

Access Reform Programme

Option Selection Paper: Expert Group 1
Changes to CRoW Open Access Land

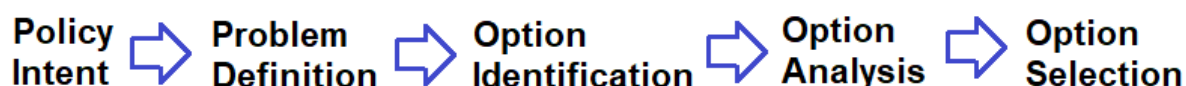
Options Selection Paper: Reforms 1A and 1B

This paper presents revised reform option proposals for implementing ARAG **Reform 1A** and **Reform 1B**. The paper will be considered by **Expert Group 1** at Option Selection workshops in January 2021.

Introduction

The Access Reform Advisory Group (ARAG) was set up and tasked to develop advice to Welsh Government for the delivery of reforms to recreational access legislation.

The process established for the development of ARAG advice is summarised below¹:



The policy intent for Reforms 1A and 1B are:

Summary of Policy Intent for Reform 1A

To enable cycling, horse riding, hang-gliding, paragliding, bathing, using a water vessel or sailboard² to occur by right on land that has a right of access under the 2000 CRoW Act.

Summary of Policy Intent for Reform 1B

To extend CRoW access land to the coast, coastal cliffs and foreshore and to facilitate continuous onward recreational journeys along the whole of the Welsh coast. Consideration is to be given to the merits of including the Wales Coast Path as part of the definition of new CRoW coastal access land.

Working with 3 ARAG Expert Groups, a Problem/Issues Identification Paper was produced for each reform area, from which Option Identification Papers were developed summarising possible approaches to implementing the reform Policy Intent set by Welsh Government. Each proposed reform option (e.g. 1A(i), 1A(ii), 1A(iii)) includes the following information:

- Option title
- Summary description of the option
- A table listing the *key elements*³ for each proposed option

A detailed Option Analysis Report of all the reform options was then produced using direct input from each Expert Group together with evidence invited from members of the National

Access Forum Wales, local access forums and policy and other specialists from across Natural Resources Wales' (NRW) remit.

¹ For further details about the Access Reform Advisory Group (ARAG), the ARAG reform areas and process and published outputs for each stage completed to date go to: [Welsh Government's website](#)

² Reference to higher rights users is as per the policy intent for Reform 1A unless otherwise stated

³ For each option, key elements are the different detailed changes proposed as being needed to implement the reform policy intent. Key elements include reform to legislation, together with other key actions for delivering the reforms.

In online workshops in September 2020, the Expert Groups considered the draft Option Analysis Reports. The information was used to further develop and finalise the Analysis Reports and to develop the Reform Option Selection papers.

Option Selection Process

This Reform **Options Selection paper** together with the respective Analysis Reports will be considered by the Expert Group in January 2021 at **Option Selection workshops**.

The workshops are to identify for each reform the Expert Group's:

- Preferred options
- Accompanying advice and considerations

The information from the January 2021 workshops will be considered with the Analysis Reports and other outputs from the ARAG process to produce a final report of advice to Welsh Government for delivering their policy intent for all the ARAG reforms.

It should be noted that the content of this paper contributes to developing advice to Welsh Government for the reform of access legislation as part of the Access Reform Advisory Group. Any such information and outputs produced during the ARAG process do not represent the policy position of Natural Resources Wales, Welsh Government, organisations that form the Access Reform Advisory Group (Steering Group/Expert Groups) or other organisations that have contributed, nor should it be considered an indication of support or otherwise for the proposals.

Revised Reform 1A Options for Option Selection

As described above, the original reform option proposals have been amended following option analysis. The revised option titles and descriptions for each 1A option put forward for option selection are summarised in the following table:

1A: Revised Option Proposal Title	Revised Outline Description of Option Proposal
i. Amended Countryside and Rights of Way Act (CRoW) Schedule 2 General Restrictions applied to CRoW access land.	Remove higher rights restrictions outlined in the policy intent from CRoW Schedule 2 (excluding 1B coastal land ⁴). Use existing CRoW powers to manage, exclude or restrict the resulting CRoW access rights Strengthen responsible behaviours e.g. through a statutory code.
ii. Higher Rights ⁵ applied to CRoW access land subject to assessment of demand/suitability	Access authorities apply higher rights selectively to defined areas of CRoW land based on an assessment of 'suitability'. Apply existing CRoW legislation to manage the rights as extended.
iii. Higher rights on defined CRoW trails (corridor approach)	Access authority defined linear route/corridor through CRoW land in which Schedule 2 restrictions are lifted, as a minimum, for horse riders and cyclists.

⁴ The application of higher rights to coastal access land will be considered alongside reform 1B

⁵ Reference to higher rights users is as per the policy intent for Reform 1A unless otherwise stated

Reform Option Selection Proposals – identification of required key elements

For each of the revised outline options identified above the summary description and key elements needed with each option approach have similarly been revised. These are summarised below.

1A(i) Amended CRoW Schedule 2 Restrictions

Option Selection Proposal Description:

Amend CRoW Schedule 2, in line with the policy intent, for existing CRoW access land (but not coastal land). Use existing CRoW powers to manage the resulting CRoW rights with exclusions and restrictions as now/or as amended. Include a responsibility clause with the lifting of Schedule 2 restrictions. CRoW Part I powers to be amended to strengthen responsible behaviours, e.g. through a statutory code.

Option Selection Key Elements within ‘Amended CRoW Schedule 2’ Proposal:

Following revisions, the option proposed for selection was considered to require the following key elements within it:

Ref No.	Revised 1A(i) required key element for outline option selection proposal	Considerations with key element
001.	<p>Amend Countryside and Rights of Way Act 2000 (CRoW) Schedule 2 legislation for non-coastal access land to allow for additional recreational activities on current access land as per Policy Intent:</p> <ul style="list-style-type: none"> cycling, horse riding, hang gliding and paragliding; <p>and on CRoW waters (excluding reservoirs):</p> <ul style="list-style-type: none"> non-mechanically propelled vessels; bathing / swimming 	<p>Assumes that the Senedd holds the power referred to in section 44(3) of the CRoW Act.</p> <p>Legal advice required on if this change can be enacted on land dedicated under CRoW section 16.</p> <p>Legal advice required on how this interacts with Forestry Commission (FC) Bylaw 648 which precludes the use of watercraft on FC land.</p> <p>Reform could be implemented by removing the requirement for relevant authorities (RAs) to have the consent of landowners for the relaxation of restrictions from Schedule 2, paragraph 7(1).</p>
002.	<p>Existing CRoW mapping would apply [i.e. no requirement to re-map CRoW access, as access land mapping was only according to defined types of land – mountain, moor etc].</p>	<p>This option does not apply to land covered by CRoW section 15 land as the rights of access are provided under other legislation.</p>
003.	<p>CRoW legislation would apply, including:</p> <ul style="list-style-type: none"> Rights of access [including mapping - see above] 	<p>CRoW section 33 guidance would need to be reviewed to ensure it covered higher rights (and any applicable 1B reform).</p>

Ref No.	Revised 1A(i) required key element for outline option selection proposal	Considerations with key element
	<ul style="list-style-type: none"> Exclusions and restrictions (E&Rs) regime Means of access (Chapter III) 	<p>Welsh Government (WG) would need to seek legal advice over whether CRoW Part I Chapter III (Means of Access) gives the power for an access authority (AA) to improve access to access land within access land (for example across internal fences). If not, legislative reform should provide for this.</p>
004.	<p>Apply an access code to define rights and responsibilities.</p>	<p>Whilst there is broad support for a code and education/promotion of it, no broad consensus has been reached on the form it should take – non-statutory, statutory without sanctions (as is currently the case under section 20 of the CRoW Act) or statutory with sanctions.</p> <p>It should be noted that Reform 1A could proceed using current legislation for responsible recreation guidance and codes, with suitable revisions to text.</p>
005.	N/A*	
006.	<p>Legislation to allow accessibility improvements of access furniture, such as gates and stiles. All furniture to meet accessibility standards, such as BS5709 standard, when replaced.</p>	<p>Any changes could be incorporated into legislation clarifying CRoW Part 1 Chapter III (see above).</p>
007.	<p>New Open Access symbol for on the ground signage (e.g. waymarking). The new design needs to incorporate all users.</p>	<p>A symbol doesn't need to be incorporated into legislation but does need to be standardised.</p> <p>Ordnance Survey and other cartography companies to be informed that different CRoW rights apply in Wales.</p>
008.	<p>Agri-environment funding to be made available for access enhancements and supporting infrastructure.</p>	<p>A post-Brexit reformed agricultural funding scheme could support enhancement of practical access to, and within, access land.</p>
009.	N/A*	
010.	<p>Changes are communicated in Wales - and England, especially in relation to cross-border impact.</p>	<p>A communication plan will be important when implementing any reform to raise awareness and understanding of the new access (this will include revising CRoW related access guidance and information).</p>
011.	<p>Reduced occupiers' liability to recreational users would apply to higher rights by virtue of existing CRoW access legislation.</p>	<p>This is currently the case as CRoW section 13, paragraph 4(a) reduces liability of all entering land under CRoW.</p> <p>WG may wish to reduce liability further, such as to the level provided for on coastal access land in England by section 306 of the</p>

Ref No.	Revised 1A(i) required key element for outline option selection proposal	Considerations with key element
		<p>[England] Marine and Coastal Access Act 2009 (MACA) and/or by reducing the liability owed by the keeper of animals, for example, by an amendment to CRoW section 13.</p> <p>It would be preferable to apply the same level of occupiers' liability in both reforms 1A and 1B.</p>

* Key element from Option Identification proposal stage is no longer included. This will be because following the analysis stage the element was not considered necessary or was incorporated wholly or in part into another key element. The key element reference numbers have been retained to make it easier to compare these revised options with the original versions. See the Analysis Report for more information about changes to key elements.

1A(ii) Application of Higher Rights subject to Suitability Assessment

Option Selection Proposal Description:

Apply higher rights selectively to defined areas of CRoW land subject to an assessment of suitability.

Option Selection Key Elements within 'Application of Higher Rights subject to suitability assessment' Proposal:

The 'Application of Higher Rights subject to suitability assessment' has the following key elements and associated considerations:

Ref No.	Revised 1A(ii) key element for outline option selection proposal	Considerations with key element
001.	<p>Access authorities (AAs) to have powers to:</p> <ul style="list-style-type: none"> • Carry out an assessment of the suitability for higher rights of defined Countryside and Rights of Way Act 2000 (CRoW) access land within their areas • Relax CRoW Schedule 2 restrictions of higher rights for areas of defined CRoW access land assessed as suitable 	<p>AAs could be required to assess areas of CRoW access land in their areas (so the power becomes a duty) to better ensure wider application of rights.</p> <p>There is a significant resource issue for this work to be undertaken.</p> <p>Enactment could be made by altering CRoW Schedule 2, paragraph 7(1).</p>
002.	<p>Powers to define in regulations:</p> <ul style="list-style-type: none"> • Suitability assessment criteria for higher rights access to apply to access land • Assessment processes and how it is applied (including defining an 'area of access land' for assessment purposes) 	<p>Regulations or methodology could determine suitability and assessment process also responsible bodies.</p> <p>Determination process would require provision for: consultations, representations, determination and appeals.</p>

Ref No.	Revised 1A(ii) key element for outline option selection proposal	Considerations with key element
	<ul style="list-style-type: none"> • Process requirements for determining the relaxation of Schedule 2 for higher rights 	<p>Statutory consultees to be specified in the regulations. Local access forums would have discretion to advise on any aspect of the process as part of their existing role and functions.</p>
003.	N/A*	
004.	N/A*	
005.	N/A*	
006.	<p>CRoW exclusions and restrictions (E&R) regime would continue to apply.</p>	<p>Guidance to NPAs issued under CRoW section 33 would need to be reviewed to ensure it covered higher rights (and any applicable 1B reform).</p> <p>Restrictions of higher rights could start at the point of enactment or once the affect has been seen.</p>
007.	<p>Landowner/management resources.</p> <p>-</p>	<p>There would need to be AA resources for assessment and potential other costs such as wardening, practical management and monitoring of impact.</p> <p>WG would need to seek legal advice over whether CRoW Part I Chapter III (Means of Access) gives the power for the access authority (AA) to improve access to access land within access land (for example across internal fences). If not, legislative reform should be implemented to allow for this.</p> <p>Welsh Government (WG) would need to take legal advice about the implications of selectively defining areas of CRoW access land for higher rights, notably any compensation requirements.</p>
008.	<p>CRoW mapping duty and associated processes continue to apply. Mapping depiction should differentiate between rights associated with different CRoW areas</p>	<p>Would also require liaison with Ordnance Survey and other mapping companies.</p>
009.	<p>CRoW section 19 powers to provide associated signage; new higher rights open access symbol/logo for waymarks and signage; unaffected areas to continue with existing signage and waymarks</p> <p>-</p>	<p>Standardise design for new waymark disks, access point signs and directional signage for access land with higher rights. Guidance about use by AAs.</p>

Ref No.	Revised 1A(ii) key element for outline option selection proposal	Considerations with key element
010.	Change CRoW Schedule 2 for higher rights as per policy intent for any assessed access land areas	WG could consider a flexible approach to assessing and determining suitability allowing variations of higher rights applied to areas e.g. only cyclists and/or horse riders.
011.	N/A*	
012.	N/A*	
013.	Revise CRoW powers to allow enhancement of means access to and within access land for higher rights so as to be applicable to CRoW access land generally. Would be applied at discretion of AA.	WG would need to seek legal advice over whether CRoW Part I Chapter III gives the power for the AAs to improve access to access land within access land (for example across internal fences). If not, legislative reform should be implemented to allow for this.
014.	'Enhanced' access by suitability, considerations could include <ul style="list-style-type: none"> - Impacts of recreational pressure - Accessibility of land - Demand for access 	NB: powers for regulations to define matters such as assessment criteria and methodology is provided in 002
015.	Reduce further the CRoW section 13 level of occupiers' liability for legitimate users of CRoW access land.	Options include: <ul style="list-style-type: none"> – reduced liability stays during E&R; – further reduce occupiers' liability on par with that afforded by section 306 of MACA for coastal access land in England. – reduce further the occupiers' liability due to injury caused by livestock? <p>It would be preferable to apply the same level of occupiers' liability in both reforms 1A and 1B.</p>

* Key element from Option Identification proposal stage is no longer included. This will be because following the analysis stage the element was not considered necessary or was incorporated wholly or in part into another key element. The key element reference numbers have been retained to make it easier to compare these revised options with the original versions. . See the Analysis Report for more information about changes to key elements.

1A(iii) Higher Rights on Defined CRoW Trails (corridor approach)

Option Selection Proposal Description:

Extend CRoW Act to include powers for access authorities to define linear routes/corridors through CRoW access land in which Schedule 2 higher rights restrictions for cyclists and horse riders are lifted. CRoW legislation would generally apply to such routes.

Key Elements within 'Higher Rights on Defined CRoW trails' Proposal:

This option was considered to require the following elements within it:

Ref No.	Revised 1A(iii) key element for outline option selection proposal	Considerations with key element
001.	<p>Amend Countryside and Rights of Way Act (CRoW) to provide powers for access authorities (AAs) to define linear routes/corridors of CRoW access land to which higher rights for equestrian and cyclists apply.</p>	<p>Welsh Government (WG) would need to seek legal advice about the implications of selectively defining corridors of CRoW access land for higher rights, notably any compensation requirements</p> <p>This is a high resource option for both access authorities (AAs) and potentially compensation costs.</p> <p>Reform could be made by altering CRoW Schedule 2, paragraph 7(1).</p>
002.	<p>Powers for AAs to define CRoW higher rights routes would be applicable to all existing access land designated or dedicated under CRoW.</p> <p>Higher rights to be applied to identified corridors would be part of defining process and subject to the AA to determine.</p> <p>Include presumption for Least Restrictive Access (LRA).</p> <p>Powers for regulations to set process of defining new higher rights corridors including AA discretionary consideration, application, assessment of proposed route, determination of proposed route.</p> <p>Proposal/assessment process to define areas to which new higher rights could be applied including:</p> <ul style="list-style-type: none"> - Proposal by application [e.g. by an individual, LAF]; or - Proposal by and at discretion of AA - Assessment of proposal against set criteria - Consultation requirements - Recommendation - Determination by CRoW AA 	<p>Requiring AAs (so the power becomes a duty) to assess areas for higher rights could ensure wider application of reform.</p> <p>Consider using route definition process used for England Coast Path under Marine and Coastal Access Act 2009 [but not apply National Trail designation].</p> <p>Discretion could be given to AAs to apply rights only for cyclists or only for equestrians' rights.</p> <p>Local access forums would have discretion to advise on any aspect of the process as part of their existing role and functions.</p> <p>Further detailed developed of option processes, assessment criteria and methodology (etc) would be needed.</p>

Ref No.	Revised 1A(iii) key element for outline option selection proposal	Considerations with key element
	<p>- Implementation of route [including means of access to and within land]</p> <p>Criteria to be defined in regulations could includes: demand/need, route characteristics [including dimensions of corridor] existing access rights, physical characteristics, nature/heritage conservation.</p>	
003.	<p>Exclusions and restrictions (E&Rs) restrictions to CRoW routes to include presumption of onward travel and to allow variation of route or provision of alternative route for such onward journeys.</p>	<p>CRoW section 33 guidance would need to be reviewed to ensure it covered higher rights (and any applicable 1B reform).</p> <p>The process for varying a route on CRoW access land for an E&R would also need to be developed and may need to follow similar processes to the original definition of the route.</p> <p>Not all routes will be through routes e.g. they may be to a viewpoint.</p> <p>Implementation of alternative route could be by amending CRoW Schedule 2 Paragraph 7(2)(b) so that the Relevant Authority (RA) or AA could specify a period of time (assuming Schedule 2, paragraph 7(1) is amended as per key element 001.</p>
004.	<p>Review and amend CRoW Part I Chapter III if necessary, to provide powers for AA to facilitate the means of access to and within access land for higher rights users [and for people with mobility problems] where necessary Powers for Natural Resources Wales (NRW) to provide guidance and advice about the type of provision for facilitating higher rights and for considering Least Restrictive Access.</p>	<p>Retain CRoW Part I Chapter III as it is if legal interpretation is they are already suitable; amend if powers are not currently available. WG may wish to consider if it should be a duty to provide such guidance.</p>
005.	<p>Apply access code to define rights and responsibilities. Provision of resources to develop and support code, including information, education and promotion for people in Wales and visitors.</p>	<p>Whilst there is broad support for a code and education/promotion of it, no broad consensus has been reached on the form it should take – non-statutory, statutory without sanctions (as is currently the case under S20 of the CRoW Act) or statutory with sanctions. It should be noted</p>

Ref No.	Revised 1A(iii) key element for outline option selection proposal	Considerations with key element
	WG, NRW, and all AAs to have a duty to promote the code.	that Reform 1A can proceed without this being resolved.

* Key element from Option Identification stage is no longer included. This will be because following the analysis stage it was not considered necessary or was incorporated wholly or in part into another key element. The key element reference numbers have been retained to make it easier to compare these revised options with the original versions. See the Analysis Report for more information about changes to key elements.

Revised Reform 1B Options for Option Selection

As for Reform 1A above, the original 1B reform option proposals have been amended following option analysis. The revised option titles and descriptions for each 1B option put forward for option selection are summarised in the following table:

1B: Revised Option Proposal Title	Revised Outline Description of Option Proposal
i. Marine & Coastal Access Act (MACA) approach	MACA Approach – define a coastal margin and coastal route for open air recreation on foot.
ii. Extend CRoW to include coastal land using section 3	Extend CRoW using section 3 powers (for rights on foot only) create parallel powers to create higher rights either through a linear route/corridor or by area.
iii. [Revised option] Apply higher rights to preferred 1B(i) or 1B(ii) option	Application of higher rights ⁶ to coastal access once the approach to 1A and 1B have been developed.

1B(i) Marine & Coastal Access Act (MACA) [England] Approach

Outline Option Proposal Description:

Use a Marine and Coastal Access Act 2009 (MACA) type approach (as used for coastal access in England) to define and designate a coastal margin and coastal route for open air recreation on foot. Modify sections of the Countryside and Rights of Way Act 2000 (CRoW) for the definition and management of the coastal access rights.

Option Selection Key Elements within ‘MACA approach’ Outline Proposal:

The Marine and Coastal Access Act approach option was considered to require the following elements within it:

⁶ Higher rights are as per policy intent 1A and includes CRoW rights for horse-riding, cycling, para/hang gliding, and on CRoW mapped water, bathing/swimming and use of non-powered watercraft

Ref No.	Revised 1B (i) key element for outline option selection proposal	Considerations with key element
001.	Amend CRoW to introduce a duty for the Senedd and NRW to secure a coastal margin for spreading room associated with a coastal route	<ul style="list-style-type: none"> This element is equivalent to the duty in section 296 of MACA.
002.	Duty for NRW to produce a coastal access scheme for implementing provisions, including defining of coastal margin and 'coastal route'; in preparing or revising a scheme NRW must consult relevant interests	<ul style="list-style-type: none"> This element emulates sections 298-299 of MACA. The coastal access scheme in England provides the detailed methodology for defining, designating and recording the coastal margin and coastal route
003.	A coastal route defined as a long-distance walking route (LDR) using amended the National Parks and Access to the Countryside Act, 1949 (NPACA)) legislation. Allow for the Wales Coast Path (WCP) to be incorporated as 'coastal route'	<ul style="list-style-type: none"> MACA section 302 'Long-distance routes' (applicable in England only) inserted section 55A's 'Proposals relating to the English coastal route' into NPACA. This requires Natural England to prepare a report proposing the designation of the England Coast Path as a long-distance route as set out in the 1949 Act, as amended
004.	Apply MACA section 306 to reduce occupiers' liability for users of coastal access rights	<ul style="list-style-type: none"> MACA section 306 'Occupier's liability', which applies in England only, introduced to the Occupier's Liability Act 1984' section 6AA, adding reduced liability for physical features (whether of the landscape or otherwise) on coastal access land It would be clearer to have the same level of occupiers' liability applied to all CRoW access land (at the coast and elsewhere).
005.	Provision for roll back of coastal route specified	<ul style="list-style-type: none"> This is provided for by MACA's section 302 'Long-distance routes' inserting into the 1949 Act s55B 'Route subject to erosion'
006.	Provision for management of coastal margin and coastal route	<ul style="list-style-type: none"> Statutory provisions for managing coastal access are within MACA, notably Schedule 20, and apply to [CRoW] 'access authorities' and the 'appropriate countryside body' [NRW if translated to Wales]; also allows for provision of funding by the countryside body to implement coastal access. MACA provisions (see Schedule 20) would supplement existing powers in CRoW to allow for the management of coastal access
007.	Duty for 'access authorities' to ensure least restrictive access (LRA) wherever possible. Associated powers for improvement	<ul style="list-style-type: none"> This duty could be included in legislation and could be extended to others with access responsibilities, such as NRW

Ref No.	Revised 1B (i) key element for outline option selection proposal	Considerations with key element
	and management of accessible infrastructure to and within coastal margin and for coastal route	<ul style="list-style-type: none"> • CRoW sections 34-38 should be reviewed for adequacy to provide for accessibility improvements to and within coastal access land and amended if needed • A new least restrictive access duty would be additional to Equalities Act requirements and has resource implications
008.	N/A*	Omitted as considered unnecessary.
009.	Procedures set out for defining and mapping the coastal margin (spreading room and coastal route) including methods, processes and consultation requirements.	<ul style="list-style-type: none"> • The 'coastal access scheme' provisions (in CRoW section 3A introduced by MACA⁷) provides the means to set out detailed methods and processes for defining the coastal margin (see key element 002) – including consultation requirements • 'Coastal margin' is made up of 'spreading room' and the 'coastal route'. The coastal route is mapped. Spreading room is defined as seaward of the coastal route rather than being mapped, • CRoW sections 4-11 'Maps', and 1949 Act section 51 'General provisions as to long-distance routes', amended where required, should adequately provide for mapping of the coastal route.
010.	CRoW exclusions and restrictions (E&Rs) regime – modified to ensure continuity of access to the coastal margin, including the coastal route	<ul style="list-style-type: none"> • Amendment to E&Rs provisions would remove the right of owners and others to use CRoW section 22 '28-day discretionary exclusions and restrictions. Exclusions and restrictions by <u>application</u> would be available to occupiers • Where WCP/coastal route is on a defined PROW it is 'excepted land' and could not be subject to CRoW exclusions and restrictions
011.	Review and amend definitions of 'excepted land' in CRoW Schedule 1 as they apply to coastal access land	<ul style="list-style-type: none"> • MACA 2009 amended excepted land definitions in CRoW Schedule 1 e.g. to ensure continuity of coastal route and coastal access land.
012.	Recreational code –modification of Countryside Code and other responsible recreation guidance to include coastal access	<ul style="list-style-type: none"> • Subject to selected approach to recreation codes across access reforms as a whole.
013.	Rights apply only to those on foot	<ul style="list-style-type: none"> • Subject to approach taken with reform 1B and reform 1A

⁷ <https://www.legislation.gov.uk/ukpga/2000/37/section/3A>

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1B(ii) ‘CRoW section 3 Mapping of Coastal Land for access on foot’

Outline Option Proposal Description:

Using section 3 of the Countryside and Rights of Way Act 2000 (CRoW) to extend rights of access on foot to coastal land types. The definition of CRoW open access land would be extended to include [to be] defined coastal land types e.g. dunes, beaches, foreshore, coastal flats, cliffs and heath. These coastal land types would be mapped using the same processes as for the original CRoW Part I mapping. Include powers to define a linear coastal route or corridor for the use of higher rights users⁸. Use existing CRoW Part I legislation for managing coastal access land, subject to a review of the adequacy of existing provisions, notably exclusions and restrictions. Provide a responsible recreation code that would include responsibilities in relation to coastal access land [along with other public access].

Option Selection Key Elements within ‘CRoW section 3 Mapping of Coastal Land’ for Access on Foot’ Option Proposal:

The ‘CRoW mapping’ option was considered to require the following elements within it:

Ref No.	Revised 1B(ii) key element for outline option selection proposal	Considerations with key element
001.	Use section 3 of the Countryside and Rights of Way Act 2000 (CRoW) to allow defined coastal land to be mapped as access land for open air recreation on foot	<ul style="list-style-type: none"> CRoW section 3 gives Senedd Cymru a power to extend open access to include ‘coastal land’ by order and to make any necessary consequential amendments
002.	Develop definitions of coastal land to which CRoW rights (on foot) would apply. Include foreshore, coastal cliff, dunes, flats, beaches, coastal heath	<ul style="list-style-type: none"> The named coastal land types in this 002 key element are already included in wording of CRoW section 3. However, there are section 3 powers to include coastal land of any description Section 3 coastal access land types should be reviewed, and detailed requirements defined within new regulations (see also 003)
003.	CRoW mapping regulations amended to reflect change – including defining land parcels and	<ul style="list-style-type: none"> Mapping regulations in CRoW would need to be reviewed and amended as appropriate to enable coastal land to be

⁸ Provision would allow for higher rights to be applied to coastal access land if Government decided to do so – whether at the same time or at a later date

Ref No.	Revised 1B(ii) key element for outline option selection proposal	Considerations with key element
	inland boundary of coastal access land	<p>mapped as CRoW open access e.g. determining the inland boundary of coastal access land</p> <ul style="list-style-type: none"> • CRoW sections 4-11 'Maps' (and associated regulations) reviewed and amended as needed should adequately provide for this
004.	N/A*	Omitted as repeats key element 003.
005.	Reduce liability owed by landholders to users of coastal access rights in line with that provided in England's Marine and Coastal Access Act 2009 (MACA)	<ul style="list-style-type: none"> • See section 306 of MACA • For clarity and consistency, it is preferable to make occupiers' liability provisions the same on all CRoW access land
006.	CRoW exclusions and restrictions regime amended to account for coastal access specific requirements	<ul style="list-style-type: none"> • CRoW sections 21-33 'Exclusion or Restriction of Access' (E&Rs) reviewed Retain E&Rs by application; do not provide for section 22 closures by notification on coastal access land
007.	Review and redefine CRoW Schedule 1 'excepted land' to ensure applicability to coastal context	<ul style="list-style-type: none"> • MACA included amendments to CRoW Schedule 1 'Excepted Land for Purposes of Part I' in relation to implementing coastal access in England that can generally inform a review and amendments for the 1B reform.
008.	Extend powers in CRoW to allow for management of access within coastal access land including boundary crossings - for recreational and land management purposes & applying a least restrictive access (LRA) approach	<ul style="list-style-type: none"> • CRoW sections 34-39 'Means of access' already makes provision for the management of access to CRoW land, including boundary crossings. However, the applicability of the powers to provide crossings across internal boundaries (such as walls and fences) is unclear • Reform should include a specific requirement to apply a least restrictive access approach to access management. • The reform should provide for facilitation of improved coastal access and onward journeys
009.	Introduce a statutory access code covering rights and responsibilities, to include specific provisions for coastal access; appropriate public bodies to have duty to promote the code	<ul style="list-style-type: none"> • Widen duty to promote access code to include other public bodies, as appropriate
010.	Rights to coastal access land apply only to those on foot [CRoW as now]	<ul style="list-style-type: none"> • Subject to a decision about whether or not to apply higher rights to coastal access land • Application of higher rights could be implemented as part of Reform 1A or

Ref No.	Revised 1B(ii) key element for outline option selection proposal	Considerations with key element
		separately via Reform 1B (see option 1B(iii))
011.	CRoW coastal access land shown on NRW's website as part of NRW's CRoW mapping and on Ordnance Survey (OS) mapping	<ul style="list-style-type: none"> • NRW is required to show CRoW access land on its website. CRoW coastal access would therefore have to be included • CRoW mapping is provided to OS and the mapping data to the Welsh Government's Lle portal
012.	N/A*	Omitted KE as matter now within revised Option 1B(iii)
013.	CRoW definitions of 'commercial activity' and 'events'. Redefine what falls in or outside CRoW rights following review. Starting with consideration of definitions used in Scottish Land Reform Act. Use regulatory powers to allow easier futureproofing.	<ul style="list-style-type: none"> • An ARAG cross-cutting issue. • Any revised definitions should also be considered within other ARAG reforms, most importantly Reform 1A

* Key element from Option Identification stage is no longer included. This will be because following the analysis stage it was not considered necessary or was incorporated wholly or in part into another key element. The key element reference numbers have been retained to make it easier to compare these revised options with the original versions. See the Analysis Reports for more information about changes to key elements.

1B(iii) [Revised option] Apply higher rights through option 1B or 1A based on decision for progressing each reform

Section 3 CRoW with Higher Rights Mapping of Coastal Land

Outline Option Proposal Description:

Apply higher rights⁹ to coastal access land through either the decided approach to reform 1A or reform 1B have been developed. See option 1B(i), option 1B(ii) for how CRoW access land and associated rights could be extended to include coastal land. See reform 1A for options developed for how higher rights could be applied to CRoW access land.

Option 1B(iii) would require a relaxation of schedule 2 of the CRoW Act to apply to coastal access land based on the approach to either reform 1A or reform 1B as decided. Relaxing Schedule 2 would have the effect of extending rights of access to higher rights as well as those on foot. Higher rights would apply to all or specified coastal access land according to the preferred option.

⁹ Higher rights are as per policy intent 1A and includes CRoW rights for horse-riding, cycling, para/hang gliding, and on CRoW mapped inland water, bathing/swimming and use of non-powered watercraft

A table of key elements for 1B(iii) has not been included (as for the other reform options) as those details would best be developed in the light of the approach to be taken.

Appendix A

ARAG Expert Group 1 members:

Name	Organisation
Richard Ball	Brecon Beacons National Park Authority
Hugh Craddock	Open Spaces Society
Sophie Dwerryhouse	County Land and Business Association
Arwel Evans	Isle of Anglesey County Council
Kieran Foster	Cycling UK
Jonathan Hughes	National Trust
Elfyn Jones	British Mountaineering Council
Rachel Lewis-Davies	National Farmers' Union Wales
James Nevitt	Ministry of Defence
Rhian Nowell Phillips [Rachel Evans from August 2020]	Countryside Alliance
Pete Rutherford	Snowdonia National Park Authority
Mark Weston	British Horse Society
Helen Lewis	Welsh Government
Joe Roberts	Natural Resources Wales
Chris Heaps	Natural Resources Wales
Jont Bulbeck	Natural Resources Wales
Jayne Carter	Natural Resources Wales