

Access Reform Programme

Option Selection Paper: Expert Group 2
Flexibility on Public Paths

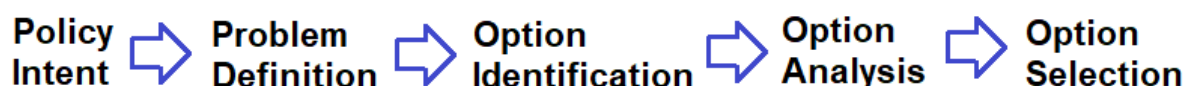
Options Selection Paper: Reforms 2A and 2B

This paper presents revised reform option proposals for implementing ARAG Reform 2A and Reform 2B. The paper will be considered by Expert Group 2 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 2A and 2B are:

Summary of Policy Intent for Reform 2A

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

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.

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. 2A(i), 2A(ii), 2A(iii)) includes the following information:

- Option title
- Summary description of the option
- A table listing the *key elements*² 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 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 2A 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 2A option put forward for option selection are summarised in the following table:

2A: Revised Option Proposal Title	Revised Outline Description of Option Proposal
i. Statutory application of cycling and horse-riding rights to public footpaths	Apply by statute cycling and horse-riding rights to the public footpath network across Wales using a 1968 Countryside Act section 30-type approach, with an associated caveat or clause for responsible use.
ii. Cycling and horse-riding rights applied by statute to footpaths with powers to exclude those rights based on unsuitability	As for option 2A(i), cycling and horse-riding rights statutorily applied across the public footpath network in Wales using a section 30-type approach. Powers would be provided for local highway authorities to assess paths for unsuitability of cycling and horse-riding rights. Paths could be excluded where use by such rights were assessed to be unsuitable. 'Unsuitability' would be determined on the basis of a formal assessment process and criteria (an unsuitability assessment).
iii. Selective application of cycling and higher rights to	Cycling and horse-riding rights would be applied to public footpaths on a case-by-case basis. Local highway authorities would have a power to appraise

footpaths applied on a case-by-case basis	the public footpaths across their public rights of way (PROW) network for horse-riding and cycling rights by applying standard criteria. The process would be linked to local authorities' Rights of Way Improvement Plan (ROWIPs).
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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.

2A(i) Statutory Application of Rights to Cycle and Horse-ride on Public Footpaths

Option Selection Proposal Description:

To extend, across all public footpaths in Wales, the range of activities that the public can undertake by right. A Countryside Act 1968, section 30-type provision³ would give statutory rights for cycling and horse-riding (often termed higher rights) on public footpaths. There would be no duty for local highway authorities (LHAs) to maintain or improve footpaths for cycling and horse-riding rights use. LHAs' powers to improve and manage paths would be enhanced. A clause or caveat in the legislation would also be put in place to outline responsible use on the paths and provide a mechanism for excluding and restricting access for individuals using paths irresponsibly.

Option Selection Key Elements within 'Statutory Application of Cycling and Horse-riding rights to Footpaths' Proposal:

The revised option proposed for selection has the following key elements, together with associated considerations:

Ref No.	Revised 2A(i) required key element for option selection proposal	Considerations with key element
001.	Legislation amended to apply by statute rights for cycling and horse-riding on public footpaths across Wales [using a Countryside Act 1968 section 30-type provision]	<ul style="list-style-type: none"> Consider further how rights for commercial activities apply to public rights of way (PROW) and can better align with how they apply to CRoW access land
002.	Legislation [along lines of Countryside Act section 30(3)] to specify local highway authority and other's maintenance obligations on public footpaths is not changed by the reform	<ul style="list-style-type: none"> Therefore applying cycling and horse-riding rights to public footpaths does not increase the duty to maintain public footpaths beyond those that currently apply

³ Section 30 (s30) of the Countryside Act 1968 applied rights to pedal cycles on bridleways subject to cyclists giving way to walkers and horse riders. There is no requirement for local highway authorities to maintain bridleways for cyclists. For the online s30 legislation text click [here](#)

Ref No.	Revised 2A(i) required key element for option selection proposal	Considerations with key element
003.	Mapping regulations for Definitive Map & Statement of PROW amended to reflect change of rights.	<ul style="list-style-type: none"> • Depiction through other mapping sources would also need to reflect changes (e.g. Ordnance survey)
004.	N/A*	
005.	Reduced occupiers' liability to be applied to public rights of way and better harmonised with the level of occupiers' liability applied for CRoW access land	<ul style="list-style-type: none"> • Legal advice needed on if and how occupiers' liability owed to recreational rights users on PROW can be reduced • A cross-cutting matter in ARAG reforms as whole is if and how to better harmonise occupiers' liability for those exercising PROW & CRoW rights
006.	A duty and associated powers given to local highway authorities (LHAs) to consider modifying legal limitations (infrastructure) to allow use by all applicable rights (including cycling and horse riding) when making new authorisations for or replacing existing infrastructure on public footpaths and other PROW. Local highway authorities would have to have regard to the need to limit illegal access when facilitating accessibility improvements.	<ul style="list-style-type: none"> • The least restrictive access principle should be applied in making authorisations and changes to infrastructure on footpaths. • Existing requirements when authorising structures, such as to have regard to land management needs should remain • The duty should not require local highway authorities to systematically review all existing legal limitations on their PROW networks. • Improving the accessibility of existing legal limitations on footpaths should be eligible for sustainable land use payment schemes.
007.	Legislation should provide powers for LHAs to restrict or exclude access to manage or prevent impacts of use on public footpaths for specified reasons (including for land management, nature and heritage conservation, health and safety). A least restrictive approach to the application of restrictions should be required. The restrictions should be open to application, consultation and have an appeals process	<ul style="list-style-type: none"> • Legislative mechanism will need to be determined (could include revised traffic regulation order (TRO) process or new approach) and have flexibility to apply to different classes of users where justifiable • Consider interaction with ARAG reform 2B
008.	Provide LHAs with powers to upgrade signage and waymarking of footpaths with cycling and horse-riding rights, including the power to place signage	<ul style="list-style-type: none"> • Legal advice should consider the adequacy of existing powers and duties and thus what reforms may be required

Ref No.	Revised 2A(i) required key element for option selection proposal	Considerations with key element
	for reasons other than direction finding.	
009.	Embed clause or caveat for regulations to specifically outline responsible horse riding and cycling rights use, in guidance or other mechanism. This would include a “hierarchy of users” on paths and defined “formal agreements” on sections of path that were deemed to be problematic. Failure to comply could trigger exclusion of a user.	<ul style="list-style-type: none"> • Develop a statutory mechanism (e.g. similar to way Scottish Outdoor Access Code is laid out or CRoW section 2 (4)) that deals with individual users misuse, resulting in their personal loss of rights and parallel enforcement mechanism • See also Key Element 010
010.	Place duty on Natural Resources Wales/Welsh Government (NRW/WG) to issue a code of conduct for shared used PROW, and a duty on WG/NRW and all Access Authorities to promote understanding of it.	<ul style="list-style-type: none"> • Ensure consistent with associated responsible recreation reforms
011.	Communication of access rights (including in mapping, a communications campaign and within [revised] countryside code, responsible recreation information and guidance work)	<ul style="list-style-type: none"> • A matter for implementation stages of reform
012.	Rules around commercial activity on PROW and CRoW reviewed and better aligned in relation to cycling and horse-riding rights. Clearer definitions of commercial activity in relation to access rights developed and communicated.	<ul style="list-style-type: none"> • Ensure consistent with related matters in other access reforms • Specific provision for 2A reform legislation

* 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.

2A(ii) Cycling and horse-riding rights applied to public footpaths with powers to exclude those rights based on unsuitability

Option Selection Proposal Description:

Cycling and horse-riding rights would be applied by statute across the public footpath network following the Countryside Act 1968 section 30 type approach outlined in Reform 2A(i). There would be no duty for local highway authorities (LHAs) to maintain such public footpaths for cycling and horse riding. Powers would be

provided for LHAs to assess paths for the unsuitability of higher rights. Paths that were assessed by a LHA to be unsuitable could have the application of cycling and horse-riding rights removed. ‘Unsuitability’ would be determined on the basis of a formal assessment process and criteria (an unsuitability assessment) with provision for consultation and appeals.

Option Selection Key Elements within ‘Cycling and Horse-Riding Rights Applied by Statute to Footpaths with Powers to Exclude Based on Unsuitability’ Proposal:

The revised option proposed for selection has the following key elements and associated considerations:

Ref No.	Revised 2A(ii) required key element for option selection proposal	Considerations with key element
001.	Legislation to apply rights to cycle and horse-ride on public footpaths across Wales using a Countryside Act 1968 section 30-type approach [see Reform option 2A(i) for those required key elements]	[See footnote 3 above re. section 30 approach]
002.	Local highway authorities (LHAs) to have powers to assess public footpaths for unsuitability for higher rights use [with flexibility to exclude different types of user rights] – no new or additional powers to restrict or exclude footpath rights.	<ul style="list-style-type: none"> • Discretionary power to assess unsuitability • Legislation should allow for LHAs to assess public footpaths in advance of new rights coming into effect
003.	Powers for Welsh Government (WG) to make regulations setting out unsuitability assessment process including to provide guidance from WG to LHAs as to process and criteria for assessment and associated requirements (e.g. for consultations)	Process to include rights making of representations to LHA about unsuitability assessment
004.	Powers to set framework for unsuitability assessment criteria	<ul style="list-style-type: none"> • Unsuitability assessments need to provide fair processes. Legal advice will need to inform specific key elements required (e.g. provision for appeals) • Criteria could include: infrastructure; widths of current paths; public safety; volume of use – current and expected
005.	Local highway authorities to have duty to consult specified organisations when carrying out unsuitability assessments.	<ul style="list-style-type: none"> • Local highway authorities’ approach to dealing with representations about assessing the unsuitability of routes should be defined • Local highway authorities should set out their approach to implementing this reform in ROWIPs [subject to 3B reform]

Ref No.	Revised 2A(ii) required key element for option selection proposal	Considerations with key element
		<ul style="list-style-type: none"> Local access forums' (LAFs) have scope and discretion within their existing role and functions to advise on a LHA's approach (here and elsewhere in the process) e.g. to advise on the LHA's approach to the appraisal of the network, or on specific cases
006.	Discretionary powers for LHAs in making decisions: LHAs should be able to rule out certain routes for cycling and/or horse-riding rights	Local access forums (LAFs) – see comment with 005 above
007.	Inclusion of appeals as part of appraisal process – this should initially be decided by the LHA. Provision made for appeals for complex or unresolved issues would move to the Planning Inspectorate for decision	
008.	Discretionary powers for LHAs to review the unsuitability of public footpaths for cycling and horse-riding rights – for those routes excluded permanently or allow for review [see right]	<ul style="list-style-type: none"> Re-appraisals should generally be undertaken if there are material changes to circumstances rather than based on fixed periods
009.	Powers for the local highway authorities to consider and amend structures on public footpaths – would be needed to appraise routes designated as unsuitable (i.e. unsuitable path furniture (e.g. gates or stiles) cannot be sole reason for determination of unsuitability)	<ul style="list-style-type: none"> Where proposing changes to path furniture, include requirement that local highway authorities' consult with owner of structures, including consideration of subsequent upkeep Resource implications, including costs, will be proportionate to the use of powers and need to be considered
010.	Define commencement time – e.g. how and when new rights come into force	<ul style="list-style-type: none"> Potential phasing of enabling legislation, such as making of unsuitability assessments, before rights generally applied Put in place resources and supporting work e.g. for unsuitability assessments and to provide for practical works Delay to the implementation of rights should be a time-bounded period
011.	LHAs to receive more powers to sign along routes where complexity of access provision is increased, e.g. <ul style="list-style-type: none"> Advisory signs where access rights have changed and/ or are restricted (through designation as unsuitable) 	

Ref No.	Revised 2A(ii) required key element for option selection proposal	Considerations with key element
	- Type and placement of sign would be LHA decision	
012.	Education around revised Countryside Code <ul style="list-style-type: none"> - Revision of CC and related activity codes - Public awareness campaign[s] - Landowner awareness - Enforcement possibility and setting out what is expected of people Setting norms for compliance	<ul style="list-style-type: none"> • Consider reform to responsible recreation arising from ARAG, such as whether to develop a statutory outdoor access code (akin to that in Scotland)

* 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.

2A(iii) Selective Application of Cycling and Horse-riding Rights to Public Footpaths on a Case-by-Case Basis

Option Selection Proposal Description:

Cycling and horse-riding rights would be applied to public footpaths on a case-by-case basis. Local highway authorities would have a duty to appraise the public footpaths across their public rights of way (PROW) network for horse-riding and cycling rights by applying standard criteria. The process would be linked to an authority's Rights of Way Improvement Plan (ROWIP).

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

This revised option proposed for selection has the following key elements and associated considerations:

Ref No.	Revised 2A(iii) required key element for option selection proposal	Considerations with key element
001.	Legislation to provide powers for local highway authorities (LHAs) to assess and designate individual public footpaths for horse-riding and cycling rights to be applied.	<ul style="list-style-type: none"> • Therefore, assessments and designation of public footpaths would be at the discretion of LHAs
002.	Powers for regulations to set out process of designation, including: <ul style="list-style-type: none"> - criteria to assess footpaths - provision for assessment of impacts (e.g. to land management, nature conservation/ wildlife, health and safety (H&S) considerations etc) 	<ul style="list-style-type: none"> • Legal advice needed to determine if compensation payments for designated footpaths are required as part of processes • Further work will be required to define criteria and assessments needed at legislative preparation stage

Ref No.	Revised 2A(iii) required key element for option selection proposal	Considerations with key element
		<ul style="list-style-type: none"> • However, note assessment criteria should include check of path's legal status using available LHA records e.g. definitive map and statement (DM&S) and any to be determined processes
003.	Legislation should provide for simple and time limited processes	<ul style="list-style-type: none"> • To deliver benefits, processes would need to be relatively easier and quicker than existing public path orders for creation of paths
004.	Make legislative provision for consultation and appeals process	<ul style="list-style-type: none"> • LAFs can input within terms of existing advisory role both to the strategic approach and with specific cases
005.	Definitive map (DM) regulations amended to reflect change	<ul style="list-style-type: none"> • Develop details at drafting of legislation
006.	N/A*	
007.	Additional powers for LHAs to modify limitations on paths (infrastructure) to facilitate access for higher rights and for accessibility reasons	<ul style="list-style-type: none"> • Additional powers for LHAs/ national park authorities to modify limitations to use, such as infrastructure and surfacing
008.*	N/A	
009.	<p>Powers for LHAs to restrict or exclude different rights through a legislative mechanism for mitigation or prevention of damaging impacts on the public footpath or other rights of way.</p> <p>Landholders to be able to apply to LHA for a restriction or exclusion for impacts on specified land management (e.g. agriculture and forestry, nature conservation, wildlife, health and safety considerations etc)</p>	<ul style="list-style-type: none"> • Powers applicable to all damaging impacts (not just higher rights use) • A statutory code mechanism to take enforcement actions against irresponsible behaviour (links to responsible recreation section of Cross-cutting Theme Analysis Report) • Potential for Traffic Regulation Order (TRO) provisions to be developed for this element (e.g. consider Road Traffic Regulation Act 1984 sections 22-22A provisions) • 2B provisions could provide sufficient scope to address this need
010.	Consider new term /definition for the footpaths designated with higher rights; also provision of revised statutory signage	<ul style="list-style-type: none"> • Consider: <ul style="list-style-type: none"> ○ Amending footpath terminology; or ○ rename designated footpaths as 'public paths' • Legislative provisions should retain DM&S and public mapping record as footpath while depicting additional rights that apply
011.	Recreational code – modification of Countryside Code, therefore advisory guidance only	<ul style="list-style-type: none"> • Provision of statutory code is being considered separately (see Considerations for KE 009 above) • Amendment of Countryside Code

Ref No.	Revised 2A(iii) required key element for option selection proposal	Considerations with key element
		<ul style="list-style-type: none"> Note need for other relevant information & guidance to reflect changes

* 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 2B Options for Option Selection

As for Reform 2A above, the original 2B reform option proposals have been amended following option analysis. The revised option titles and descriptions for each 2B option put forward for option selection are summarised in the following table:

2B: Revised Option Proposal Title	Revised Outline Description of Option Proposal
i. Diversion or closures by notification	Provide a simple process for making short-term diversions of public rights of way (PROW) by registered landholders using a notification to the local highway authority (LHA). 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 maps, 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 the LHA.
ii. Statutory access code diversion	A new enforceable outdoor access statutory code would include provision of powers for landholders to divert public paths 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. Temporary diversion for works	Provide a statutory mechanism for local highway authorities (LHAs) to make short-term, temporary diversions of public paths for specified agricultural and forestry land management reasons. Landholders would have the right to apply for such diversions to public paths on their land, which would have to be approved by LHAs. A suitable alternative route and on-site signage would be provided by the landholder; the application and any approved diversion, with maps, would be advertised online. The legislation would be modelled on section 135A of the Highways Act 1980.

2B(i) Diversion or closures by notification

Outline Option Proposal Description:

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.

Option Selection Key Elements within 'MACA approach' Outline Proposal:

The 'Diversion or closures by notification' option was considered to require the following elements within it:

Ref No.	Revised 2B(i) required key element for option selection proposal	Considerations with key element
001.	N/A*	Original text now covered by KE 002 and KE 003
002.	<p>New legislation provisions:</p> <ul style="list-style-type: none"> - power for registered landholders to notify of short-term temporary diversions of footpaths and bridleways - powers for the Senedd to issue regulations to govern process and associated requirements 	<ul style="list-style-type: none"> • Closures would not be provided for – they would require use of existing provisions such as traffic regulation orders (TROs) <p>Regulations for all relevant matters in following key elements e.g. accepted reasons for diversions; templates for notifications and requirements for providing alternative diversion routes</p>
003.	<p>Local high authorities (LHAs) should receive all relevant information packaged within notification from landowners:</p> <ul style="list-style-type: none"> - Checklist (reasons for diversion, of what and why) - Map/plan of route diversion - Alternative route available <p>LHA ability to check frequency of diversions and question need</p>	<ul style="list-style-type: none"> • Regulatory powers provided by key element 002 (see above)
004.	<p>Registration by landholders of land for which notifications for temporary diversions can be made. Associated requirement for LHAs to keep a register of landholders and manage the register:</p> <ul style="list-style-type: none"> - Registration/ signup required to use the simpler temporary diversion process - Provides landownership/ plans <p>LHAs can identify land parcels and ownership and have on record details of previous diversions and reasons</p>	

Ref No.	Revised 2B(i) required key element for option selection proposal	Considerations with key element
005.	<p>Option for temporary diversion of specified users:</p> <ul style="list-style-type: none"> - Exclusion from defined PROW 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 <p>Requirement for provision of an alternative route</p>	<ul style="list-style-type: none"> • Provision of permissive alternative routes remains an option [not needing legislative reform]
006.	<p>Grievance process allowing a more transparent [challengeable] process. Available to users/public</p>	
007.	<p>Regulations to set out requirements for notices including:</p> <ul style="list-style-type: none"> - to be date stamped [start and end dates] - Onus on landholder to ensure notices are in place and removed on date stated <p>LHA enforcement procedure to prompt this, ensuring diversions are not in place longer than necessary</p>	<p>To be covered by regulatory powers in key element 002</p>
008.	<p>Communicating notifications: Duty for landholders to notify LHA - online LHA duty to notify by electronic notice and communication to [e.g.]:</p> <ul style="list-style-type: none"> - User groups - Public - Others (as specified) <p>Landholders:</p> <ul style="list-style-type: none"> - On-site notice and plan required regardless of closure length and duration 	<p>To be included in regulatory powers in key element 002</p>
009.	<p>Outdoor responsible recreation and access code[s] revised as appropriate</p>	<ul style="list-style-type: none"> • All relevant responsible recreation and access codes and guidance to be revised as part of implementing option • Associated information campaign raising awareness of users, land managers and others about the provisions and potential for route changes at ground level

* 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 Report for more information about changes to key elements.

2B(ii) Statutory access code diversion

Outline Option Proposal Description:

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.

Option Selection Key Elements within ‘Statutory access code diversion’ Outline Option Proposal:

The ‘Statutory Access code diversion’ option was considered to require the following elements within it:

Ref No.	Revised 2B(ii) required key element for option selection proposal	Considerations with key element
001.	Legislation for an enforceable statutory access code to enable this option (which would have both mandatory and advisory elements)	
002.	Define (in guidance within code) circumstances of short-term, temporary diversion(s). Clearly defined circumstances in code for users/landowners/ managers to make diversions and limits to use and agricultural land management reasons	<ul style="list-style-type: none"> • Qualifying criteria for using the statutory code- based temporary diversion (e.g. purposes, duration, suitable alternative route provision, extent of PROW affected etc) • Guidance would require landholder and stakeholder input (e.g. National Access Forum Wales) • Option is not to replace provisions for longer term or permanent diversions or for certain types of work affecting a public path (e.g. not works changing route)
003.	Define reasonable alternative route <ul style="list-style-type: none"> - Safe and reasonable provision - Equivalent access to existing route - Notices, signage - Liabilities that apply 	<ul style="list-style-type: none"> • Liability around diversions and related needs further legal consideration at drafting stage
004.	Communication of within Code <ul style="list-style-type: none"> - What to expect included in the code - Cascading the code to all - Providing information about all aspects to the public, access managers and landholders 	
005.	Development of an overall Statutory Code – for all CRoW/PRoW Access	<ul style="list-style-type: none"> • Consider also the merits of improved framework for permissive alternative

Ref No.	Revised 2B(ii) required key element for option selection proposal	Considerations with key element
		<p>routes using elements of this approach although permissive routes don't meet concerns of land managers about liability of alternative routes</p> <ul style="list-style-type: none"> • Other PROW processes would be used for any temporary diversions where qualifying criteria for this process are not met
006.	Code to define details about limits to the extent and duration of temporary diversions	<ul style="list-style-type: none"> • Details such as duration, frequency of use, reasons for use [etc] would need to be defined in the Code. • 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
007.	Communication of temporary diversion: <ul style="list-style-type: none"> - Signage template and notices (to be part of code) - Dedicated social media presence about diversions 	<ul style="list-style-type: none"> • Include standardised templates for notices and directional signage • Social Media accounts for public to 'go to' for all statutory code information.
008.	Grievance process through local highway authority <ul style="list-style-type: none"> - For users who have a grievance or complaint over short-term diversions using this procedure - Penalties or an order to be provided for in the statutory code process or directly linked to it 	<ul style="list-style-type: none"> • Likely to increase burden on stakeholders

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2B(iii) Temporary diversion for works

Outline Option Proposal Description:

Use the same mechanism that is being developed in England to create temporary diversions to PROW under section 135A of the Highways Act

Option Selection Key Elements within 'Temporary Diversion for Works' Outline Option Proposal:

The 'Temporary diversion for works' option was considered to require the following elements within it:

Ref No.	Revised 2B(iii) required key element for option selection proposal	Considerations with key element
001.	<p>Define [drawing on draft legislative proposals in England] a new section 135A of the Highways Act 1980:</p> <ul style="list-style-type: none"> - Local highway authorities (LHAs) to have new powers to create temporary diversions for specified land management reasons: [agricultural and forestry related] works and agricultural management of livestock. - Determination and making of temporary diversions by LHA; - Diversions duly made to have status of temporary PROW with associated powers [for LHAs], rights and responsibilities - Limitations to use - Regulations for process 	<ul style="list-style-type: none"> • Closures are not provided for. These would require use of existing provisions such as traffic regulation orders (TROs) • 2B development will need to consider the decision taken with 2A reform • Powers for LHA to divert onto neighbouring land with agreement • Some limitations could be set in primary or secondary legislation and could include limited number, duration and extent of such diversions/ closures within any land holding or neighbouring land holding at any one time and within a fixed period • Discretionary powers for LHA would provide greater flexibility • Current TROs use is low – scale of use of this provision is 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; health & safety; least restrictive access (LRA) etc]; - online applications [and notices – see below] to LHA; - standards for provision of alternative routes [including connectivity; form of notices/signage 	<ul style="list-style-type: none"> • Regulatory approach would provide greater flexibility in setting detailed requirements (see consideration above about limitations in terms of duration, extent etc) • A centralised application [and notification] portal for Wales could be developed in future, potentially linked to Reform 3A, but is not essential to progressing the reform as proposed. [Potentially used for range of public access processes - with links to Reform 3A, integrated access map]
003.	<p>Provision of 14-day notice period before any work is carried out. Notice required to be given online through the LHA's website 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"> • Exact notice period required could be consulted on.
004.	N/A*	

Ref No.	Revised 2B(iii) required key element for option selection proposal	Considerations with key element
005.	<p>Online application process to reduce the administration time for the LHA, including templates/forms to create all required legal paperwork online.</p> <p>Online notification of diversions – reducing costs of advertising.</p>	<ul style="list-style-type: none"> • Provision of 2 step outline and confirmation stages could provide greater flexibility for land managers to use provisions • Alternatives to online processes will be needed to meet equality duties
006.	<p>The temporarily diverted PROW would have same liabilities for LHA and landholders.</p>	<ul style="list-style-type: none"> • Further legal consideration of liability implications needed to confirm this is reasonably achievable • LHAs could accept liability if inspect diversion routes prior to coming into force but has resource implications for LHAs and possible charges to landholders • Liability of diversion route could be set as the same as for permissive ones - would decrease attraction of process for landowners and make similar to permissive alternative routes • Further reduction in liabilities for PROW in line with CRoW Act [or as per MACA England] and these provisions requires further legal advice
007.	<p>Duty of the landholder to provide suitable alternative route including infrastructure and to put up notices, signs / temporary fencing (in the instances of stock control) to mark out the diversion.</p> <p>Duty of the LHA to provide date stamped, authorised standard notices and signage for the landholder to use and post notices with map of affected route on LHA website.</p>	<ul style="list-style-type: none"> • KE 002 refers to the powers to provide regulations to set out requirements, such as the provision of acceptable alternative routes and standardised templates for notices and signages
008.	<p>Provisions will need to take account of potential cycling and horse-riding rights applied to 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"> • Alternatively, a review process of the powers could be included to ensure they can be altered, if necessary.
[New] 009.	<p>Information and guidance about the new provisions provided for the public,</p>	<ul style="list-style-type: none"> • Element necessary to support implementation of the option

Ref No.	Revised 2B(iii) required key element for option selection proposal	Considerations with key element
	land managers and other interests; information included within responsible recreation codes	<ul style="list-style-type: none"> • Ensure link to 3A reforms as far as relevant to approach taken

Appendix A

ARAG Expert Group 2 members:

Name	Organisation
Kate Ashbrook	Open Spaces Society
Chris Dale	Swansea Council
Duncan Dollimore	Cycling UK
Sophie Dwerryhouse	Country Land and Business Association
Nick Fenwick	Farmers Union Wales
Rachel Lewis-Davies	National Farmers' Union Wales
Rhian Nowell Phillips [Rachel Evans from August 2020]	Countryside Alliance
Anthony Richards	Pembrokeshire Coast National Park Authority
David Shiel	Clywydian Range Area of Outstanding Natural Beauty
Mark Weston	British Horse Society
Alison Roberts	Natural Resources Wales
Joseph Roberts	Natural Resources Wales
Sarah Smith	Welsh Government
Jont Bulbeck	Natural Resources Wales
Jayne Carter	Natural Resources Wales