facilitate access for higher rights on footpaths; and discretionary powers for the prevention of damage to a designated footpath for specific reasons (including the health and safety of users, nature conservation and impacts on land management).

In addition, it would be necessary to provide information to the public and stakeholder interests about footpaths designated with higher rights (to be called ‘public paths’) through revisions to revised statutory signage, the Countryside Code, and other guidance where relevant.

## **Reform 2A: Commentary on issues common to all reform options**

In the responses to the call for evidence a number of issues raised were common to all 3 options:

- Whether it was better to apply cycling and horse-riding rights by statute across the public footpath network (options (i) and (ii)) or to apply rights selectively path by path (option (iii)).
- While having an up-to-date definitive map and statement for 2A(i) and (ii) is generally desirable, it is not an essential precursor to a s30 type reform [e.g. see key elements 2A(i) 004/Alt and 007; 2A(iii) 006/Alt]. There was reasoning for it being a considered as part of assessing the suitability and unsuitability of, or if restricting higher rights on a footpath, however, not essential.
- Local highway authorities suggested simple approaches to updating certain definitive and map statement processes. For example, by noting rights

available for footpaths on definitive statement once relevant section 30-type legal change had occurred.

- Greater speed and efficiency of proposed reform processes would be needed - compared with existing DMMO and Public Path Order (PPO) processes - balanced with fairness to different interests.
- The costs of the implementation of options and of managing public footpaths thereafter would affect the usability of the rights provided.
- Reform to processes to exclude and restrict access was felt to be needed alongside any reform, on PROW generally, and in relation to higher rights applied to public footpaths – to streamline and speed-up processes and ensure applicability to higher rights on footpaths.
- The process and methodology for the assessment of suitability and unsuitability of higher rights on public footpaths will be key (including consideration of statutory undertakers' needs, such as NRW's management of flood defences).
- The reform provides an opportunity to legislate more generally for proactive accessibility improvements on PROW, not just to make improvements for higher rights users.
- A local highway authority's approach to implementing the reform should be reflected in their statutory plan for improving access [this links to integrated access plans, as outlined in Reform 3B].
- The importance of effective information published online or displayed on footpaths.
- Differentiating 'footpaths with higher rights' from bridleways or footpaths will help inform users' expectations as to what they may reasonably encounter on a route.
- The importance of measures to help ensure responsible recreation with this reform and the potential to link to a statutory access code to manage rights and responsibilities with potential exclusion of access.
- There were few responses to, or evidence and examples provided, in relation to the assessment criteria and delivery considerations.

Further analysis of responses and evidence are highlighted in the commentaries about the individual options in the following sections below.

## **2A(i) Commentary of issues on reform focusing on legislation**

Bringing forward changes as a blanket section 30-type approach is generally considered feasible from a legislative point of view [option key element 001]. As such, applying a change through legislation to all rights across all public footpaths would be relatively straightforward to administer. This would include providing a clear and readily understandable change and way to implement higher rights. This approach would result in a large increase (over 26,000 kms) in higher rights across all parts of Wales. Subject to resulting use, it would impact all landowners with footpaths across their land and associated pedestrian users and other interests.

An alternative element [001/Alt] added a reform allowing for natural accompaniments on PROW to include non-mechanically powered craft but this element was considered by many respondents and the expert group as not relevant to this reform.

As part of the reform, there would need to be changes to regulations governing definitive map and statement processes. Some solutions have been suggested in evidence responses from local authorities, such as noting legal rights that apply to a way in the definitive statement for each footpath. The reform key element is considered needed, but the details can be left for further consideration when drafting legislation.

The resulting status of footpaths changed by the reform does need to be considered further. Public footpaths with higher rights could be given a new term to aid description and understanding in different contexts. For example, on mapping and signs, for legal processes and general communications. A suggestion made was to use 'public path' for such designated ways as it is already used as a collective description for footpaths and bridleways. Changing the depiction of public footpaths with only footpath rights could be one approach as this would be an exception rather than the norm. An alternative suggestion was to retain 'public footpath' while explaining the new rights that exist. Of course, there are significant resource implications from requiring extensive signage and mapping changes.

Without clear information for all interests, there is the potential for confusion about available rights in Wales compared to public footpaths in England. This includes problems that will be difficult to resolve for public footpaths that cross the Wales-England border, including the Offa's Dyke Path National Trail.

There were evidenced reasons for providing restrictions or closure mechanisms to support the practical management of higher rights on public footpaths. Those cited included managing the impacts on heritage and nature conservation, on the physical condition of paths, or the unavoidable impact on other users and safety of users. Most evidence related to impacts of use at the local site level for specific sections of path, including the periodic impacts related to weather conditions or seasonal sensitivities (e.g. for nesting birds). On occasion, the need for more extensive exclusions and restrictions (E&Rs) may occur, e.g. Cadw noted the coincidence of the Offa's Dyke Scheduled Ancient Monument with sections of public footpaths making up the Offa's Dyke Path National Trail. Their view was that some restrictions or closures along the monument were likely to be needed to protect vulnerable sections of the monument against the extra impact of higher rights use. Cadw also provided evidence that other Scheduled Ancient Monuments would need to be considered for protective E&Rs. No overall estimate of the additional burdens and associated costs overall was made.

This 2A(i) option included a proposal for a [to be developed] statutory code process to manage impacts. Other suggestions to manage impacts included:

- Introducing a new exclusion and restrictions mechanism (not defined but could link to Reform 2B).

- Providing a streamlined exclusion or restriction mechanism for PROW generally. The existing traffic regulation order mechanism under the Road Traffic Regulation Act 1984 was not felt to be adequate unless it could be significantly reformed.
- Providing a caveat in PROW legislation to suspend a person's public rights of way for defined irresponsible use (similar to that provided in CRoW section 2).

However, no clear evidence was provided for the overriding benefits of any particular E&Rs approach or mechanism, nor for the criteria that should be used for objectively making such judgements in the context of this reform. It was also noted that enforcing closures or restrictions in practice can be difficult to manage. So, further development work would be needed around possible E&R approaches - during the ARAG process or later – to provide a streamlined but balanced mechanism alongside such reforms.

Opinion mostly supported the proposal that local highway authorities' duty to maintain footpaths for higher rights should be a power only – not a duty. A number of responses noted that resulting higher rights' use on footpaths would result in increased maintenance demands on local highway authorities - even if the duty to maintain was only for footpath-type use. (Legal advice<sup>3</sup> tended to support the view that local highway authorities would have to maintain to existing footpaths standards where footpaths had increased maintenance needs resulting from the exercise of new rights). There was a weight of opinion that this would have significant resource implications for local highway authorities, although further work would be needed to estimate costs.

If there was a duty to maintain footpaths for higher rights, many expressed the view that this would lead to very significantly higher costs. For example, surfacing repairs or replacing footbridges with bridleway bridges - although no estimation of costs has been made. There was also support for the view that there would be some consequential impacts on land management from higher rights' use of footpaths (e.g. widening of routes).

A number of responses from local authorities (some evidenced) identified existing, significant issues with the upkeep of PROW and the currently unmet burdens on them as important considerations for the practical implementation of new rights.

There was broad support and evidence of the need for providing additional statutory means to improve the accessibility of PROW to facilitate new higher rights use of footpaths. The implications for private ownership of structures (notably gates and

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<sup>3</sup> External legal advice to NRW September 2020

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1980/66/section/147ZA>

<sup>5</sup> <https://www.legislation.gov.uk/ukpga/1980/66/section/66>

<sup>6</sup> <https://www.legislation.gov.uk/ukpga/1980/66/section/147>

<sup>7</sup> Welsh PROW Analysis, NRW, 2020 (research report about PROW related evidence and digital data)

stiles) on PROW was noted as an issue here and would need consideration (including legal advice) in making such a reform. It was noted that accessibility improvements can be made on a more informal basis, or through existing mechanisms e.g. the Highways Act section 147ZA<sup>4</sup> provides a possible mechanism to improve structures on PROW, as does section 66<sup>5</sup>. There are implications for recording of structures authorised on a PROW (see section 147 of the Highways Act<sup>6</sup>) as limitations within definitive statements and making available such information. Evidence from NRW research in 2020<sup>7</sup> shows many local highway authorities have Geographic Information System (GIS) data about PROW structures, but this is not often linked to legal records. This aspect could be considered in more detail as an area to support the main reform.

There is also dated indicative evidence about the scale of illegal obstructions and problems, such as inadequate signage, that would affect higher rights users of footpaths. Many views felt that the reform, together with the existing number of problems on the footpath network, was likely to increase demand for enforcement and maintenance. Statutory mechanisms to address the issues already exist but the lack of financial and staff resources was referred to, and evidenced, as factors that would affect implementation of the reform (as with many of the reforms).

The importance of accompanying information provision (including codes of conduct, guidance and advice for users, land managers and others) and communication campaigns linked to changes was very widely acknowledged as essential. Similarly acknowledged was the potential for future land management payment schemes to support improvements of routes for higher rights.

## **2A(ii) Commentary of issues on reform focussing on legislation**

As with 2A(i), bringing forward changes as a blanket section 30-type approach is generally considered feasible from a legislative point of view [option key element 001]. As such, applying a change through legislation applied to all rights across all public footpaths would be relatively straightforward to administer. This would include providing a clear and readily understandable change and way to implement higher rights. The approach would result in a large increase (over 26,000 kms) in higher rights across all parts of Wales. Subject to resulting use, it would impact on all landowners with footpaths across their land and associated user and other interests.

An alternative element [001/Alt] added a proposal allowing for natural accompaniments on PROW to include non-mechanically powered craft (though this was generally not considered relevant to this reform).

As for 2A(i), changes to definitive map and statement processes would need changes to regulations. Some solutions have been suggested, such as noting legal

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<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1980/66/section/147ZA>

<sup>5</sup> <https://www.legislation.gov.uk/ukpga/1980/66/section/66>

<sup>6</sup> <https://www.legislation.gov.uk/ukpga/1980/66/section/147>

<sup>7</sup> Welsh PRoW Analysis, NRW, 2020 (research report about PRoW related evidence and digital data)

rights that apply to a way in the definitive statement for each footpath. Such matters can be left for further consideration when drafting legislation.

As for 2A(i) the resulting status of footpaths changed by the reform would need to be considered. Public footpaths with higher rights could be given a new term to aid description and understanding in different contexts. For example, on mapping and signs, for legal processes and general communications. A suggestion made was to adopt ‘public path’, as it is already used as a collective description for footpaths and bridleways. Changing the depiction of public footpaths with only footpath rights could be one approach as they would be an exception rather than the norm. An alternative suggestion was to retain ‘public footpath’ while explaining the new rights that exist. It was noted that it would help inform users’ expectations about what they could expect on a route which would not have to be maintained for higher rights use and therefore may not be suitable for such use.

As for 2A(i) there is the potential for confusion with public footpaths in England, including problems that will be difficult to resolve for public footpaths that cross the Wales-England border, some being high profile routes such as the Offa’s Dyke Path National Trail.

Unsuitability assessments included in the 2A(ii) option would reduce, in proportion to the extent they are applied to footpaths, the need to use exclusion and restrictions (E&R) mechanisms compared to Option 2A(i). However, the evidence provided indicates exclusions and restrictions are likely to still be required to support the management of higher rights on public footpaths. As for 2A(i), this included for managing the impacts of higher rights on heritage and nature conservation sites, on the physical condition of paths, and where there was unavoidable impact on other users, or for the health & safety of users. Most evidence related to impacts at the local site level or along specific sections of path, as well as the local, periodic impacts related to weather conditions or seasonal sensitivities (e.g. for nesting birds). It was suggested that such E&Rs powers should enable management of impacts from any recreational user, not simply higher rights users. On occasion the need for exclusions and restrictions may be more extensive, e.g. Cadw evidenced some Scheduled Ancient Monuments as likely to need exclusions or restrictions. For example, the Offa’s Dyke Scheduled Ancient Monuments frequently coincides with public footpaths making up the Offa’s Dyke Path National Trail. Cadw felt E&Rs along many sections of Offa’s Dyke were likely to be needed to protect the monument from the additional impact of higher rights.

As for Option 2A(i) this 2A(ii) option included a proposal for a statutory code process to manage or prevent the impacts resulting from the reform. Other suggestions included: introducing a new mechanism (not defined but could link to Reform 2B) or adapting the existing Traffic Regulation Order (TRO) mechanism within the Road Traffic Regulation Act 1984<sup>8</sup> (RTA); or providing a caveat to rights, similar to that in CRoW Act 2000, section 2, where access rights are suspended for infringing schedule two requirements. However, evidence was not provided in responses for the overriding benefits of any particular E&Rs approach or mechanism, nor for the

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<sup>8</sup> <https://www.legislation.gov.uk/ukpga/1984/27/contents>

criteria for objectively making such judgements, so further development work would be needed in this respect - during the ARAG process or more realistically at a later time.

As with 2A(i), the key elements in option 2A(ii) did not include proposals for local highway authorities to maintain footpaths for higher rights. Despite that, a number of evidenced responses, supported by legal opinion sought by NRW, raised the likely need for increased maintenance of public footpaths by for authorities to be able to meet their continuing duties for maintaining the footpaths for pedestrian users. There was a weight of opinion that the reform would therefore have significant resource implications for LHAs, although such costs haven't been estimated. If there was a duty to maintain footpaths for higher rights (proposed as an 'alternative key element') most opinions given felt this would lead to significantly higher costs e.g. to replace footbridges with bridleway bridges, although no estimation of costs has been made. A number of responses from local authorities (some evidenced) identified the existence of significant existing issues with the upkeep of PROW, and other unmet burdens on local authorities as an important consideration for the practical implementation of new rights.

As for Option 2A(i), there was broad support and evidence of the need for providing additional statutory means to improve the accessibility of PROW to facilitate new higher rights use of footpaths. The implications for private ownership of structures (notably gates and stiles) on PROW was noted as an issue here and would need consideration in making such a reform. It was noted that such improvements can be made on a more ad hoc basis, or through existing mechanisms such as s147ZA<sup>9</sup> or s66<sup>10</sup> of the Highways Act 1980. Not provided for in the options are the implications for recording of Highways Act s147 authorisations and limitations on PROW within definitive map statements and the availability of such information. Evidence from Wales PROW Analysis, NRW research in 2020 shows many local highway authorities have GIS data about PROW structures, but this is not often linked to the legal records mentioned. As for 2A(i) this aspect could be considered in more detail as an area for consideration to enable the main reform.

As noted for option 2A(i) there is indicative evidence about the scale of illegal obstructions and problems (such as with signage) that would affect higher rights users of footpaths. Additional rights were also viewed as likely to increase demand for enforcement and maintenance. Statutory mechanisms to address the issues on the footpath network already exist but again the increased financial and staff resource demands were referred to (and evidenced as factors) as mentioned above.

However, compared to Option 2A(i), the unsuitability assessments included with 2A(ii) would reduce but not eliminate the need for enforcement and/or accessibility improvements to address issues with footpath structures (legal or illegal) and other

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<sup>9</sup> Section 147ZA of Highways Act 1980 provides for agreements to replace or improve structures such as stiles or gates on PROW to make them more accessible

<sup>10</sup> Section 66 of the Highways Act 1980 allows local authorities to put up, maintain, alter or remove certain types of structures for safeguarding people using a highway [including PROW]

matters such as obstructions, signage improvements or changes. The impact would be proportionate to the implementation of such unsuitability assessments.

As for 2A(i) the importance of accompanying information provision (including codes of conduct, guidance and advice for users, land managers and others) and communication campaigns linked to the changes was very widely acknowledged as essential. Similarly acknowledged was the desirability of any post-Brexit land management payment schemes to support improvements of routes for higher rights.

## **2A(iii) Commentary of issues on reform focusing on legislation**

Bringing forward changes through a selective suitability approach is generally considered feasible from a legislative point of view [option key element 001].

The amount of the over 26,000 kms of definitive footpaths in Wales that would be designated for higher rights is hard to determine. It will depend on the process established and resources of local highway authorities. Welsh Government 2017 research provides a useful indicator of the use of legal processes by Welsh local highway authorities (such as public path orders) and associated costs. For example, the research reported for the five years between 2011/12 and 2015/16, fifteen authorities in Wales made 109 Highways Act section 25 (s25) creation agreements and 69 unopposed section 26 (s26) creation orders (i.e. just under 2.5 PROW creations per local highway authority per year); the average cost reported was £1838 per s25 agreement and £2544 for a s26 order. There would be a need for considerable additional resources and incentives for local highway authorities to designate a significant number of footpaths with higher rights. Evidence about local highway authorities' current use of powers, burdens and levels of funding indicate there would be significantly fewer higher rights designated under option 2A(iii) compared to blanket, statutory designation of rights under Options 2A(i) and (ii). The impacts on land holders and the land management implications would also be significantly reduced.

Responses of a number of local highway authorities indicate that the use of 2A(iii)-type suitability designation powers by local highway authorities would be subject to available resources. The requirements for legally fair, balanced processes seem likely to make a 2A(iii) process comparable to existing public path order processes. Evidence shows there is very limited capacity currently to carry out public path orders (see Welsh Government 2017 research about the numbers of Highways Act ss25/26 carried out). A number of comments also noted that the powers proposed for 2A(iii) are similar to the existing powers in Highways Act s25 and s26 for the creation of higher rights on public footpaths [and elsewhere].

As evidenced above, the 2A(iii) approach would be likely to result in a significantly lower increase in cycling and horse-riding rights – although this would be subject to the approach and priorities of individual local highway authorities and any additional resources allocated. In proportion to the resulting use of the reform powers provided, the option would impact on fewer landowners with footpaths across their land, and fewer other recreational users and other interests.

As with Highways Act s25 and s26 processes, payment of compensation may be necessary if using the 2A(iii) (i.e. selective application of rights) type approach to creating higher rights on footpaths, although advice to NRW<sup>11</sup> was not conclusive on this point.

Further legal advice will help to indicate whether there should be provision for a compensation process for the higher rights created within the envisaged 2A(iii) process.

As for 2A(i) and 2A(ii), definitive map and statement processes would need changes to regulations. Some potentially straightforward solutions have been suggested (such as noting legal rights that apply to a way in the definitive statement for each footpath). Alternatively, their designation could lead to them being defined as bridleways with associated legal event DMMOs. Such matters can be left for further consideration when drafting legislation.

Unlike for 2A(i) and 2A(ii) changes to public footpaths would be progressive and matters could be identified and addressed as part of the suitability process. The process could pro-actively take account of a range of issues e.g. health & safety, impacts on designated nature and heritage conservation sites, where public footpaths lead to or cross the Wales-England border, or where a path includes a major recreational route such as the Wales Coast Path.

Subject to the process established, suitability assessments of footpaths would tend to avoid designating footpaths where the impact of higher rights was not sustainable (e.g. impacts on sensitive designated conservation sites, or because of health and safety reasons). 2A(iii) is also likely to reduce the need to use restrictions on designated footpaths compared to Option 2A(i) and to a lesser extent 2A(ii).

As for 2A(i) and 2A(ii) most evidence about recreational impacts resulting from the option was that it would occur at the local site level or along specific sections of path; also, because of periodic factors such as weather conditions or seasonal sensitivities (e.g. for nesting birds). Reforming E&R mechanisms for PROW (e.g. expanding section 22 or section 22A of the Road Traffic Regulation Act 1984) could give greater flexibility for local highway authorities to designate footpaths for higher rights knowing they have a suitable mechanism to manage flexibly. For example, where issues are seasonal.

Different to Option 2A(i) and 2A(ii), Option 2A(iii) includes revisions to the advisory Countryside Code.

A number of responses, some evidenced, raised the likely need for increased maintenance on designated paths in order to meet local highway authorities' duties for usual footpath use. The resource implications for local highway authorities will depend on and will influence how well used the provided powers would be. While estimated unit costs of the process can be indicated from Welsh Government 2017 research (see above), there is no direct comparison and no quantification of overall

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<sup>11</sup> External legal advice to NRW September 2020

costs. Further work is needed to give an estimated cost range and upper ceiling for the option.

As for the other options for 2A, it should be considered whether option 2A(iii) should specify the maintenance responsibilities for designated paths. A number of responses from local authorities (some evidenced) identified the existence of significant existing issues with the upkeep of PROW, including existing unmet burdens on local authorities as important considerations for the practical implementation of new rights.

As for Option 2A(i) and 2A(ii), there was broad support and evidence of the need for providing additional statutory means to improve the accessibility of designated footpaths to facilitate new higher rights use. However, it was also noted that such improvements can be made on a more informal basis, or through existing mechanisms such as section 147ZA, or section 66 of the Highways Act.

To widely implement Welsh Government's intent, local highway authorities would have to plan for and systematically assess, designate and make available footpaths for higher rights, preferably linking to reform 3B (integrated access plans). Additional resources would need to be made available for them to do so.

It would be expected that illegal obstructions and other on the ground problems (such as signage) that would affect higher rights users of designated footpaths would be dealt with through existing local highway authority powers during the designation process. Dealing with legal definition issues would similarly need to be addressed and would impact on delivery as a result. The effect of assessing footpaths for their suitability for higher rights would be to 'bring forward' issues related to legal or enforcement matters that local highway authorities had not addressed, were unresolved or authorities were not aware of. The impact would be proportionate to the implementation of suitability assessments undertaken.

As for 2A(i) and 2A(iii) the need for accompanying information provision (including codes of conduct, guidance and advice for users, land managers, and others) and a communication campaign linked to the changes, was widely acknowledged as essential. Similarly acknowledged, was the desirability of any post-Brexit land management payment schemes to support improvements of routes for higher rights.

## Table 2: Criteria Assessment for Reform 2A

The ARAG programme set a number of criteria against which measures were developed to assess reform proposals. Evidence provided by external responders and NRW has been used to develop the following assessment criteria table. The three options have been presented side by side to aid comparison between them.

<b>Outline Proposal Titles:</b>	<b>Criteria Description &amp; Measures</b>	<b>2A(i) General application of higher rights to footpaths [s30 approach]</b>	<b>2A(ii) Higher rights applied to footpaths with powers to exclude based on unsuitability</b>	<b>2A(iii) Selective application of higher rights to footpaths applied on a case-by-case basis</b>
Summary Description of Outline Proposals:	N/A	Roll out the general application of higher rights to footpaths, using a 1968 Countryside Act section 30-type (s30) approach, with an associated caveat or clause on the requirement for responsible use.	Higher rights applied across the footpath network. Local highway authorities would have powers to assess paths for unsuitability of higher rights. Paths could be excluded where rights were assessed to be unsuitable. 'Unsuitability' would be determined on the basis of a formal assessment process and criteria (titled the unsuitability assessment).	Higher rights applied on a case-by-case basis, assess process, linked to farm scheme through a duty to appraise network by local authority applying standard criteria linked to ROWIPs.
Outline Option Proposal Description:	N/A	To extend, across all public footpaths in Wales, the range of activities that the public can undertake by right. A Countryside Act 1968, section 30-type provision would give rights for cycling and horse-riding to use footpaths and there would be no responsibility for local authorities to maintain or improve footpaths for higher rights use. A clause or caveat in the legislation would also be put in place to provide a mechanism for excluding and restricting access.	Higher rights applied across the footpath network following the s30 type approach outlined in Reform 2A(iii). Powers would be provided for local highway authorities to assess paths for unsuitability of higher rights. Paths could be excluded where rights were assessed to be unsuitable. 'Unsuitability' would be determined on the basis of a formal assessment process and criteria (titled an unsuitability assessment).	By application to the relevant local authority or National Park Authority on a case-by-case basis, the extension of activities that the public can undertake, by right, on public footpaths. To include non-motorised forms of recreation, including cycling and horse-riding (to not take a blanket approach as above option reform).
Extent of access	Amount of 'by right' access affected. Consider: - totals [e.g. kms/ha; %]; - % changes;	Higher rights would apply - initially at least to all footpaths: <ul style="list-style-type: none"><li>• = approx. 79% of PROW network;</li><li>• = approx. 26,320 kms of footpaths</li><li>• All PROW estimated as 33,211 kms [*].</li></ul>	Generally applicable to define 26,320 kms of footpaths in the first instance –see estimates for 2A(i).  Likely to be relatively fewer higher rights compared to Option 2A(i). The actual amount is subject to:	Extent of new rights will be subject to how powers are implemented. There will be some increase in time of available access rights for cyclists and horse riders – but the amount of time spent will be subject to how the reform is framed and implemented.

	<ul style="list-style-type: none"> <li>- distribution: where and how distributed in Wales</li> <li>- measures include absolute and/or relative amounts e.g. as change from current position; relative to other options</li> </ul>	<p>Assumed not to apply to non-definitive public footpaths.</p> <p>Distribution of rights would be across all of Wales irrespective of local authority context.</p> <p>Would increase rights by approximately 26,320 kms compared to current higher rights. As a result, PROW network would be an estimated 6,891 kms (increase of available rights of around 480%).</p> <p>Increase in networks of connected, accessible routes increased [not quantified] – including off-carriageway public access (lengths based on Wales Rights of Way Condition survey, 2002 (WRWCS)). Although dated, the amount of change to the network is anticipated as low. Local highway authorities' data accuracy is likely to have improved, no equivalent quality assurance (QA), as the collation of all-Wales data is available.</p>	<ul style="list-style-type: none"> <li>• Unsuitability process' scope to disapply rights</li> <li>• Provide a duty to assess unsuitability or discretionary powers</li> <li>• Provision of right to apply for unsuitability assessment</li> <li>• Detail of unsuitability criteria and process</li> <li>• How unsuitability and E&amp;Rs are applied in practice by local highway authorities/national park authorities – potential for differences between the capacity of authorities and resources of local highway authorities/national park authorities are likely differences across Wales</li> <li>• LUC research (for NRW 2020) indicates physical environment (for example, slope, soil type and rainfall) are important to determining vulnerability to the impacts of recreational use. These (with other criteria) would be included in any unsuitability assessments. They can also allow estimates of extent and distribution of potentially vulnerable footpath routes. Methods would need further testing and additional criteria to provide an indicative network level estimate of the extent of unsuitable routes.</li> </ul>	<p>However, an indicative amount will be a small proportion of higher rights created by 2A(i) and 2A(ii) options:</p> <ul style="list-style-type: none"> <li>• &lt; 1 [one] s26 creation order or s25 agreement made per local highway authorities/year between 1986 and 2000 in England and Wales (ref: Ridall &amp; Trevelyan, 2001)</li> <li>• &lt; 2 [two] Road Used as Public Path (RUPP) reclassification orders made between 1986 and 2000 per LHA/year in England and Wales (ref: ibid)</li> <li>• Between 10-15 Public Path Orders (PPOs) p.a. in Powys CC; backlogs of approx. 170 PPOs [Powys CC evidence]</li> <li>• The Wales Coast Path (WCP) Programme created 85 kms of new PROW between 2007 and 2014. Extent implemented will be affected by: <ul style="list-style-type: none"> <li>• Requirements of process</li> <li>• Right to apply for higher rights</li> <li>• Resources: local highway authority staff and additional financial budget [compensation expected to be payable]</li> <li>• Number of objections and appeals required</li> </ul> </li> </ul>
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]</li> </ul>	<p>Physical accessibility:</p> <p>Extends available routes and networks of public rights for cyclists and horse riders.</p> <p>The amount of network that would be barrier-free to cyclists and horse riders is indicatively estimated as 41% of the 26,320kms of public</p>	<p>Initially, quality would be as per the current footpath's network suitability for higher rights users (see estimates for and evaluation of 2A(i) option).</p> <p>Key differences are:</p>	<p>Subject to application of powers and associated planning to join up existing higher rights.</p> <p>Issues affecting impact, will include:</p> <ul style="list-style-type: none"> <li>• Reform in legislation (e.g. duty or power)</li> </ul>

	<ul style="list-style-type: none"> <li>- 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 info including on site presence e.g. signage for the PROW or off-site linkage to other public access of similar rights</li> </ul>	<p>footpaths [as per Countryside Council for Wales (CCW) supported motorised off-roading study estimates] = c.10,790kms = c.32.5% of PROW network in Wales.</p> <p>Distribution and connectivity for higher rights will be significantly increased. However, this has not been quantified, and will be locally dependent (for example, upland areas have fewer boundary features).</p> <p>Other notable factors include:</p> <ul style="list-style-type: none"> <li>• Obstacles on footpaths [= 13 per 10kms unusable on average in Wales in 2002] of which fences/walls/hedges [= 6.6/10km: ref= WROWCS 2002] will have relatively greater impact on horse riders and to some lesser extent cyclists – could increase demand on local highway authorities to enforce.</li> <li>• Powys Countryside Code report their last Best Value Performance (BVPI) figures (2015) estimated 38% of network as 'open and available'. The WROWCS 2002 estimated Powys' equivalent BVPI as approximately 28% 'easy to use' (Wales = 40%).</li> </ul> <p>Other factors affecting use: information such as height-related barriers, path surfaces suitable for horse riding and cycling use of footpaths is not known.</p>	<ul style="list-style-type: none"> <li>• Disapplying rights will provide a relatively better (usability-wise) available network compared to full footpaths network but with relatively fewer available routes and linked areas compared to 2A(i).</li> <li>• As for 2A(i), quality of routes available will be limited by existing condition of footpath network and associated legal and illegal limitations on footpaths. The latter would be addressed to some degree by unsuitability assessments (e.g. those that have natural and man-made barriers that cannot be readily adjusted) leading to either E&amp;Rs or disapplication of rights via unsuitability assessment.</li> </ul> <p>Resources and powers to improve available rights will affect resulting quality and network linkage (for example, improving legal structures for higher rights; enforcement against illegal structures; fewer assessed as unsuitable).</p> <p>Disapplication of rights would affect integrity of rights network - potentially a consideration for assessment of individual routes.</p> <p>It may be possible to estimate the possible extent and distribution of potentially unsuitable footpath routes and therefore consider impact on resulting network – for example, the extent and quality by looking at LUC research data (see reference above) bringing together data for vulnerability criteria such as slope, soil type and rainfall, and to</p>	<ul style="list-style-type: none"> <li>• If approach requires compensation payments to landowners</li> <li>• Implementation by local highway authorities</li> <li>• Available resources to apply legislation</li> <li>- Connections with other available higher rights will be much more limited</li> <li>• Resources to improve access created</li> </ul> <p>Where applied, option (iii) would result in high proportion of suitable, quality routes (compared to other options - although extent applied to would be very limited). The 2A(i) assessment provides a potential top end estimate of already suitable barrier-free (1007 kms) and obstacle-free footpaths if applied to all potential paths. But if this provides coherent, usable networks of paths, it is not possible to estimate.</p> <p>See reference to LUC research: development of unsuitability, and therefore suitability criteria, and methodology could in part inform likely suitable networks.</p> <p>Potential limitations may result from resource requirement to implement and to pay compensation.</p>
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	<p><b>Barrier free:</b> The 2002 condition survey (WROWCS) estimated stile &amp; obstacle free and hard surfacing = 1,007 kms.</p> <p><b>Distribution</b> relative to population will be for existing public footpaths and would include urban, urban fringe and rural paths, however, would not be quantified by GIS analysis.</p> <p>Other aspects of <b>usability include signage.</b> Where people understand new rights issue, this would be equivalent to the condition on footpaths generally.</p> <p>Signage estimates for compliance with statutory duty from metalled road were recorded in the 2002 research as 42%, with a BVPI of 50%. Ease of use BVPI for PROW in 2000/01 was estimated as 55%. In relation to higher rights users on footpaths, this would be relatively worse compared to general condition of public footpaths for walkers.</p>	<p>provide indicative level of unsuitability at network level and/or as part of developing unsuitability assessment process. However, other factors such as widths, health and safety and nature conservation factors are also potential criteria to be included in the assessments needed.</p> <p>Reform would need to consider how such unsuitability assessments or resulting E&amp;Rs or disapplying of rights would affect different classes of users.</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> <li>•</li> </ul>	<p>By right access in perpetuity: applied for horse riding and cyclists.</p> <p>Some locally applied limitations or constraints to rights - applied to higher rights predominantly. (Likely to be a small minority % of network to which rights applied - but actual impact will be dependent on number of factors).</p> <p>Impacted by how Reform 2B brought forward diversions, closures or restrictions.</p>	<p>By right access in perpetuity.</p> <p>A proportion (no estimate) of footpaths would have additional rights restricted or disapplicated.</p> <p>Extent of use of powers to disapply rights through unsuitability criteria will affect the actual, and perception, of permanency of rights. Impact will be dependent on number of factors (e.g. see Quality of Access points above).</p> <p>E&amp;Rs applied could limit rights where applied either temporarily or permanently.</p>	<p>On those paths to which rights applied there would be a change in perpetuity.</p> <p>A review process would provide potential for further change.</p> <p>Use of powers and communication of where applied would determine perception of permanency.</p>

			Unquantified indicatively likely to be a small minority of network - actual impact will be dependent on number of factors).	
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 &amp; to all interests.</li> <li>- If and how option will be subject to change (temporary or permanent e.g. E&amp;Rs)</li> <li>- Communicability of relevant access information.</li> </ul>	<p>Generally applied. Simple to understand. Clarity and certainty in legal terms will be very high – subject to accuracy of definitive maps and statements.</p> <p>Status of resulting PROW needs clarifying in relation to retain public footpaths without higher rights.</p> <p>Knowledge and information provided to all interests is required to make clear and certain in practice.</p> <p>Practical certainty of use: limitations (for example, stiles) would only be apparent with information [online and on the ground (signage)] provided to users.</p> <p>Digital information about structures is widely recorded but very resources are limited online [LUC research for NRW, 2020].</p> <p>Rights and responsibilities would only be apparent with information campaign and associated information provision on ground.</p> <p>Clarity and certainty in relation to legal limitations will be a challenge.</p> <p>Clarity in relation to understandable access for the public and where.</p>	<p>Clear and certain in legal terms.</p> <p>Status of resulting PROW needs clarifying – in relation to retained public footpaths without higher rights.</p> <p>Limitations (for example, stiles) would only be apparent with information provided to users – see 3A.</p> <p>Rights and responsibilities would only be apparent with an information campaign and associated information and signage on ground –this option (2A(ii)) considers this aspect.</p> <p>Differential approach to rights on footpaths if with and without higher rights would need to be clearly understood and communicated on the ground e.g. new class of PROW, signage and published information (e.g. online; printed maps; E&amp;Rs).</p>	<p>Option would be clear on rights created where assessed as suitable.</p> <p>Status of resulting PROW needs clarifying in relation to retain public footpaths without higher rights.</p> <p>Clarity therefore subject to determining if option creates a new class of PROW, or the process results in re-classification to public bridleway status.</p> <p>Defined rights will be clear and certain. Not clearly differentiated process from s25/s26 powers.</p> <p>Differential approach to rights on footpaths if with and without higher rights would need to be clearly understood and communicated on the ground e.g. new class of PROW, signage and published information (e.g. online; printed maps; E&amp;Rs).</p>

Cost	<p>Estimated costs of a proposal for different sectors: actual, indicative or comparative estimates. 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>Implementation costs subject to:</p> <ul style="list-style-type: none"> <li>• Legislative process for Welsh Government</li> <li>• Minimal direct administrative costs to application of rights for local highway authorities</li> <li>• Administrative costs related to definitive map changes [£3,534.00]</li> <li>• Signage - possibly take a replacement approach</li> <li>• Demand for path maintenance</li> <li>• Land management impacts</li> <li>• Compliance and enforcement;</li> <li>• Suggestion of decrease in requests for DMMOs; increase in PPOs etc</li> <li>• Communication of new rights including information and guidance</li> </ul> <p>Cost areas to consider:</p> <ul style="list-style-type: none"> <li>• Increase need for information and communication of rights and responsibilities</li> <li>• Potential change to demand for resulting enforcement actions</li> <li>• Amendment to accompanying legal and administrative processes</li> <li>• Potential changes to on-ground signage; change to other provided information about PROW; increase demand for infrastructure changes [upgrading and/or maintenance]; impacts on private rights and land management; demand for Traffic Regulation Orders (TROs) increase for certain land management</li> </ul>	<p>Cost areas to consider, with increased administrative costs to do with disapplication of rights.</p> <p>Estimated costs to consider:</p> <ul style="list-style-type: none"> <li>• Assessment of all defined footpaths would be a significant undertaking (surveying 26,000 kms), if at a rate of 10km a day would require around 12 'person years' to complete</li> <li>• Administration costs would likely to be greater, for example:</li> <li>• Capacity to deliver estimated as 268 PPO a year across Welsh local authorities [DLW, 2002 research]. Little to indicate that capacity has improved significantly</li> <li>• Indicative average cost for DMMOs = £2,720 unopposed; £5.500 via hearing/written reps; up to £10,190 if public inquiry [source: DLW 2002 research with inflation increases added]</li> <li>• A duty to assess footpaths would require significant costs</li> <li>• Information and communication of rights and responsibilities; resulting enforcement actions; amendment to accompanying legal and administrative processes; changes to on ground signage; change to other provided information about PROW; demand for infrastructure changes [upgrading and/or maintenance]; and impacts on private rights and land management.</li> </ul>	<p>Cost areas [for Regulatory Impact Assessment (RIA) or similar] to consider:</p> <ul style="list-style-type: none"> <li>• Information and communication of rights and responsibilities; resulting enforcement actions [relatively lower]; amendment to accompanying legal and administrative processes [relatively lower]; changes to on-ground signage [relatively lower]; change to other provided information about PROW; demand for infrastructure changes [upgrading and/or maintenance] - relatively lower; impacts on private rights and land management</li> <li>• Further consideration would be needed about whether a selective approach requires compensation for the application of higher rights and associated costs and requirements within legislation.</li> </ul>
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Monitoring & Enforcement	<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>	<p>No clear evidence as to increase or decrease for enforcement, nor is there objective evidence for scale of demand.</p> <p>Indications are for an increase in demand monitoring/enforcement from users and land managers initially, given network condition and assumed impacts of new use.</p> <p>Issues with lack of awareness of change of rights would be subject to communications.</p> <p>WROWCS 2002: suggests may lead to increased demand to deal with illegal obstacles, compared with walkers who can more easily by-pass them, and therefore don't need to report [see indicative WROWCS 2002 ref above re obstacles; signage etc].</p> <p>Clarity of signage and information provision will impact on compliance and demand for enforcement.</p> <p>Monitoring of provisions: there is nothing in this option that requires monitoring, on the work of local authorities, network condition, impact on land management, land management compliance with responsibilities and user behaviours.</p> <p>Most of these matters apply across all options but to different degrees.</p>	<p>Evidence includes that as for option 2A(i) in respect of potential demand.</p> <p>As new rights could be subject to systematic disapplication process with consultative processes and implementation, this may impact enforcement action required though difficult to predict how.</p> <p>Potential to change demand for temporary or permanent restrictions but not evidence.</p> <p>Clarity of signage and information provision would impact on compliance and demand for enforcement.</p> <p>Monitoring would require specific action – this option doesn't provide for it.</p>	<p>As extent of new rights would be significantly less and subject to consultative processes and suitability assessment. As such, the new rights would expect less enforcement action required.</p> <p>Clarity of signage and information provision would impact on compliance and demand for enforcement.</p> <p>Monitoring would require specific action – this option doesn't provide for it.</p>
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Equity of Access	<p>Positive or negative effect on equity of access. Consider:</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>	<p>Generally applied in all part of Wales by right. Wales National Household Survey 2016-17 estimated Welsh adults participating within last year:</p> <ul style="list-style-type: none"> <li>• 9.1% participated in off-road cycling;</li> <li>• 3.0% participated in horse riding</li> <li>• 71.4% participated in walking</li> <li>• WNHS also noted off-road cycling has a significant level of 'future demand'</li> </ul> <p>No differential in impacts on land managers as applied to all land with footpaths.</p> <p>Option provides increased powers for accessibility improvements benefitting higher rights and those with mobility problems, for example.</p> <p>Potential for decreased accessibility, perceived or real impact, for pedestrians sharing footpaths with higher rights users.</p> <p>Impact on all landowners and land managers with FPs on land.</p>	<p>Generally applied in all part of Wales by right.</p> <p>Benefits to participants in cycling and horse riders in Wales [see 2A(i) figures] for Welsh adults.</p> <p>Option provides increased powers for accessibility improvements benefitting higher rights and those with mobility problems – though, unpredictable, the impact will depend on extent used.</p> <p>Potential for decreased accessibility perceived or real for pedestrians sharing footpaths.</p> <p>Disapplying rights could because of 'unsuitability' will reduce impacts on pedestrians from changes in some locations.</p> <p>Impact on all landowners and land managers with FPs on land.</p>	<p>There will be 'some' increased access for cyclists and horse riders available to a proportion of participants [e.g. see 2A(i) participation figures] in Wales, and to visitors to Wales participating in recreation.</p> <p>Distribution of new rights would be subject to use and application of powers (scale of which is difficult to predict) including:</p> <ul style="list-style-type: none"> <li>• If and how powers are used to improve accessibility which benefit those with mobility problems (for example) and higher rights users (although already some powers now)</li> <li>• Extent of powers will be limited by resource constraints therefore less widely applied than 2A(i) and 2A(ii)</li> <li>• Extent of use of power is affected by public and landowner requests, opposition or support</li> <li>• Approach of local highway authorities to use of provisions</li> <li>• Impact on land managers could vary according to where and how applied by individual local highway authorities</li> </ul>
Greater efficiency & transparency	<p>Better and/or reduced process requirements for stakeholders; reduced time taken, including for administration processes [see also costs]; improved access to processes by stakeholders</p>	<p>Some increased burdens although objective evidence is weak. Available evidence indicates significant levels of unresolved legal, maintenance and enforcement issues (e.g. Powys CC; Monmouthshire CC).</p> <p>Initially straight forward statutory application of rights to network - clear and transparent process at strategic level.</p>	<p>Increase burdens although objective evidence weak. Mostly responses suggested consequential impacts, such as:</p> <ul style="list-style-type: none"> <li>• Impacts on burden of existing administrative processes. This would introduce a new requirement for local highway authorities to assess suitability of footpaths for higher rights</li> <li>• May reduce DMMOs demand from recreational users and public around status of routes and may increase</li> </ul>	<p>Subject to use and application of the powers provided. Difficult to quantify scale of use of powers and consequential impacts on efficiency and transparency.</p> <p>Implementation is likely to be significantly affected by available resources and local highway authorities' approaches.</p>

	<p>Information and guidance provision will determine awareness of changes to public and local-level stakeholders in Wales.</p> <p>Consequential demand on local highway authorities from different interests are likely but no means to predict scale.</p> <p>Increased requirements to administer and enforce statutory access code for range of stakeholders.</p> <p>No appeal mechanism against implementation of rights.</p> <p>Impacts on existing mechanisms, including maintenance, enforcement and access management.</p> <p>Welsh Government 2017 research estimated cost of TROs as £1817 each, over five years, with around 3 TROs per year on average carried out by most local highway authorities.</p> <p>Some consequential increase on burden of existing administrative processes.</p> <p>2017 Welsh Government research, existing enforcements on average (see right-hand column):</p> <ul style="list-style-type: none"> <li>May reduce DMMOs demand from recreational users and public around status of routes [Welsh Government's 2017 PROW research indicates average 4.5 DMMOs completed per annum per local highway authority; average unopposed DMMO costs = £4660];</li> </ul>	<p>requests for PPOs from landowners for diversions of footpaths</p> <ul style="list-style-type: none"> <li>May increase inquiries and for information in statements about limitations on public footpaths and enforcement around unapproved limitations</li> <li>Probable increase in requests for access improvements and maintenance of routes. Initially straight forward application of rights to network, clear and transparent process at strategic level, information and guidance provision will determine awareness of changes to public and stakeholders at Wales and local level</li> <li>Consequential demand for enforcement on LHAs from different interests are likely but scale is hard to predict. The current levels based on 2017 WG research data for existing enforcements types are on average per local highway authorities per year: <ul style="list-style-type: none"> <li>Notices = 3.9</li> <li>Prosecutions = 0.10</li> <li>Contacts = 18.9</li> <li>Direct actions = 2.6</li> <li>Informal advice = 11.4</li> <li>All types = 36.9</li> </ul> </li> <li>Hard to predict level of burden arising from suitability assessments</li> </ul>	<p>See also considerations for 2A(ii) – notably bullets 1, 4, 5, 6.</p>
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		<ul style="list-style-type: none"> <li>May increase requests for PPOs from landowners [see 2017 Welsh Government research for current numbers processed].</li> <li>May increase inquiries and for information in definitive statements about limitations on public footpaths and then enforcement around unapproved limitations - also about s147 authorisations potentially [see 2017 WG research].</li> </ul> <p>Probable increase in requests for access improvements and maintenance of routes - current numbers would require further research.</p>		
Ecosystems and ecosystems resilience	<p>Positive, negative or neutral impacts.</p> <p>Factors to consider if evidence allows re impacts on species and habitats:</p> <ul style="list-style-type: none"> <li>- Extent: changes to area/length rights would apply to and impacts will occur [including extent protected sites and species that would be impacted?]</li> </ul>	<p>Level of use likely to increase generally although is subject to unmet demand and trends in recreation.</p> <p>Factors to consider re impacts which could generally be prevented and/or mitigated by E&amp;Rs or other regulation of use:</p> <ul style="list-style-type: none"> <li>• Evidence that increase disturbance to habitats and species in most circumstances although impacts vary and E&amp;Rs can address local and site issues, including seasonal impacts</li> <li>• Exercise of rights by higher rights users can have greater impacts but overall occur at lesser volume</li> <li>• Rights apply to existing defined footpaths no change to legal length and where paths run now - higher rights change nature and character of disturbance</li> <li>• Impacts on erosion of surfaces - vulnerability of sensitive sites potentially</li> </ul>	<p>As for option 2Ai, the subject of extent and how powers are used to disapply or restrict higher rights is used.</p> <p>Unsuitability assessment criteria allows for consideration of sites demonstrably sensitive to use by higher rights because of environmental considerations [including nature, heritage (e.g. Scheduled Ancient Monuments) or landscape conservation].</p> <p>Unsuitability assessments and E&amp;Rs provisions provide a means for preventing or mitigating site and localised/seasonal impacts.</p> <p>Nature conservation and other specialist input (e.g. Cadw) may be required for determining suitability of routes, monitoring</p>	<p>As for other two options, and subject to how powers applied, assessment criteria allow for consideration of sites sensitive because of environmental considerations (including nature, heritage or landscape conservation).</p> <p>E&amp;Rs provisions provide a means for preventing or mitigating site and localised/seasonal impacts.</p> <p>Nature conservation and other specialist input (e.g. Cadw) would be required for determining suitability of routes, monitoring and management of impacts including applying E&amp;Rs.</p>

	<ul style="list-style-type: none"> <li>- Change to levels and type or character of impacts;</li> <li>- Change to distribution of impacts [widely; specific areas?]</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>• Impact on surface of existing paths so not extending areas to which access occurs spreading of erosion and use outside existing path line</li> <li>• Increased trespass off footpaths onto surrounding areas</li> <li>• Type of use and impacts will differ</li> <li>• Natura 2000 (N2K) sites identifying recreation in Plans as a significant issue</li> <li>• Extent (ha, kms, etc) of protected sites and landscapes recorded with recreational pressures currently leading to TROs or E&amp;Rs indicated as very low</li> <li>• Local nature conservation input would be required</li> </ul> <p>Cadw noted Scheduled Ancient Monuments also need consideration – no data on number potentially affected but several examples provided under current regime.</p>	and management of impacts including applying E&Rs.	
Sustainable land and water management	<p>Consider if 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</li> </ul>	<p>General impacts (not quantified) - see extent and other criteria assessment:</p> <ul style="list-style-type: none"> <li>• Impact on path surfaces in agricultural and forestry setting; locally significant according to conditions</li> <li>• Additional consideration and management needed at times for agricultural, forestry and other land management</li> <li>• Greater need or perceived need for off-route incursions on to land</li> <li>• Increased real or perceived risks</li> <li>• Desire to seek temp closures and section 119 Highways Act 1980 diversions may increase</li> </ul>	Relatively less compared to Option 2A(i) according to how applied	Relatively less compared to 2A(i) and (ii) according to how applied

	NB: Considerations for ecosystems to be included in preceding consideration above.	<ul style="list-style-type: none"> <li>More accessible structures could impact on amount of illegal mechanically propelled vehicle use</li> </ul>		
Health & wellbeing	Consider if positive, neutral or negative impact on physical and mental wellbeing. Consider: <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>Positive:</p> <ul style="list-style-type: none"> <li>Dependent on new rights resulting in increased use [see quality criteria for higher rights' participation]</li> <li>Potential for increased use (frequency and volume) with physical and mental health benefits</li> <li>Potential to reduce on-road risks to cyclists and horse riders. From 2010 there have been 353 incidents</li> <li>Latent demand for Wales Household Survey, 2016/17, indicated significant additional demand for off-road cycling [- data needed]</li> </ul> <p>Negative:</p> <ul style="list-style-type: none"> <li>Potential negative impacts on land managers from increased use accentuating land management issues associated with rec use (no evidence on this currently)</li> <li></li> </ul>	Broadly similar to 2A(i) but proportionately less impacts according to how affects use and level of disapplication of rights.	Fewer positive and negative benefits from less creation of new higher rights. Relative balance will determine overall impact.
Community cohesion	Consider if positive, neutral or negative impact on community cohesion. Consider: <ul style="list-style-type: none"> <li>Changes to local use and accessibility within area;</li> <li>Changes to local</li> </ul>	<p>Positive:</p> <ul style="list-style-type: none"> <li>Widely available access for horse riders and cyclists – greater off-road provision</li> <li>Potential to reduce on-road risks to cyclists and horse riders (British Horse Society evidence re accident levels)</li> <li>Latent demand estimated (2016/17 indicated significant additional</li> </ul>	Broadly similar to 2A(i) but proportionately less impacts according to how affects use and level of disapplication of rights.	Fewer positive and negative benefits. Relative balance will determine overall impact.

	<p>wellbeing and economic benefits</p> <ul style="list-style-type: none"> <li>- Likely impact on community interests</li> </ul>	<p>demand for off-road cycling – data needed)</p> <p><b>Negative:</b></p> <ul style="list-style-type: none"> <li>• Interaction of users with actual and perceived increase in conflict</li> <li>• Increase in actual and perceived conflicts between local users and visitors and between land managers and users</li> </ul>		
Successful and responsible business	<p>Consider if 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</li> </ul> <p>NB: evidence of actual costs or overall impact [positive/negative etc] may be difficult to assess at this stage.</p>	<p><b>Positive:</b></p> <ul style="list-style-type: none"> <li>• Potential for increased use (frequency and volume) with increased visitor spend</li> <li>• Potential for increased services providing for business related to cyclists and horse riders as visitors</li> <li>• Latent demand – see criteria above</li> <li>• Level of realisable demand hard to determine</li> <li>• Economic benefits potentially distributed widely, though there is no evidence to predict outcome</li> <li>• </li> </ul> <p><b>Negative:</b></p> <ul style="list-style-type: none"> <li>• Potential increase costs to land managers [RIA will need to determine]</li> <li>• Increased costs for service provision e.g. parking</li> </ul>	<p>Broadly similar to 2A(i) but proportionately less impacts according to how affects use and level of disapplication of rights.</p>	<p>Fewer positive and negative benefits. Relative balance will determine overall impact.</p>

## 2A: considerations for Revision or further development of the Option Proposals and key elements

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.

**Table 3: Consideration for revision of key elements for Reform Option 2A(i)**

Key Element Ref No.	2A(i) Required element for outline option proposal	Considerations / potential changes to improve option and key element
001.	Legislation amended to allow cycling and horse-riding on footpaths, using a Countryside Act '68 section 30-type provision.	<ul style="list-style-type: none"> <li>Necessary for option as proposed</li> <li>Omit alternative key element (KE) Alt/001 ‘natural accompaniments’ from this reform consider in Access Reform Programme (ARP) Group 1 reform</li> <li>See KE 012 ‘Consideration/potential changes...’ below</li> </ul>
002.	Legislation to specify maintenance duty required for use on foot – not for horse riders or cyclists [Wildlife and Countryside Act 1981 section 55(8)].	<ul style="list-style-type: none"> <li>Retain key element approach for maintenance duty for footpath users only and therefore omit alternative option</li> <li>There are expected to be additional maintenance burdens with this specific key element</li> </ul>
003.	Mapping regulations amended to reflect change including the definitive maps of public rights of way. Depiction through other mapping sources would also need to reflect resulting changes (e.g. Ordnance survey).	<ul style="list-style-type: none"> <li>Required key element</li> <li>Leave detail for legislation drafting stages if option is taken forward</li> </ul>
004.	Definitive map updating.	<ul style="list-style-type: none"> <li>Omit key element Alt 004</li> <li>Develop detail for mechanism for updating DM&amp;S requirement - if option developed</li> </ul>
005.	Reduced public liability, as defined under Countryside and Rights of Way Act (CRoW), and as applied to public rights of way (PROW).	<ul style="list-style-type: none"> <li>Legal advice needed on liability point</li> <li>Consider as a cross-cutting matter in ARAG - if and how to harmonise liability for PROW &amp; CRoW</li> </ul>

<b>Key Element Ref No.</b>	<b>2A(i) Required element for outline option proposal</b>	<b>Considerations / potential changes to improve option and key element</b>
006.	A duty and associated powers given to local highway authorities to modify limitations (infrastructure) for higher rights with consideration for limiting illegal access and facilitating accessibility improvements.	<ul style="list-style-type: none"> <li>Support from land use payment schemes for improving structures would be beneficial</li> <li>Amend wording so it is clear that 006 would apply when considering new structures – not retrospectively across network</li> <li>Consider further if and how reform of Highways Act '80 section 147 and definitive statement legislation can support the Reform 2A policy intent</li> </ul>
007.	Legislate for an exclusions and restrictions mechanism – Create an exclusions and restrictions process enabling higher rights to be withdrawn on sections of path where there is proven irresponsible behaviour. This process should be through application including consultation and an appeals process (reasons could include impacts on working land, nature conservation, wildlife, health & safety considerations etc).	<ul style="list-style-type: none"> <li>How a mechanism based on a statutory code can work to take enforcement actions against irresponsible behaviour</li> <li>How Traffic Regulation Orders (TROs) or other exclusion &amp; restriction (E&amp;R) provisions could be developed for this element and purposes widened as a result e.g. for public safety or unsuitability</li> <li>Either an existing E&amp;R mechanism should be streamlined and/or simplified, or a new mechanism should be provided</li> </ul>
008.	Give local highway authorities powers to upgrade signage and waymarking for footpaths with higher rights, including the power to place signage for reasons other than direction finding.	<ul style="list-style-type: none"> <li>Check the adequacy of existing powers and duties; or</li> <li>If &amp; how existing powers need adapting or what new ones are required</li> </ul>
009.	Embed clause or caveat for regulations to specifically outline responsible higher rights use, in guidance or other mechanism. This would include a “hierarchy of users” on paths and define “formal agreements” on sections of path that were deemed to be problematic. Failure to comply would trigger the E&R process outlined above.	<p>Requirements for mechanisms:</p> <ul style="list-style-type: none"> <li>Inclusion in primary legislation (CRoW section 2)</li> <li>Statutory code with a focus on cross-cutting issue</li> <li>TROs to restrict where necessary</li> <li>New powers to influence proposal for Highway Code hierarchy of users to apply to PROW use</li> <li>(See also KE010 below for additional detail)</li> </ul>
010.	Place duty on Natural Resources Wales/Welsh Government to issue a code of conduct and a duty on Welsh Government/NRW and all	<ul style="list-style-type: none"> <li>Ensure within context of responsible recreation cross-cutting theme</li> </ul>

<b>Key Element Ref No.</b>	<b>2A(i) Required element for outline option proposal</b>	<b>Considerations / potential changes to improve option and key element</b>
	Access Authorities to promote understanding of it.	
011.	Communication of access rights (through mapping, communications campaign, countryside code and activity codes work)	<ul style="list-style-type: none"> <li>Matter for implementation stages</li> </ul>
012.	Rules around commercial activity on PROW and CRoW reviewed and better aligned in relation to higher rights. Clearer definitions of commercial activity developed and communicated.	<ul style="list-style-type: none"> <li>Cross-cutting matter for improved harmonisation</li> <li>Specific provision for 2A reform legislation</li> </ul>

**Table 4: Consideration for revision of key elements for Reform Option 2A(ii)**

<b>Ref No.</b>	<b>2A(ii) Required element for outline option proposal</b>	<b>Considerations / potential changes to improve option and key element</b>
001.	Legislation applying Countryside Act 1968 section 30 type approach [see Reform option 2A (i) for those required elements]	Necessary key element for option as proposed
002.	Local highway authorities' duties to assess public footpaths' network for unsuitability for higher rights use, with flexibility to exclude different types of user rights. No new or additional powers to restrict or exclude footpath rights will be introduced.	<ul style="list-style-type: none"> <li>Define in key element that it should be a discretionary power for local highway authorities to assess unsuitability</li> <li>Local highway authorities' approach to dealing with representations should be defined</li> <li>The defined footpath network is over 26,000 kms [see Table 2]</li> </ul>
003.	Powers for Welsh Government to establish unsuitability assessment process including providing guidance to local authorities regarding criteria for assessment.	<ul style="list-style-type: none"> <li>Necessary key element for option as proposed (See also 004-007 consideration below)</li> </ul>
004.	Powers to set framework for unsuitability assessment criteria to include, for example, infrastructure; widths of current paths; public safety; volume of use – current and expected.	<ul style="list-style-type: none"> <li>Unsuitability assessments need to provide fair processes. It is preferred that legal advice informs relevant key elements and advice on such matters (See also 004-007 considerations below)</li> </ul>
005.	Associated powers given to local highway authorities to carry out unsuitability appraisal of network including consultation - consultees would be defined in legislation as local access	<ul style="list-style-type: none"> <li>Clarify wording to make clear 2A(ii) 005 is about the need for consultation – which is essential as part of unsuitability appraisal</li> </ul>

Ref No.	2A(ii) Required element for outline option proposal	Considerations / potential changes to improve option and key element
	forums (LAFs), landowners, public path order (PPO) statutory consultees.	<p>process [as and when that process is developed];</p> <ul style="list-style-type: none"> <li>• Local highway authorities should set out in Rights of Way Improvement Plans (ROWIPs) [subject to 3B reform] and consult LAFs on their approach to appraisal of network</li> <li>• Local highway authorities' approach to dealing with representations about assessing routes as unsuitable should be defined</li> </ul>
006.	Discretionary powers for local highway authorities in making decisions. In essence, local highway authorities should be able to rule out certain routes based on their appraisal of network.	No change to key element
007.	Inclusion of appeals as part of appraisal process, which should occur internal initially between the local highway authorities and the local access forum. It should be noted, appeals for complex issues and unresolved issues would move to the planning inspectorate stage for decision.	<ul style="list-style-type: none"> <li>• Modify this element to better reflect LAFs' role to provide advice. Decision making for legal processes would rest with local highway authority [and other relevant statutory bodies where referred to them].</li> <li>• Legislation will need to specify provisions for appeals</li> </ul>
008.	Requirement for 'periodic' review of unsuitable routes – routes will either have to be excluded permanently or will have to be reviewed for review.	<ul style="list-style-type: none"> <li>• Amend key element to provide local highway authorities with discretion whether to review previous appraisals (re-appraisal)</li> <li>• Re-appraisals should generally be undertaken if there are material changes to circumstances rather than based on fixed periods</li> </ul>
009.	Powers for the local authorities to consider and amend structures on PROW must appraise routes designated as unsuitable (i.e. cannot be sole reason for determination of unsuitability).	<ul style="list-style-type: none"> <li>• Discretionary power for local highway authorities</li> <li>• Local highway authorities' consultation should include the owners of structures and include consideration of subsequent upkeep</li> <li>• Implications, including costs, will be proportionate to use of powers, must be considered</li> </ul>
010.	Define commencement time – e.g. how and when new rights come into practice.	<ul style="list-style-type: none"> <li>• Widely supported</li> <li>• Potential phasing of enabling legislation</li> </ul>

Ref No.	2A(ii) Required element for outline option proposal	Considerations / potential changes to improve option and key element
		<ul style="list-style-type: none"> <li>Put in place resources and supporting work to provide practical works and unsuitability</li> <li>Would delay implementation of rights – to look into the time-bound period.</li> </ul>
011.	<p>Local authorities to receive more powers to sign along routes where complexity of access provision is increased. For example:</p> <ul style="list-style-type: none"> <li>Advisory signs where access rights have changed and/or are restricted (through designation as unsuitable)</li> <li>Type and placement of sign would be decided per local authorities</li> </ul>	<ul style="list-style-type: none"> <li>A necessary practical enabling power</li> <li>Key element should note need for signage powers to be amended appropriately [Countryside Act '68 section 27; Road Traffic Act '84]</li> </ul> <p>Affected by matters such as terminology for higher rights footpaths and associated conventions for signage</p>
012.	<p>Education around revised Countryside Code</p> <ul style="list-style-type: none"> <li>Revision of Countryside Code and related activity codes</li> <li>Public awareness campaign(s)</li> <li>Landowner awareness</li> <li>Setting expectations</li> <li>Setting norms for compliance</li> </ul>	<ul style="list-style-type: none"> <li>Broadly supported as essential</li> <li>Refer to approaches taken to responsible recreation and also with exclusions or restrictions</li> <li>Resource implications should be noted</li> </ul>

**Table 5: Consideration for revision of key elements for Reform Option 2A(iii)**

Ref No.	2A(iii) Required element for outline option proposal	Considerations / potential changes to improve option and key element
001.	Legislation to provide powers for local highway authorities to designate individual footpaths for higher rights use.	<ul style="list-style-type: none"> <li>Required key element for option</li> </ul>
002.	Powers for regulations to set out a process of designation, including criteria to assess footpaths, provision for assessment of impacts – for example land management, nature and wildlife conversation, and health and safety considerations.	<ul style="list-style-type: none"> <li>Whether compensation payments for designated footpaths are required will inform processes to be specified - legal advice to inform</li> <li>Further work will be required to define criteria and assessments needed at legislative preparation stage (see 006 consideration below)</li> </ul>
003.	Simple and time limited processes (with lengthy definitive map modification order (DMMO) process for example).	<ul style="list-style-type: none"> <li>Fair, due legal process will need to be followed determining ability to provide a</li> </ul>

Ref No.	2A(iii) Required element for outline option proposal	Considerations / potential changes to improve option and key element
		<ul style="list-style-type: none"> <li>streamlined process, which should have reasonable time limits applied</li> </ul>
004.	Make legislative provision for consultation and appeals process.	<ul style="list-style-type: none"> <li>Required part of fair legal process</li> <li>No reference to local access forums (LAFs) needed as they can input within terms of existing advisory role both to the strategic approach and with specific cases.</li> </ul>
005.	Definitive map regulations amended to reflect change.	<ul style="list-style-type: none"> <li>Required. Give detailed consideration at drafting of legislation</li> </ul>
006.	Definitive map updating - mechanism to bring definitive maps of public rights of way up to date	<ul style="list-style-type: none"> <li>No evidence provided about the need for all Definitive Map &amp; Statements of PROW (DM&amp;S) to be up to date as precursor to implementation of reform</li> <li>Extensive research into legal status shouldn't be required</li> <li>Remove as separate key element. Instead include 'consideration' with key element 002 (above) to note that assessment process should look at available evidence about legal status of routes</li> </ul>
007.	Additional powers for local authorities/National Park Authorities (NPAs) to modify limitations on paths (infrastructure) to facilitate access for higher rights and for accessibility reasons.	<ul style="list-style-type: none"> <li>Discretionary power for local highway authorities</li> <li>Local highway authorities to hold a consultation with owner of structures, including consideration of subsequent upkeep</li> <li>Implications, including costs, proportionate to use of powers</li> <li>The implications for privately owned legal structures on footpaths needs to be accounted for – legal advice needs to inform the issue further</li> </ul>
008.	Redefine natural accompaniments (linked to reform 1A – e.g. carrying of boats to inland water over rights of way).	<ul style="list-style-type: none"> <li>Omit this key element as it is generally considered unnecessary for intent of this reform.</li> <li>Consideration of this could instead be given within the Access Reform Programme (ARP) Group1 reforms</li> </ul>

Ref No.	2A(iii) Required element for outline option proposal	Considerations / potential changes to improve option and key element
009.	Restrictions and exclusions mechanism for defined reasons – by application to local highway authorities. For example, working land, nature and wildlife conservation and health and safety considerations.	<ul style="list-style-type: none"> <li>• Mechanism at discretion of LHA and to be applicable to all damaging impacts (not just from higher rights users)</li> <li>• A statutory code mechanism to take enforcement actions against irresponsible behaviour (links to cross-cutting theme report)</li> <li>• Potential for Traffic Regulation Order (TRO) provisions to be developed for this element (e.g. consider Road Traffic Regulation Act 1984 sections 22-22A provisions)</li> <li>• 2B provisions to have sufficient scope to address this need</li> </ul>
010.	Consider new term/definition of footpaths designated with higher rights and revised statutory signage language to accompany.	<ul style="list-style-type: none"> <li>• More limited footpath changes would result from this option.</li> <li>• Possible approaches: <ul style="list-style-type: none"> <li>○ Amending footpath terminology; or</li> <li>○ rename designated footpaths as 'public paths'</li> </ul> </li> <li>• Provision to retain DM&amp;S and public mapping record while depicting rights that apply</li> </ul>
011.	Recreational code – modification of Countryside Code, therefore advisory guidance only	<ul style="list-style-type: none"> <li>• Provision of statutory code is being considered separately</li> <li>• Amendment of Countryside Code</li> <li>• Note need for other relevant information &amp; guidance to reflect changes</li> </ul>

## Next Steps Summary

This report will be presented to Ministers for formal review around November 2020. Where agreed, the changes suggested to the Key Elements tables (above) will be actioned and a final set of proposed Reform Options will be produced.

In January 2021, the last Expert Group sessions will take place, these will be the Option Selection meetings. The task in the meetings is for the members of the Expert Groups to discuss, and where possible, reach consensus on the preferred options for each reform area. 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 Beacons National Park Local Access Forum  
Brecon Beacons 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