

Welsh Government consultation document Taking Forward Wales' Sustainable Management of Natural Resources Response from the Open Spaces Society, September 2017

Introduction

- 1 The Open Spaces Society is Britain's oldest national conservation body, founded in 1865. We campaign to create and conserve common land, town and village greens, open spaces and public paths, in town and country, throughout England and Wales.
- 2 We welcome this consultation and have focused in particular on chapter 4, access to outdoors, while responding to some of the proposals about forestry and designated landscapes.

Chapter 2: Forestry

Proposal 3

We are considering new approaches to felling licences requirements, including opportunities for alternatives (via a management plan) and aligning conditions with the sustainable management of natural resources and its supporting principles.

- 3 We could suggest that the exemption of the requirement for felling licences on public open spaces (section 9(2)(b) of the Forestry Act 1967) should be removed, on the grounds that the exemption is too wide in scope and exempts, for example, any woodland owned by a local authority

Chapter 3: Designated landscapes

- 4 We fully support the detailed submissions from the Campaign for National Parks, the Alliance for Welsh Designated landscapes and Wales Environment Link: we are a member of all three bodies. We wish, however, to emphasise a few points in our response. These are, in brief, that there is no need for new legislation for the designated landscapes, nor to alter their statutory functions, purposes or governance. The Sandford Principle must be retained and the section 62 duty must be strengthened as it is currently almost meaningless.

Proposal 6

We are considering aligning the statutory functions of designation landscapes more clearly with the sustainable management of natural resources.

- 5 We disagree with this proposal. We believe that Welsh Government should adopt the recommendations of the Marsden report arising from the independent panel, commissioned by government in 2014 to review the designated landscapes in Wales. That report shows how the sustainable management of natural resources can be taken forward in designated landscapes without any need to change the current purposes or statutory functions of those landscapes. There is no evidence of any need to justify changing the purposes of the designated landscapes, which have stood the test of time.
- 6 We are dismayed at the suggestion in the consultation that there is no longer a need for the Sandford Principle. This has been a central tenet of national parks since 1974 and, although it has rarely had to be applied, its existence has been an effective defence against inappropriate economic development. We note that Assembly Members share this view and many of them endorsed the Sandford Principle in the debate on the 'Future Landscapes' report on 6 June. We urge Welsh Government not to ditch the Sandford Principle but to recognise that it should be at the heart of our designated landscapes.

Proposal 7

We are considering establishing a clear formal relationship between special qualities of a designated area and the partnerships, powers and policies that drive its sustainable management.

- 7 We are not clear what this proposal means, but we consider that the Welsh Government should toughen the protection afforded to designated landscapes by strengthening the duty on relevant authorities 'to have regard to' the statutory purposes of national parks in section 11A(2) of the National Parks and Access to the Countryside Act 1949 as amended by section 62(2) of the Environment Act 1995 ('the section 62 duty'). We endorse the recommendation in the Marsden Report that this should be amended to a duty to *contribute to* the statutory purposes, and that it should be applied to all designated landscapes. We believe it should be monitored, with every relevant authority being required to provide the government with an annual report of the contributions it has made to the statutory purposes of the designated landscapes, and any actions which conflict with those purposes.

Proposal 8

We are considering enabling governance arrangements to evolve to reflect local circumstances including a wider range of delivery models such as partnerships and shared or delegated responsibilities

- 8 We see no need for any change to the governance arrangements, although we believe that local accountability could be considerably strengthened by adopting the recommendation of the Williams Commission that local authorities appoint to the national park authorities members who represent wards which are at least partly within the park, and that the appointments reflect a good geographical spread across the park.

Proposal 9

We are considering refreshing the way new areas can be recognised for their special qualities and their sustainable management, including whether there should be an agreed standard for the level of community consultation and representation.

- 9 While there may be some merit in this, it is certainly not a priority.

Chapter 4: Access to Outdoors

Introduction

- 10 The Open Spaces Society is delighted that the Welsh Government is focusing on access and recreation and is pleased to respond to this consultation document. We agree entirely with the ambition of the Well-Being of Future Generations Act 2015 that ‘improved access to the countryside and improved opportunities for outdoor recreation contribute to a “healthier Wales”, due to the associated health benefits’. Access and recreation have many public benefits. If people can get out into the countryside they can learn about it and appreciate it, how it is managed and protected, and become familiar with the Welsh culture; and visitors to the countryside contribute to the local economies.
- 11 We support many of the changes proposed in this chapter, but for many we require further information before we can comment since the proposals are not entirely clear and somewhat confused. We ask for further full and early consultation on the detail of any proposals which Welsh Government wishes to pursue. We are also concerned that some of the proposals require greater resources in order to succeed yet there is no mention of how such resources will be provided.
- 12 We understand that the Welsh Government is willing to consider proposals for freedom to roam along the lines of the Land Reform (Scotland) Act 2003. This is not mentioned in the paper, but we hope that Welsh Government would wish to explore this further, *provided it has no adverse effect on the existing system of public paths*. We ask to be involved in any discussions on this.
- 13 The document does not consider the post-Brexit world; we need to have some flexibility so that there can be access to land if it comes out of production.
- 14 The paper reports that the Welsh Outdoor Recreation Survey, December 2016 ‘identifies beaches (28%), mountains (16%) and the coast (14%) as the areas people would most like to go to in the future’. The paper concludes that ‘these aspirations reflect the appeal of Wales’ more iconic locations’—but it should also conclude that there are many other places which people wish to visit, including places close to home. It is therefore essential to provide more and better access throughout Wales.
- 15 The role of Walkers Are Welcome towns in attracting income to Wales should be recognised by Welsh Government: they demonstrate the value of investing in access provision.
- 16 In addition to responding to the proposals in the paper, we make further proposals which would be beneficial for public access, which we list at the end.

Increasing range of activities on access land and public rights of way

Proposal 10

To enable cycling and horse riding on footpaths to occur under the same conditions as those provided for cycling on bridleways under section 30 of the Countryside Act 1968. These provisions allow for cycling without placing additional burdens of maintenance and liability on the local authority; and they prioritise the ordinary users of those paths. Whilst it would not place additional liabilities or maintenance burdens on local authorities, it would enable them to plan and implement surface and furniture improvements to routes that would add most value to the rights of way network. It would place the onus of checking the suitability of individual paths on users.

- 17 The proposal is unclear. It does not appear to envisage a general right for cyclists and horse-riders to use footpaths, but to give local authorities the power to designate footpaths as available to other users, having made appropriate 'surface and furniture improvements to routes that would add most value to the rights-of-way network'. The opening words refer to allowing use 'under the same conditions' as s30, not the same terms, but then the proposal suggests that 'it would place the onus of checking the suitability of individual paths on users'. This implies, to the contrary, that there would be a general right of other users. So, which is it? If a general right for other users is conferred on section 30 terms (ie the other users give way to walkers), how will horse-riders react to finding that most public footpaths are unusable because of legitimate physical obstructions? How will they know whether such obstructions exist, and what will they do if they are unable to turn around if they encountered obstructions? What will be done about removing such obstructions, given that cyclists usually bypass or surmount them? And, since the proposals 'would not place additional liabilities or maintenance burdens on local authorities', who will fund the removal of obstructions to users other than walkers, and who will be responsible for maintaining the surface of publicly maintainable footpaths fit for use by all?
- 18 As written, this is a muddle. We oppose a general right for all users on all footpaths. We would not object to the use by horse-riders or cyclists of footpaths which are suitable for such use, provided that those users give way to walkers, and provided this does not put an additional burden on local authorities. It is worth bearing in mind that, where section 30 conferred a right for cyclists to use bridleways, every bridleway (being passable by horse riders) was by definition accessible to cyclists without the need for costly adjustments. That is far from the position with similar measures in relation to footpaths, and consultees need much more information about how such measures would work.
- 19 We therefore propose that this is addressed on a case-by-case basis, with LAFs identifying routes which they recommend to the highway authorities to include in the rights of way improvement plans (ROWIPs). Both LAFs and ROWIPs would be given greater status (see below).
- 20 The Active Travel (Wales) Act 2013 requires local authorities to consult on and identify suitable routes for walking and cycling and to improve the infrastructure to achieve this. However, curiously this is not mentioned in this section of the consultation document, yet it is fundamental to the achievement of proposal 10.

Proposal 11

To amend or revoke the following list of restrictions on access, provided in Schedule 2 (1) of the CRow Act 2000:

- (b) uses a vessel or sailboard on any non-tidal water;*
- (c) has with him any animal other than a dog;*
- (i) bathes in any non-tidal water; and*
- (s) engages in any organised games, or in camping, hang-gliding or para-gliding.*

21 We have no objection in principle to this proposal but need further detail as to what is proposed in each case before we can comment. For example, is it intended that the revocation of the restriction on vessels and sailboards would be confined to unpowered craft? Would the revocation of the restriction on organised games be confined to those not organised for profit?

Proposal 12

To allow, with appropriate authority, organised cycle racing on bridleways in order to bring rules relating to bridleways into line with footpaths.

22 We have no objection to removing the anomaly but in all cases racing should only be permitted where the conditions are suitable and other users are not put at risk or to significant disadvantage—for example, public path users (whether on footpaths, bridleways or byways) should not be forced to engage in long detours in order to avoid a cycle race. All signs should be removed immediately the event is concluded on that section of path.

We would welcome any further suggestions for change in relation to anomalous or unreasonable restriction on public rights of way.

23 There should be a specific duty to consult user organisations before making traffic regulation orders, or public spaces protection orders which affect public rights of way, commons or other access land and town and village greens.

24 It should no longer be possible for diversion and extinguishment orders for public footpaths and bridleways to be made under section 116 of the Highways Act 1980 (ie involving the magistrates' court) which is a heavy-handed and intimidating way of dealing with these simple changes, but section 118 should be amended to enable a public carriageway (of any description) to be stopped up subject to the reservation of a footpath, bridleway or restricted byway rights.

25 All applications for consent for stiles and gates under section 147 of the Highways Act 1980 should be published on highway authority websites with a note of the decision and reasoning. If a structure is no longer required for agricultural purposes, the consent should be withdrawn and the structure removed. Stiles should be permitted only in exceptional circumstances.

Extend access land to the coast and cliffs

Proposal 13

To extend CRoW Act access land to the coast and cliffs.

- 26 We welcome this proposal. The brilliant Wales Coast Path is proving extremely popular and has already paid for itself many times over in economic benefit. This proposed extension of access to coast and cliffs will make walkers' experience even better. However (in the absence of a true freedom to roam over all land), we recommend that the Wales Coast Path is set in a strip of access land so that access land extends from the path to the sea and inland to the nearest sensible boundary. This would bring Welsh coastal access in line with that in England and avoid any confusion between access in the two nations.
- 27 There are places where the Wales Coast Path is some distance from the coast. Natural Resources Wales should work with the highway authorities to secure a route on the coast.
- 28 With regard to access land in general, there should be a legal duty on the access authority to provide access points to all access land, and these should be the least-restrictive option (gap, gate, stile) with all structures to British Standard 5709. These access points should be shown on maps to give people the confidence of where they can go.
- 29 There should be a right of recreation to *all* open country (we note that much open country was excluded from the access maps under the CRoW Act). This includes the *ffridd* (ie uncultivated inbye land) which was largely excluded and where there is in many places a tradition of informal access.
- 30 We would support the extension of the CRoW Act to other land types, such as woodland. In a post-Brexit world we need to recognise that landscapes and habitats may alter due to changing farming practices, and this may open up more land to potential public access.

Establish access on inland water

Proposal 14

To extend Part 1 of CRoW Act access land provisions to rivers and other inland waters

- 31 We support greater legal access to riverbanks and lakesides.

Proposal 15

To establish NRW as the authority responsible for:

- *identifying appropriate access and egress points;*
- *implementing measures to promote responsible use, including the use of river level indicators; and*
- *mediating between the different user interests to facilitate user access agreements.*

32 We have no objection to this, provided NRW deals with any conflict of interest on land which it owns in a way which does not prejudice public access. However, the identification of appropriate access and egress points should be part of the work of the LAFS, in influencing the ROWIPs.

Introducing a statutory requirement for responsible recreation covering access land, public rights of way and water

Proposal 16

To establish a statutory caveat on all users to behave responsibly whilst exercising their right to participate in recreation on access land, inland water and on public rights of way.

33 It is stated that a statutory requirement for responsible recreation 'would match the statutory duties already placed on land managers to ensure access areas are open and easy to use'. But in Wales there is no such requirement on landowners. On the other hand, the CRoW Act provides that access users must comply with the statutory restrictions on pain of losing their access rights for three days. So the proposal implies that something further is intended, perhaps that all users would lose their access rights as a penalty for the misdemeanours of the few? It is unclear how this would be enforced, already there is a lack of enforcement on landowners who abuse public rights of way.

34 We therefore need more information before we are able to comment.

Establish mechanisms for restricting access

Proposal 17

To enable temporary diversions and exclusions to be applied across all accessible land and water where circumstances require them and after the safety and convenience of the public have been considered.

35 Again, it is unclear what is proposed. There is already provision in the Road Traffic Regulation Act 1984 for traffic regulation orders (TROs) and in the CRoW Act for restrictions to access land.

36 With regard to TROs we recommend an improved process with statutory consultation and an opportunity for the public to object, with provision for a public inquiry if necessary. We also wish to see the Welsh Government engage with the public on requests from local

authorities to the Welsh Ministers for extensions to temporary TROs made for public paths under section 15(5) of the Road Traffic Regulation Act 1984, so that the Welsh Government expressly invites the views of user organisations and others before agreeing to extent a temporary TRO.

- 37 We strongly oppose provisions for temporary diversions where these are merely to suit a landowner's convenience, as they can lead to severe public inconvenience and confusion.

Proposal 18

Dogs to be on a short fixed length lead in the vicinity of livestock at all times of the year. In all other circumstances they will be subject to "effective control", a legally defined term already used in England under Schedule 2 paragraph 6A of the CRow Act. Exceptional circumstances relating to safety and the protection of nature conservation will be identified and guidance provided by the access code.

- 38 We have no objection to this proposal, provided the advice to people with dogs who are attacked by stock is to let go of the lead as the safest option.

Simplifying and harmonising procedures for designating and recording public access.

All Wales digital map of access

Proposal 19

To enable the development of one statutory map of accessible areas and green infrastructure. Layers of mapping would initially include CRow access land (including water), public rights of way and designations, including, National Trails. Legislation would need to allow further layers to be identified and added.

- 39 We support this. There should be auditing and preservation of amendments made to ensure that the historic record for a particular place and date can always be retrieved later, in case of dispute, and to ensure that unauthorised amendments are not made given the greater scope for concealment of entirely digital changes.
- 40 We welcome the application to rights of way provided that the digital record is the master record and there is consultation on the transition from paper to digital record so the interpretation of the paper record during digitisation can be challenged. There must also be an opportunity still to challenge after the consultation period as some subjective decisions on interpretation will not come to light for many years. Objections to interpretation should be determined by an independent person, not the surveying authority.
- 41 This proposal should extend to registers of common land and town or village greens. We are concerned that, despite current proposals for enabling electronic registers of such land, the consultation paper makes no substantive mention of registers of common land and town or village greens in this context. Nor, surprisingly, is there any mention of the role and management of, and access to, common land. In relation to both rights of way

and common land there is a need for audit and preservation of the historic electronic record.

Reducing procedural burdens associated with public rights of way and access land

Proposal 20

To amend technical provisions relating to procedures for creating, diverting and extinguishing public rights of way; and the recording of amendments to the definitive map and statement.

- 42 We are wary of proposals to amend technical provisions relating to procedures for altering public rights of way and wish to see the detail before commenting. Any changes must fully protect the legal tests for change and the public's opportunity to object and be heard.
- 43 We welcome the possibility of electronic notification of rights-of-way orders, but not at expense of public engagement in general.
- 44 On a separate point, but aimed at reducing procedural burdens associated with public rights of way, we advocate the introduction of a power for local authorities to issue on-the-spot fines for the willful obstruction of public paths.

Proposal 21

To introduce provisions to allow flexibility in relation to stock control measures on public rights of way.

- 45 We support the proposal for 'Making it easier for local authorities and land managers to remove unnecessary stock control measures, including, stiles and gates', but presumably this reduces the burden only on local authorities, and increases it on land managers (who can do this anyway).
- 46 We suggest that you defer the implementation of 'some of the provisions' of the Deregulation Act until they have been tested in England, but we agree that there are some that could usefully be applied for Wales (for instance, the requirement for surveying authorities not applicants to notify landowners of an application for a definitive map modification order application).

Proposal 22

To amend the requirement for a decadal review of access maps to a process of continual review.

- 47 We do not support the proposal for a continual review of CRoW maps without further information. We fear that wealthy landowners could apply at any time to review the map following amendment of their boundaries to make land ineligible and it could put an intolerable burden on NRW and the public.

- 48 However, far greater use should be made of section 16 of CRoW whereby landowners can dedicate land to public access, and create additional rights on existing access land. All public bodies should be required to dedicate all their suitable land to public access, with rights for horse-riders, cyclists and unpowered craft where appropriate.

Extending Rights of Way Improvement Plans (ROWIPs) to include access land and water and integrating with Active Travel provisions

Proposal 23

To create a requirement on local authorities and National Park Authorities to develop integrated access plans to take effect anytime up to the date of the next review in 2027.

- 49 We support this and recommend that it includes unsealed roads and cycle tracks in the countryside, as well as common land and village greens. However, it will need additional resources and guidance.

Repeals

Proposal 24

To repeal the Cycle Tracks Act 1984. In doing this create a new type of public right of way, 'cycle paths', prioritising cycling and walking (and subject to proposal 10 above) to be recorded on the definitive map and statement. All existing cycle tracks designated under the 1984 Act would be recorded as cycle paths.

- 50 We want all cycle paths to be shown on the definitive map. At present, when a footpath is converted to a cycle track it is removed from the map. In addition, horse-riders should be given a right of access on cycle paths. However the best way to achieve this is to legislate to dedicate all cycle tracks as bridleways and add them to the definitive map. We are unclear of the need for the new 'cycle path' since, if routes are given bridleway status, this confers rights on walkers, riders and cyclists.

Proposal 25

To repeal unwanted provisions in the CRoW Act. In particular those relating to the 2026 cut-off date for historical routes under sections 53 – 56 of the CRoW Act.

- 51 We strongly support this. We also recommend the repeal of the provision by which byways open to all traffic (BOATs) cannot be recorded after 2026, as this provision has no impact on public rights, but merely makes it more difficult to demonstrate that such rights exist.

Improving existing advisory forums and how access rights and responsibilities are communicated to all interests.

Statutory Code for Access in Wales

Proposal 26

To develop a statutory code for access to the outdoors for recreation similar to that already in place in Scotland under the Land Reform (Scotland) Act 2003.

52 We support this in principle, although the code must apply equally to landowners and managers and to users. We would wish to be consulted on content and wording.

Local Access Forums

Proposal 27

To review the regulations and guidance relating to local access forums with a view to updating and clarifying their role and membership.

53 We agree that the regulations and guidance should be updated and clarified. However, we do not support the appointment of deputies, although if this is permitted the deputy should be an observer not a voting member (since the appointee was appointed after interview).

54 There should be broad representation on the LAFs of those who are affected by lack of access, especially those with disabilities, and compliance with the Equality Act 2010.

55 There should be a greater onus on the appointing authority to act on the advice of the LAF.

56 In addition, there should be a statutory duty on highway authorities to implement their ROWIPs, with funding made available for this. The LAF should have a role in developing the ROWIP and holding the authority to account in delivering it.

57 There should be a stronger link between the LAFs and the National Access Forum Wales (NAFW), with clear communications between them, and the NAFW should have a statutory role in advising the Welsh Government and acting as a sounding board.

Additional proposals from OSS for improving access in Wales

58 The current *Glastir* scheme should be used to secure more and better access, and there should be strict enforcement of conditions which require public paths to be kept clear of obstruction.

59 Developers should be required to dedicate paths associated with developments as public rights of way, and green spaces as town or village greens, to secure them in perpetuity.

60 There should be a requirement for common land and town and village greens within or adjacent to proposed development to be a material planning-consideration.

61 There should be a right of appeal, and a requirement to provide suitable alternative land, before public open space is taken for another purpose.

62 Communities should be empowered to register local open spaces as community assets to secure their long-term protection.

- 63 There should be a duty on local authorities to take action against unlawful works on common land; these can obstruct or impede public access.
- 64 There should be a speed limit of 20mph on all unfenced roads across common land, to safeguard stock, the landscape and public access there.
- 65 There should be a right for the public to ride horses on all commons (at present such a right exists on only some commons).

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