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Llywodraeth Cymru
Welsh Government

Access Reform Programme

Analysis Report: Reform 2B

Temporary Restrictions on Public Paths

Executive summary Reform 2B – Temporary provisions to facilitate short term closures and stock control on public rights of way

Summary of Policy Intent for Reform 2B:

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

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

- i. Provide a simple process for short-term diversions of public rights of way (PROW) by registered landholders using a notification to the local highway authority (LHA)¹. Advertising would be online without the need for press advertising. A suitable alternative route with signage would have to be provided by the landholder; the diversion, with map, would be publicised online. Notifications by the landholder could be made for stock control measures and other specified reasons and would not require prior approval by authorities.
- ii. A new enforceable outdoor access statutory code would include provision of powers for landholders to divert public access for specified land management reasons. Landholders would have to notify the LHA of diversions and provide a suitable alternative route, with associated signage and notices.
- iii. Provide a statutory mechanism for LHAs to make short-term temporary diversions of PROW for specified agricultural land management reasons. Landholders would have the right to apply for such diversions to PROW on their land, which would have to be approved by authorities. A suitable alternative route and on-site signage would be provided by the landholder; the diversion, with map, would be advertised online. The legislation would be modelled on section 135A of the Highways Act 1980.

Key issues identified in the delivery of the 2B Options were:

- A least restrictive access approach should be applied with any 2B reform as with Countryside and Rights of Way Act (CRoW) exclusions and restrictions (E&Rs) balancing the benefits to landholders and the public
- Impacts of options could be significant. However, to be more accurately assessed further development of the 2B options is needed, in particular the detailed rules and procedures e.g. defining more closely what agricultural or other land management reasons they can be used for, notification periods and how frequently and for how long diversions can be used on a landholding.
- Alternative routes should provide equivalent accessibility for access users to the PROW that has been diverted

- Where between landholders and LHAs the liability and responsibilities for diverted routes should rest needs to be determined and needs to be informed by further legal advice
- Online procedures, including notices and advertising for temporary diversions was supported across sectoral interests
- Grievance procedures for all three options were broadly agreed as necessary for the public to raise concerns, and as a check and penalty against improper use, as were strengthened enforcement powers for LHAs.
- The 2B(ii) option is reliant on an enforceable statutory access code being introduced which has not been decided.

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 CRoW access land
- **Reform 1B:** changes to Countryside and Rights of Way Act (CRoW) legislation extending CRoW access land to the coast
- **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 analysis report of Reform Options has been produced following evidence and other contributions invited from:

- Local Access Forums [22 contacted]
- National Access Forum members [37 organisations]
- ARAG Expert Group members [28 representatives]
- Cadw

Natural Resources Wales' 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. It should be noted that evidence and comments were made about the working of the proposed option and should not be taken to indicate support or opposition to the proposal.

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

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

Across the reform areas, 1A, 1B, 2A (etc) 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 website](#)

Reform 2B – Temporary provision to facilitate short term closures and stock control on PROW

Summary of Policy Intent for Reform 2B

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

Table 1: Reform 2B Option Titles & Outline Descriptions:

2B: Outline Proposal Title	Summary Description of Outline Proposal
i. Diversion or closures by notification	Simplify process for short-term diversion by notification without the need for press advertising. An alternative route should be provided and shown online and on the ground. It includes for stock control measures and other specified reasons.
ii. Statutory access code diversion	Statutory code to define provision of alternative, short-term measures to divert public access

iii. Temporary diversion for works	Use the same mechanism that is being developed in England to create temporary diversions to PROW under section 135A of the Highways Act
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Summary Description of Proposed Reforms within Option 2B(i)

The option introduces powers for landholders to notify local highway authorities (LHAs) about the temporary closures of PROW on their land, and provision of an alternative temporary diversion route, for the purposes of land management. Legislation would set out the types of land management operation for which temporary restrictions could be notified – these would include specified stock control reasons. Legislation would require landholders to be registered with the LHA in order to use the powers. Notifications would not be subject to prior approval by the LHA.

Regulations would specify requirements for matters such as: the registration process, notification requirements, the provision of diversionary routes (such as routes standards and on the ground signage) and grievances related to the use of restrictions. Regulations would include the online provision of notifications to LHAs and making them and the resulting restrictions available online to the public.

Information about the new provisions would be provided in responsible recreation codes and associated guidance to land managers, the public and other stakeholders, and promoted accordingly.

Summary Description of Proposed Reforms within Option 2B(ii)

The option is based and reliant on the introduction of a new, enforceable statutory code (statutory outdoor access code (SOAC)) for responsible recreation for Wales. The code would include powers for landholders to apply short-term, temporary closures of PROW for land management, with provision of a suitable alternative diversion route.

The code would set out the types of land management operation for which temporary restrictions could be made and would exclude works affecting a PROW. The circumstances for diversions would be specified but would be expected to include specified stock control reasons.

The code would define the requirements for the diversionary route, the maximum duration, the route standards and on-ground signage and notices; PROW responsibilities would apply to the diverted route as with the defined PROW. There would be limitations about the length and/or number and time that diversions could be applied on any landholding.

In the option's alternative proposals, the statutory code would also provide for how the public can legitimately make their own way around illegal obstructions and hazards on PROW. A formal grievance procedure would be set out for use by the public and be the responsibility of the local highway authority to administer (including penalising breaches of the code).

Information about the provisions would be included in the statutory code and an associated communications campaign; there would also be detailed guidance to land managers, local authorities, and others with an interest.

Summary Description of Proposed Reforms within Option 2B(iii)

This option proposes legislation based on the uncommenced s135A, Highways Act 1980 providing LHAs with discretionary powers to make temporary diversion of PROW for specified agricultural related works and management of livestock. Landholders would have the right to apply for such diversions.

The same duties and responsibilities for PROW would apply to temporary diverted routes.

In specified, limited circumstances a PROW could be closed without an alternative diversion route being provided. This would be by notification to the LHA and could only be used a limited basis.

Legislation would provide regulations to set out the process including for: applications, decisions, standards and accessibility of the physical route, path signage and provision of notices, online advertising and guidance/information provision. Providing the temporary route, signage and notices to the required standard would be the responsibility of the landholder.

Alternative 3B(iii) option elements included: proposed greater flexibility for LHAs to temporarily restrict the use of some types of users, as well as to make full closures. It was also proposed that the period and extent of PROW that could be temporarily diverted on a land holding should be specified within the legislation and that there should be a central online application process.

Reform 2B: Summary of issues common to all 3 reform options

- a. Options lack clarity about or do not specify limitations for the purposes and extent the restrictions would be used making it unclear what types and scale of impacts there would be on public access (see points below)
- b. A proportionate, least restrictive access approach to limiting the public's access rights should be provided for – in a similar way to that used for considering and applying exclusion and restrictions (E&Rs) on CRoW access land; provisions must also be compatible with equalities legislation
- c. Consideration should be given to limiting scope of options to temporary diversions only – e.g. no reformed powers for temporary closures without providing an alternative/diversion route; closures would use current procedures (such as TROs)
- d. Reform should clearly specify limitations to diversion powers, such as: frequency can be applied within a fixed period; [short] duration applicable for; what purposes applicable for; extent of use on land holdings; applicability to different types of recreational user
- e. It is essential that options provide (e.g. by regulations) for defined standardised requirements for diversion routes, such as route alignment, physical standard of route, equivalent level of accessibility (including equalities needs), provision of notices and signage.
- f. Provisions must provide for and be realistically enforceable by LHAs to be workable
- g. The proposals will need to balance reducing burdens within the system, including for landholders and LHAs, with protecting the wider public interest to exercise their rights

- h. Where the liability for temporary diverted routes should rest: landholders or LHAs, considering the balance of benefits from process, the desire for light touch process and LHAs' need for assuring acceptability of diverted routes?
- i. Online advertising is the easiest single way to reduce LHA costs, although staff time is also a significant cost; Covid closure information was noted as successfully being provided online without newspaper advertisements
- j. The numbers of current procedures used in Wales that the options would replace (e.g. TROs) are currently low
- k. There is little evidence about what elements of current processes make them inefficient, inflexible and costly – and therefore whether proposals will effectively address these points.
- l. Information to the public about diversions on site and online, including about accessibility, will be important, as will information and guidance about the process to different interests
- m. Providing for the powers to include temporary diversions for forestry operations and appropriate timescales for such provisions was proposed by NRW land managers

Reform 2B: further commentary on matters common to all 3 reform options

Assessing the additional resource demands from options can only realistically be carried out once proposals are developed further. The additional resource demands would need to be provided in order to properly implement the provisions.

Expert Group comments noted that any reform under 2B needed to be compatible with other regulatory demands on farmers.

For notices, section 135A (7) of HA 1980 was given as a legislative example for regulating notices. Online advertising was widely supported, and the example of online lists of recent Covid-related CRoW and PROW closures was cited – but noting the need to also provide maps of routes affected.

Provision for off-line procedures would still be required for those that cannot use ICT for whatever reason.

For 2B(i) and 2B(ii) LHAs would not be required to approve diversion routes. This would leave remedying problems that came to the LHA's attention for either enforcement action by the LHA or the proposed grievance procedure if provided for. Similarly, problems arising with diverted routes after they've been approved under option (iii) would need to be dealt with through the same mechanisms.

In Expert Group discussions it was noted that there was a large degree of uncertainty around legal liabilities. LHAs are likely to be reluctant to readily accept the risks and burdens (whatever the option) from landholder provided alternative routes, particularly when the benefit is to the landholder not the LHA or wider public. In addition a landholder could not be sure that a LHA would agree with them that an uninspected alternative route they've put in place complies with the standards (etc) that would be required and therefore the responsibility for such matters as user safety could be subject to dispute.

Grievance procedures for all three options were broadly agreed as necessary for the public to raise concerns, and as a check and penalty against improper use.

There were a number of comments that available enforcement measures would need to be clearer and strengthened to deal with misuse of any of the 2B provisions particularly notifications under 2B(i) and 2B(ii). Welsh Government's 2017 research¹ found that the numbers of enforcement actions taken by local authorities annually are very low across authorities in Wales. Expert Group discussions felt that taking enforcement was likely to be difficult, contentious and potentially resource intensive. If used at current levels of enforcement the new powers would be rarely subject to local authority intervention.

A number of opinions referred to potential for greater use of permissive routes as alternatives to PROW. Examples referenced: authorities' own practises; trials with using permissive routes in south west England; the use of permissive routes during Covid restrictions instead of formal closures.

The Road Traffic Regulation Act 1984, section 14² (RTRA s14) was also suggested for consideration as an alternative legislative model based on powers already being used.

2B(i) Options: Commentary on Specific Evidence and issues:

Note that there are a number of issues that apply to all the options, including 2B(iii), that are covered in the 'common issues section' above.

A reform along the lines of CRoW s135A of CRoW (which was not enacted in Wales or England) provides a legislative guide to key elements for proposals for the 2B(i) approach, as well as the 2B(iii) option. (See also reference to RTRA s14 above)

The 2B(i) option would provide flexibility for landholders to divert and at times close PROW for land management reasons. A number of people responding felt that the negative impact on the public's rights meant any notification-based process should not provide for closure of paths without provision of reasonable alternative routes (in effect only allow temporary diversion of paths).

It was widely felt by LHA responders that notification to them about diversions should be subject to their approval before they would be willing to accept liability for a diverted route to the same level as for the defined PROW. As Option 2B(i) does not provide for LHA's prior approval, liability for diverted routes would be a significant issue. Further legal consideration is needed to inform liability issues, including the implications if legal provisions were not adequately met by one or more parties.

As with other proposed options 2B(i) would tend to increase burdens on LHAs and, subject to the scope of the provisions and how they were used by landholders, will impact on the public's access to existing PROW to an extent that is hard to predict. Current burdens (supported by evidence) mean the capacity of LHAs to process current public paths orders and TROs on public rights of way is limited. The processes proposed are not seen by practitioners as likely to decrease existing burdens, including the need to take enforcement action – potentially even increasing them.

¹ Cost of Managing the Public Rights of Way Network in Wales, February 2017, Welsh Government

² <https://www.legislation.gov.uk/ukpga/1984/27/section/14>

Key elements linking the 2B(i) reform to the making of permanent diversions were perceived as duplicating existing practice and unnecessary.

2B(ii) Commentary on Specific Evidence and issues emerging:

Note that there are a number of issues that apply to all the options, including 2B(ii), that are covered in the 'common issues section' above.

The lack of detail about the mechanisms that would be provided to ensure effective operation of temporary diversions using a statutory code approach was a concern raised as a concern by a number of LHA responders. This included the mechanism for how they would be enforced where necessary.

According to the Welsh Government's 2017 research (see footnote 1) current levels of use of TRO powers for PROW is low. The 2B(ii) option would introduce a new process and is likely to increase demands and burdens e.g. for enforcement.

For 002/Alt key element, it was noted that common law rights to bypass illegal obstacles exist, making the key element unnecessary; on the other hand, inclusion of those rights in a code would raise awareness and make clear those common law rights. The issue could instead be considered when a responsible recreation code is reviewed and revised in conjunction with wider reform work.

The 2B(ii) approach is reliant on Welsh Government deciding to take forward a new statutory outdoor access code as part of its access reforms. 2B(ii) would therefore need to be decided and developed in conjunction with responsible recreation proposals.

2B(iii) Commentary on Specific Evidence and issues emerging:

Note that there are a number of issues that apply to all the options, including this 2B(iii) option, that are covered in the 'common issues section' above.

2B(iii) is based on section 135A of the Highways Act 1980 (s135A), which was introduced by the CRoW Act. Section 135A provides a clearly developed legislative guide to key elements for proposals for the 2B(iii) option approach. Responses consider the option to be a feasible approach.

As the legislation has not been not enacted in Wales or England there is no evidence about how it has worked in practice. There is no commitment to enact the s135A provisions in either country at this time.

There were advocates for the approach. The option would provide the flexibility landholders want to divert and at times close PROW for land management reasons.

However, there were also concerns raised that s135A as worded needed further consideration in several aspects e.g. diversion notice period, duration, frequency of use, reasons for use and the extent diversions could applied to PROW within any land holding.

In the Expert Group 2 discussions, the length of notice period required under option 2B(iii) was not agreed. Therefore the period set would need to balance the interests of landholders, the public and local highway authorities. The Expert Group suggested that a 2-step process with an outline approval (in principle approval for a date window) followed by shorter notice to confirm exact dates, could better meet land managers' needs e.g. weather dependent operations.

Reference was also made in the Expert Group discussions to the need for appeals to be part of the option 2B(iii) process, such as exists in procedures for DMMO Schedule 14 applications.

The issue of liability for alternative (diverted) routes was raised as a concern – see discussion in the common issues section above.

As with the other options, 2B(iii) would tend to increase burdens on LHAs and affect the rights of the public in unpredictable ways. LHAs noted current burdens and limited resources and capacity for PROW work with relatively small numbers of public paths orders and TROs on public rights of way in any one year.

Table 2: Criteria Assessment for Reform 2B

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 3 options have been presented side by side to aid comparison between them.

Outline Proposal Titles:	Criteria Description & Measures	Diversion or closures by notification	Statutory access code diversion	Temporary diversion for works
Summary Description of Outline Proposals:	N/A	Simplify process for short-term diversion by notification without the need for press advertising. An alternative route should be provided and shown online and on the ground. It includes for stock control measures and other specified reasons.	Statutory code to define provision of alternative, short-term measures to divert public access	Use the same mechanism that is being developed in England to create temporary diversions to PROW under section 135A of the Highways Act
Outline Option Proposal Description:	N/A	2B(i) Simplify process for short term diversion by notification without the need for press advertising. An alternative route should be provided and shown online and on the ground. It includes for stock control measures and other specified reasons.	2B(ii) Statutory code to define provision of alternative, short-term measures to divert public access for land management purposes. Alternative routes provided in accordance with the code would be a temporary right of way.	2B(iii) Use the same mechanism that is being developed in England to create temporary diversions to PROW under section 135A of the Highways Act
Extent of access	<p>Amount of 'by right' access affected. Consider:</p> <ul style="list-style-type: none"> - totals [e.g. kms/ha; %]; - % changes; - distribution: where and how distributed in Wales - measures include absolute and/or relative amounts e.g. as change from current position; relative to other options 	<p>Amount:</p> <p>The extent of rights would be unchanged with this [and similarly all the options].</p> <p>The defined rights that could be exercised would be reduced - but replaced by temporary rights.</p> <p>Distribution: assumed it will be applied Wales-wide</p> <p>Rights affected: dependent on scope set in reform option provisions [not currently clearly defined e.g. could be for FPs & BWs only].</p> <p>Scope in reform could be better defined in relation to temporary closures/diversion reasons + time limits could also define rights</p> <p>Note that further details could be defined within regulations and guidance.</p> <p>Number impacted depends also on the use of procedure to temporary close/divert paths and therefore the matters above.</p> <p>Consider 'in principle' what is acceptable in terms of scale impact on rights: what PROW applies to; how much it can be applied e.g. in terms of reasons for use and limits to use.</p> <p>NB: responsible recreation provisions and reforms outside of ARAG work will consider access legislation related to access with dogs.</p>	<p>No change to extent of rights of access although will have impact on what is exercisable by right compensated by alternative routes.</p> <p>Distribution of impact presumed to be Wales-wide.</p> <p>Scale [numbers and duration] of impact depends on scope of land managers use of provisions.</p> <p>Rights affected assumed to be limited to</p> <p>Scope of reform needs to be defined in relation to temporary closures/diversion reasons + time limits</p> <p>Consider 'in principle' what is acceptable in terms of scale impact on rights: what PROW applies to; how much it can be applied e.g. in terms of reasons for use and limits to use.</p> <p>NB: responsible recreation provisions and reforms outside of ARAG work will consider access legislation related to access with dogs</p>	<p>No change to extent of rights of access although will have impact on what is exercisable by right compensated by alternative routes.</p> <p>Distribution of impact presumed to be Wales-wide.</p> <p>Scale [numbers and duration] of impact depends on scope of land managers use of provisions.</p> <p>Scope in reform could be better defined in relation to reasons for temporary closures/diversion + associated time limits</p> <p>Consider 'in principle' what is acceptable in terms of scale impact on rights: what PROW applies to, how much it can be applied e.g. in terms of reasons for uses, , and limits to use.</p> <p>NB: responsible recreation provisions and reforms outside of ARAG work will consider legislation related to rec access with dogs <u>Implications</u>: limits to scope of provisions in terms of:</p> <p>PROW applies to [e.g. FP & BWs only?]; duration and frequency of use; number of PROW affected within a landholding at any one time and within a fixed period.</p> <p>Monitoring and enforcement to ensure compliance with process requirements' remedies for non-compliance.</p>
Quality of access	<p>Accessibility to users in terms of:</p> <ul style="list-style-type: none"> - physical condition 	Subject to level of use of provisions [see Extent criteria above] the wider network likely to be mostly unaffected.	Subject to level of use of provisions [see Extent criteria above] the wider network likely to be mostly unaffected.	Subject to level of use of provisions [see Extent criteria above] the wider network likely to be mostly unaffected. Physical condition of alternative routes will be subject to implementation and

Outline Proposal Titles:	Criteria Description & Measures	Diversion or closures by notification	Statutory access code diversion	Temporary diversion for works
	<ul style="list-style-type: none"> - usability [practicality of access provided by rights reforms] - availability to different users - proximity to population; [also an equity issue] - presence of barriers to higher rights use and people with mobility problems; - 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 	<p>Physical condition of alternative routes will be subject to implementation and compliance with standard requirements for alternative routes by landholders (additional regulatory powers could provide to specify alternative routes requirement in current proposal.</p> <p>Compliance likely to be affected by monitoring and enforcement [see M&E criteria].</p> <p>See 2A assessments about condition survey and PI data which, although 2002 info, indicates that there are high levels of non-compliance with legal responsibilities.</p> <p>Diverted routes: impact on availability of network subject to provision of good alternative routes plus good information provision online and on site. Level of use of powers will determine impact on quality of wider network.</p>	<p>Physical condition of alternative routes will be subject to implementation and compliance with standard requirements for alternative routes by landholders.</p> <p>Compliance likely to be affected by monitoring and enforcement [see M&E criteria].</p> <p>See 2A assessments about condition survey and PI data which, although old info, indicates that there could be significant non-compliance with legal responsibilities.</p> <p>Diverted routes Impact on availability of network subject to provision of good alternative routes plus good information provision online and on site. Level of use will determine impact on quality of wider network.</p>	<p>compliance with standard requirements for alternative routes by landholders.</p> <p>Compliance likely to be affected by monitoring and enforcement [see M&E criteria].</p> <p>See 2A assessments about condition survey and PI data which, although old info, indicates that there would be significant non-compliance with legal responsibilities.</p> <p>Diverted routes Impact on availability of network subject to provision of good alternative routes plus good information provision online and on site. Level of use will determine impact on quality of wider network.</p>
Permanency	<p>'By right' access in perpetuity, or permissive? Situation for different rights users?</p> <ul style="list-style-type: none"> - Absolute position and relative to other options [see extent and quality] - Qualified to significant degree 	<p>No change to overall legal status of PROW network overall - but see clarity and certainty below.</p> <p>Status of diverted routes and associated responsibilities and liabilities needs clarifying.</p>	<p>No change to overall status of PROW network overall - but see clarity and certainty below</p>	<p>No change to overall status of PROW network overall - but see clarity and certainty below</p>
Clarity & Certainty	<p>Clarity of rights:</p> <ul style="list-style-type: none"> - Simple or complex to understand - Understandable what can do and cannot do where and when & to all interests. - If and how will option will be subject to change (temporary or permanent e.g. E&Rs) - Communicability of 	<p>Reduced certainty and clarity regarding availability of network, notably if closures permitted.</p> <p>Scale and impact on these criteria dependent on reform details.</p> <p>Clear monitoring and enforcement requirement. Provisions could reduce illicit closures and improve usability but dependent on level of use of powers instead of not complying with responsibilities [however, not estimated].</p>	<p>Reduced certainty and clarity regarding availability of network - although no temporary closures permitted.</p> <p>Scale and impact dependent on reform details - preferable to have limited diversions (e.g. max distances and time diverted).</p> <p>Clear monitoring and enforcement requirement. Provisions could reduce illicit closures and improve usability but dependent on level of use of powers instead of not complying with responsibilities [however, not estimated]</p>	<p>Reduced certainty and clarity regarding availability of network - although no temporary closures permitted. Scale and impact dependent on details - limited diversions (e.g. max distances and time diverted) would give greater certainty and clarity. Clear monitoring and enforcement requirement Provisions could reduce illicit closures and improve usability but dependent on level of use of powers instead of not complying with responsibilities [however, not estimated]</p>

Outline Proposal Titles:	Criteria Description & Measures	Diversion or closures by notification	Statutory access code diversion	Temporary diversion for works
	relevant access information.			
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"> - Financial - Resources - Relative to current position - Relative to other proposals 	<p>Reduction of current demand & costs for TROs if number of illicit closures [etc] or enforcement actions were reduced.</p> <p>There are approximately 3 TROs p.a. on PROW across most Welsh LHAs; approximately 37 enforcement actions per LHA per year at Wales level.</p> <p>Indicatively expect a reduction in current TROs processes – although current use by most authorities is low (approximately 3 per year per LHA – ref see footnote 3). Hard to determine if option would result in low/moderate/high level of reform use and therefore if overall burden would increase or fall.</p> <p>Saving likely to be overtaken by increased level of demand for new procedure? Expectation of increase costs from inquiries from public about diversions/closures. Average time taken to process a TRO is approximately an average of 12.30 hours. Levels of use low. Enforcement of illegal closures/diversions may fall but create need for enforcement of new procedure.</p> <p>Average cost of advertising per TRO currently £803.91³. Relatively less time taken to process a light touch procedure less but potentially more of them compared with PROW-TROs.</p> <p>Account would need to be made for processing time and website management costs.</p>	<p>Reduction of current demand & costs for TROs or number of illicit closures [etc] requiring enforcement.</p> <p>There are approximately 3 TROs p.a. on PROW across most Welsh LHAs; approximately 37 enforcement actions per LHA per year at Wales level.</p> <p>May be [small?] reduction in small number of current TROs. Burden could increase or fall. Saving likely to be overtaken by increased level of demand for new procedure? Expectation of increase costs from inquiries from public about diversions/closures. Average time taken to process a TRO is approximately an average of 12.30 hours. Levels of use is low per year per LHA. Enforcement of illegal closures/diversions may fall but create need for enforcement of new procedure. Average advert cost per TRO currently £803.91 [reference footnote 3]. Relatively less time taken to process a light touch procedure less but potentially more of them compared with PROW-TROs. Account would need to be made for processing time and website management costs.</p>	<p>Reduction of current demand & costs for TROs or illicit closures and enforcement [see estimate left of current levels of TORs and enforcement actions noted in option (i) and (ii) analysis]</p> <p>May be a small reduction in small number of current TROs. Burden could increase or fall. Saving likely to be overtaken by increased level of demand for new procedure? Expectation of increase costs from inquiries from public about diversions/closures. Average time taken to process a TRO is approximately an average of 12.30 hours. Levels of TRO use is low. Enforcement of illegal closures/diversions (currently low levels – see left) may fall but create need for enforcement of new procedure.</p> <p>Average cost of advertising per TRO currently £803.91 [reference footnote 3]. Relatively less time taken to process a light touch procedure less but potentially more of them compared with PROW-TROs. Account would need to be made for processing time and website management costs.</p>
Monitoring & Enforcement	<p>Enforcing rights and responsibilities, in terms of:</p> <ul style="list-style-type: none"> - Ability to enforce demand/need for enforcement actions; - likely impact on compliance with rights and responsibilities <p>Ability to monitor option</p>	<p>Impact hard to determine. Some reduction of current illegal closures/diversions if well used. Would be resulting demand to monitor and enforce this new provision.</p>	<p>Hard to determine if result in low/moderate/high level of use and if misuse would increase enforcement. Monitoring and responding to enquiries and also public complaints likely to increase particularly at first introduction.</p>	<p>Hard to determine if result in low/moderate/high level of use and if misuse would increase enforcement. Monitoring and responding to enquiries and also public complaints likely to increase particularly at first introduction.</p>

³ 'Cost of Managing the Public Rights of Way Network in Wales', 2017, Annex 1, Welsh Government

Outline Proposal Titles:	Criteria Description & Measures	Diversion or closures by notification	Statutory access code diversion	Temporary diversion for works
	and implementation			
Equity of Access	<p>Positive or negative effect on equity of access. Consider:</p> <ul style="list-style-type: none"> - Overall population - People with protected characteristics - Specifically, for those with mobility problems; social inequalities; - Differential impacts: on land holders - Different impacts: on classes of user; - Scale/extent of impacts on the preceding 	<p>Equitable access requires as commodious provision of alternative routes and enforcement as to standards and info provision.</p> <p>Closures restricting some users would need to be compliant with equalities legislation.</p> <p>Option needs to provide for regulation and guidance for use of powers including matters such as provision of alternative routes without effective inspections and/or compliance regime</p>	<p>Equitable access requires as commodious provision of alternative routes [in keeping with Equalities legislation] and enforcement as to standards and info provision. May be difficult to get such compliance on provided alternative routes without effective inspections and/or compliance regime</p>	<p>Equitable access requires as commodious provision of alternative routes [in keeping with Equalities legislation] and enforcement as to standards and info provision. May be difficult to get such compliance on provided alternative routes without effective inspections and/or compliance regime</p>
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>Easier and reduced burden if get expected reduction in TROs and requirements. Level of TRO use needs determining.</p> <p>Unquantified demand for provisions; some investment costs with new procedure.</p> <p>Less scrutinised process - harder to enforce infringements</p> <p>Further details and work needed to assess scale of use of grievance process and impacts.</p> <p>Monitoring and enforcement plus good info provision will affect transparency of process and use; to be beneficial, needs to lead to result in increased overall land manager compliance with responsibilities.</p>	<p>Easier and reduced burden if get expected reduction in TROs and requirements.</p> <p>Level of TRO use needs determining. Unquantified demand, including investment costs for new procedure.</p> <p>Less scrutinised process.</p> <p>Monitoring and enforcement plus good info provision will affect transparency of process and use; also needs to lead to reduction in overall land manager non-compliant obstructing or diverting routes.</p>	<p>Easier and reduced burden if get expected reduction in TROs and requirements.</p> <p>Level of TRO use needs determining. Unquantified demand, including investment costs, of new procedure.</p> <p>Relatively more scrutinised process compared to option (i) or (ii).</p> <p>Further details and work needed to assess scale of use of grievance process and impacts.</p> <p>Monitoring and enforcement plus good info provision will affect transparency of process and use; also needs to lead to reduction in overall land manager non-compliant obstructing or diverting routes.</p>
Ecosystems and ecosystems resilience	<p>Positive, negative or neutral impacts. Factors to consider if evidence allows re impacts on species and habitats:</p> <ul style="list-style-type: none"> - extent: changes to area/length rights would apply to and impacts will 	<p>May provide greater opportunity to provide temporary closures for nature and heritage conservation reasons, although current demand is considered to be very low.</p>	<p>May provide greater opportunity to provide temporary closures for nature and heritage conservation reasons although current demand is considered to be very low.</p>	<p>May provide greater opportunity to provide temporary closures for nature and heritage conservation reasons although current demand is considered to be very low.</p>

Outline Proposal Titles:	Criteria Description & Measures	Diversion or closures by notification	Statutory access code diversion	Temporary diversion for works
	<p>occur [including extent protected sites and species that would be impacted?]</p> <ul style="list-style-type: none"> - change to levels and type or character of impacts; - change to distribution of impacts [widely; specific areas?] - resilience to impacts [of habitats/species] - provision adequate to prevent or mitigate impacts 			
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"> - disturbance to livestock and livestock management ; - agricultural and other land management impacted. - Significant biosecurity implications? - Increased use of land potentially [scale of demand?] <p>NB: Considerations for ecosystems to be included in preceding consideration above.</p>	<p>May provide greater opportunity to provide temporary closures for land and water management. Reduced burden for regular users of closures procedures such as by NRW for forestry operations likely to benefit. Use of CRoW E&Rs is low except by NRW.</p>	<p>May provide greater opportunity to provide temporary closures for land and water management. Reduced burden for regular users of closures procedures such as by NRW for forestry operations likely to benefit. Use of CRoW E&Rs is low except by NRW.</p>	<p>May provide greater opportunity to provide temporary closures for land and water management. Reduced burden for regular users of closures procedures such as by NRW for forestry operations likely to benefit. Use of CRoW E&Rs is low except by NRW.</p>
Health & wellbeing	<p>Consider if positive, neutral or negative impact on physical and mental wellbeing. Consider:</p> <ul style="list-style-type: none"> - Changes to use and benefits derived 	Determined by balance of impacts - see criteria above	Determined by balance of impacts - see criteria above	Determined by balance of impacts - see criteria above

Outline Proposal Titles:	Criteria Description & Measures	Diversion or closures by notification	Statutory access code diversion	Temporary diversion for works
	<ul style="list-style-type: none"> - Impact on different population groups e.g. relatively disadvantaged 			
Community cohesion	<p>Consider if positive, neutral or negative impact on community cohesion. Consider:</p> <ul style="list-style-type: none"> - changes to local use and accessibility within area; - Changes to local wellbeing and economic benefits - likely impact on community interests 	Determined by balance of impacts - see criteria above	Determined by balance of impacts - see criteria above	Determined by balance of impacts - see criteria above
Successful and responsible business	<p>Consider if positive, neutral or negative impact on responsible business, Consider:</p> <ul style="list-style-type: none"> - impact on economic opportunities - impact of changes on economic activity on different sectors - distribution [see extent] <p>NB: evidence of actual costs or overall impact [+ve, -ve etc] may be difficult to assess at this stage.</p>	More flexibility for land managers. Easier and quicker to carry out land management operations while complying with public access responsibilities. Determined by balance of impacts - see criteria above	More flexibility for land managers. Easier and quicker to carry out land management operations while complying with public access responsibilities. Determined by balance of impacts - see criteria above. Potential for easier and better compliance with farm payment schemes	More flexibility for land managers. Easier and quicker to carry out land management operations while complying with public access responsibilities. Determined by balance of impacts - see criteria above. Potential for easier and better compliance with farm payment schemes

Key Elements Tables

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

Ref No.	- 2B(i) Required element for outline option proposal	- Considerations / potential changes to improve option KE
001.	Shift onus onto landowners to notify LHAs of intention for temporary diversion/closure <ul style="list-style-type: none"> • [New legislation provisions] • Simplify and speed up process of closure/ diversion • Guidance to produce a template for notification 	<ul style="list-style-type: none"> • Refine KEs to give acceptable balance between flexibility for land managers, light-touch processes, who has liability for diverted routes and limiting scope of use that protect the public's access interests • Amend option so all KEs only provide for diversions i.e. must be an alternative route provided – no closures • Revise wording of KE: should be for landholders [not just landowners] <p style="text-align: center;">-</p>
002.	New legislation provisions: <ul style="list-style-type: none"> • power for registered landholders to notify of short-term temporary closure/diversions of [FPs/BWs?] • powers to regulate provisions 	<ul style="list-style-type: none"> • Define limitations to making of diversions • Greater clarity that regulations would specify requirements for diversion routes • Adopt KE 002/Alt that closures not within scope – instead subject to existing processes such as temporary TROs <p style="text-align: center;">-</p>
003.	LHAs should receive all relevant information packaged within notification from landowners: <ul style="list-style-type: none"> • Checklist (reasons for closure/diversion of what and why) • Map/plan of route closure/diversion • Alternative route available (if not then reasons why) 	<ul style="list-style-type: none"> • Important provision for workable option • Omit KE 003/Alt – a central IT portal is not essential to delivering option; it could be introduced later

Ref No.	- 2B(i) Required element for outline option proposal	- Considerations / potential changes to improve option KE
	<ul style="list-style-type: none"> • LA ability to check frequency of closures and question need <p style="text-align: center;">-</p>	
004.	<p>Registration of land by landowners to the LA – LAs control register</p> <ul style="list-style-type: none"> • Registration/ signup to use this simpler process • Provides landownership/ plans • LAs can identify land parcels and ownership and have on record details of previous diversions/ closures and reasons 	<ul style="list-style-type: none"> • Broadly accepted as necessary for envisaged process.
005.	<p>Option for exclusion/ temporary diversion:</p> <ul style="list-style-type: none"> • Exclusion for certain types of user (but still allowing other types access) if deemed an issue at certain periods. E.g. restriction of dogs during lambing periods/ wildlife protection • Would not be a requirement for an alternative route 	<ul style="list-style-type: none"> • Provision would limit public's certainty and expectation for onward journeys • Decide if option requires provide alternative route • Provision of permissive alternative routes remains an option [not needing legislative reform]
006.	<p>Grievance Process allowing a more transparent [challengeable] process.</p> <ul style="list-style-type: none"> • Available to users/public <p style="text-align: center;">-</p>	<ul style="list-style-type: none"> • Broadly accepted • Need for balanced and consistent process • Further detail needed if taken forward <p style="text-align: center;">-</p>
007.	<p>Notices needing to be date stamped [start and end dates]</p> <ul style="list-style-type: none"> • Onus on landowner to ensure notices are in place and removed on date stated • LA enforcement procedure to prompt this, ensuring diversions/closures are not in place longer than necessary <p style="text-align: center;">-</p>	<ul style="list-style-type: none"> • Broadly accepted
008.	<p>Communicating notifications: Landholders to notify LHA - online LA Communication online to:</p> <ul style="list-style-type: none"> - User groups - Public - Stakeholders 	<ul style="list-style-type: none"> • Broadly accepted

Ref No.	- 2B(i) Required element for outline option proposal	- Considerations / potential changes to improve option KE
	Landholders: <ul style="list-style-type: none"> • Onsite notice and plan requirement regardless of closure length - 	
009.	Outdoor access code / Communicating to users about potential for route changes at ground level	<ul style="list-style-type: none"> • Broadly accepted

Table 2: Option 2B(ii) Diversion or closures by notification – Considerations for Revisions to KEs

Ref No.	2B(ii) Required element for outline option proposal	Considerations / potential changes to improve option KE
001.	Legislation for a statutory access code to enable this option (which would have both mandatory and advisory elements)	<ul style="list-style-type: none"> • Necessary for option as proposed • Further work to define details (see commentary re common issues)
002.	Define (guidance) circumstances of diversion(s) <ul style="list-style-type: none"> • Landholder defined • Stakeholder input - (e.g. NAFW) Clearly define circumstances in code for users/landowners/ managers Transitional (all/mostly) Processes (not works changing route)	<ul style="list-style-type: none"> • Necessary to define scope of power and process. • Permissive alternative routes and framework could be developed without requiring the proposed statutory code option approach? • 002/Alt option omitted – users legitimately going around obstructions [etc] can be considered when drafting a statutory access code
003.	Define reasonable alternative route <ul style="list-style-type: none"> • Safe and reasonable provision • [Signed] Liabilities for landowner & users <ul style="list-style-type: none"> • Rights of Way Convenience Communications Safe/equivalent	<ul style="list-style-type: none"> • Essential to define alternative [diversion] route requirements • Liability around diversions and related needs further legal consideration at drafting stage • 003/Alt option omitted – the matter could be considered when drafting a statutory access code <p style="text-align: center;">-</p>
004.	Communicating – What to expect in the code (cascading the code to all); formal notices	<ul style="list-style-type: none"> • Broad support for provision of information & communications and standard templates for notices <p style="text-align: center;">-</p>
005.	Development of an overall Statutory Code – for all CRoW/PROW Access	<ul style="list-style-type: none"> • Consider merits of improved framework for permissive alternative routes rather than this approach although permissive routes don't

Ref No.	2B(ii) Required element for outline option proposal	Considerations / potential changes to improve option KE
		<p>meet concerns of land managers about liability of alternative routes</p> <p>-</p>
006.	<p>How long does the Statutory Code cover?</p> <ul style="list-style-type: none"> When does an application for a longer diversion is needed? <p>(goes back to the defining stage)</p>	<ul style="list-style-type: none"> Details such as duration, frequency of use, reasons for use [etc] need to be defined. Existing powers would have to be used for closures (e.g. traffic regulation orders (TROs)) Existing powers (e.g. TROs) would have to be used for diversions not provided for by this option <p>-</p>
007.	<p>Communication – on the ground</p> <ul style="list-style-type: none"> Signage template (to be part of code) Dedicated social media presence 	<ul style="list-style-type: none"> See also 004 comment Limited scope and good alternative routes
008.	<p>Appeal process through Highways Authority</p> <ul style="list-style-type: none"> For users who have a grievance over short-term closures/ diversions (<i>too many</i>) Penalties or an order 	<ul style="list-style-type: none"> Revise wording to call it grievance process Necessary to enforce proper use of provisions and for complaint resolution Potential for increased burden on stakeholders <p>-</p>

Table 2: Option 2B(iii) Diversion or closures by notification – Considerations for Revisions to KEs

Ref No.	2B(iii) Required Elements	Considerations / potential changes to improve option KE
001.	<p>Define [drawing on draft legislative proposals in England] a new section 135A of the Highways Act:</p> <ul style="list-style-type: none"> LAs to have new powers to create temporary diversions for specified land management reasons: [agricultural related] works and management of livestock. Determination and making of temporary diversions by LHA; 	<ul style="list-style-type: none"> Clarity about reasons and limitations to use of provisions; consider scope to include forestry operations Limitations could include limited number and extent of such diversions/ closures within any land holding or

Ref No.	2B(iii) Required Elements	Considerations / potential changes to improve option KE
	<ul style="list-style-type: none"> • Diversions duly made to have status of temporary PROW with associated powers [for LHAs], rights and responsibilities • Rights for land holders to apply for temporary closures • Regulations for process <p>[Consider diversion or closure for more limited extent and effect by notice?]</p>	<p>neighbouring land holding in a fixed period</p> <ul style="list-style-type: none"> • Discretionary powers for LHA would provide greater flexibility • Do not include closures within scope of option • Current TRO use is low – scale of increased use difficult to assess
002.	<p>Regulatory powers to define process and criteria, including:</p> <ul style="list-style-type: none"> • form and making of applications, • assessment criteria and processing of applications; • decision criteria [including assessment of alternative routes e.g. impact on network/onward journeys; H&S; LRA etc]; • online applications [and notices – see below] to LHA; • standards for provision of alternative routes [including connectivity; form of notices/signage • closures in exceptional circumstances only 	<ul style="list-style-type: none"> • 002 broadly felt to be necessary component - • 002/alt and 003/alt KE for centralised application [and notification] portal for Wales [see below] was commented on as helping applicants – although was no evidence it is essential to option
003.	<p>Provision of 14-day notice period before any work is carried out. This was felt to be correct.</p> <p>Notice required to be given online through the LAs website</p> <p>LHAs to provide start/end date stamped standard notices/signage for landowners / managers to put up on site.</p>	<ul style="list-style-type: none"> • Need for notices supported in context of option; dates stamps needed; online supported • Period for notices not generally agreed as 14 days – balance of interests will be needed (e.g. responsive to landholders needs; sufficient time for LHAs to process and inspect routes) • 2 step outline and confirmation stages could

Ref No.	2B(iii) Required Elements	Considerations / potential changes to improve option KE
		provide greater flexibility (see commentary)
004.	Provide a mechanism for closure in some cases using model of the 28-day rule applied in the CRow Act. Limit extent and number of paths affected in a fixed time period [say annually, or within a X year period]	<ul style="list-style-type: none"> • Divergence of views for and against provision, most notably about closures • Has potential to work in tandem with CRow E&Rs on access land • Concerns as to need and workability of this element and scale of use with resulting impact on public access, potential for disregarding of diversions and need for enforcement. • Omit provision as more in keeping with Option (i) or (ii) approaches <p style="text-align: center;">-</p>
005.	<p>Online application process to reduce the administration time for the LA, including templates/forms to create for all the legal paperwork online.</p> <p>Online notification of diversions – reducing costs of advertising.</p> <p>On site signage/notices: LHA to provide site signage to be put in place by the landowner / manager instead of doing works to mark out the diversion themselves, this would reduce the cost.</p> <p>[Minimise overall costs: estimate that the cost of the process could be reduced to as little as £300 per application [from estimate of over £2000]. However, could generate new, additional work]</p>	<ul style="list-style-type: none"> • Generally supported in context of option with rider that should not be only online applications and information.
006.	Powers to temporarily divert the PROW would keep same liabilities. There was also a discussion about bringing reduced liability over from the CRow Act to apply to PROW as well.	<ul style="list-style-type: none"> • Further legal consideration of liability implications needed • Process issue: LHAs could accept liability if inspect

Ref No.	2B(iii) Required Elements	Considerations / potential changes to improve option KE
		<div data-bbox="1098 264 1437 331" data-label="Text"> <p>diversion routes prior to coming into force</p> </div> <ul data-bbox="1050 338 1513 667" style="list-style-type: none"> • Liability of diversion route to be as for permissive ones - would decrease attraction of process for landowners • Further reduction in liabilities for PROW in line with CRow Act [or as per MACA England] OK in principle but still raises legal questions
007.	<p>Duty of the landowner/manager to put up signs / temporary fencing (in the instances of stock control) to mark out the diversion.</p> <p>Duty of the LA to provide the signage for the landowner to use.</p> <p>Notices with map of affected route on LHA website.</p>	<ul style="list-style-type: none"> • Yes, include element • 007/alt Centralised portal for notices and applications offers benefits without being essential. Leave for later time • Link to 3A also beneficial. <p>-</p>
008.	<p>Provisions will need to take account of potential higher rights use of footpaths subject to outcome of Reform 2A proposals. Enabling legislation with details provided through regulations would be more flexible and readily revised in future.</p>	<ul style="list-style-type: none"> • Generally agreed that 2A is likely to affect demand for and approach needed for diversions: sensible that 2B developed in light of decision about 2A reforms • Regulatory approach to detailed provisions would be more flexible • Uncertainty about demand and use <p>-</p>
Addition	<p>Information and guidance about the new provisions for the public, land managers and other stakeholders including responsible recreation codes; provide online information about individual temporary diversions for recreational users</p>	<ul style="list-style-type: none"> • Add element about providing information and guidance to support implementation of option • Ensure link to 3A reforms as far as relevant

Next Steps Summary

This report will be presented to the Ministers for formal review in November 2020. Once agreed, the changes suggested to the key element 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 this meeting 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 Beacon National Park Local Access Forum
Brecon Beacon National Park (Expert Group representative)
British Horse Society (BHS) (Expert Group representative)
The British Mountaineering Council (BMC) (*Expert Group representative*)
Cadw
Canoe Wales
Carmarthenshire County Council (*Expert Group representative*)
Ceredigion Local Authority (Expert Group representative)
Country Land and Business Association (CLA) (*Expert Group representative(s)*)
Cycling UK (Expert Group representative(s))
Flintshire and Wrexham Joint Local Access Forum
Institute of Public Rights of Way & Access Management
Ministry of Defence (MOD) (Expert Group representative)
National Representative, Welsh Local Access Forums
Open Spaces Society (OSS) (Expert Group representatives)
Pembrokeshire Coastal National Park Authority (*Expert Group representative*)
Powys Local Access Forum
Rhondda Cynon Taf Local Access Forum
South Wales Outdoor Activity Providers Group (SWOAPG)
Swansea City and County (Expert Group representative)
Wales Adventure Tourism Organisation (National Access Forum Member)
Vale of Glamorgan County Borough Council (*Expert Group representative*)

Natural Resources Wales Internal Responses

- Evidence, Policy and Permitting (EPP) Team
- Knowledge and Evidence, EPP
- Land Management Team
- Marine and Coastal Ecosystems Team
- Marine and Coastal Policy and Planning Team
- North West Wales Operations
- North East Wales Operations
- North West Wales Sites Team
- Outdoor Access and Recreation Team

- South Wales Central Operations Team
- Sustainable Management of Natural Resources (SMNR) Team
- Sustainable Places – Land and Sea Management Team
- Well-being and Integration Team