

OPEN SPACES SOCIETY'S RESPONSE TO THE WELSH GOVERNMENT'S CONSULTATION DOCUMENT: AGRICULTURE (WALES) WHITE PAPER

The Open Spaces Society (OSS) was founded in 1865 and is Britain's oldest national conservation body. It campaigns to protect common land, village greens, open spaces and public paths, and people's rights to enjoy them.

Introduction

In responding to the Welsh Government's consultation *Brexit and our Land* (October 2018) and *Sustainable Farming and our Land* (October 2019), we emphasised the importance of agricultural funding being directed to securing more and better public access, and of using the grant system to reinforce the need for land managers to obey the laws on public paths and access. We spelt out how we believed these aims could be achieved. We are disappointed that these objectives appear not to be recognised explicitly in the current consultation.

Once again, in responding to this consultation, we have a particular interest in promoting public access to the countryside through Wales's network of public paths and rights of access, and in securing better management of common land to reflect the many public goods which it provides.

Section 1: National Minimum Standards

- 1 What are your views on:
 - (a) the proposed approach to the creation of the National Minimum Standards?
 - (b) The need for flexibility to amend the National Minimum Standards where necessary? Are there any further considerations which are needed?

Please provide comments to support your view, eg potential benefits and impacts.

The Open Spaces Society supports the creation of National Minimum Standards provided they ensure that all public rights of way and access land are available to the correct legal standards for use and enjoyment by the public at all times.

It is essential too that there is cross compliance and strict enforcement, so that all land managers are required to keep their public rights of way in good order, and to allow access to access land, and that any who fail in these respects must forfeit their grants.

The potential benefits are that people have the confidence to explore and enjoy paths and access land throughout Wales, which benefits their health and well-being. There would be a positive impact on highway authorities, and therefore the public purse, since the authorities' role of enforcing public paths would be reduced in the light of an incentive to land managers to obey the law.

2 What are your views on:

- (a) How advice and guidance can effectively support farmer to understand the National Minimum Standards; and**
- (b) The further considerations needed for advice and guidance? For example, what form guidance should take, who should provide it, the scope of guidance and how farm advisory services may support farmers.**

Please provide comments to support your view, eg potential benefits and impacts associated with the considerations.

Clear advice and guidance must be given to farmers and land managers regarding their duties and responsibilities to maintain public paths and keep them clear of obstructions, reinstate after disturbing the surface, etc.

Section 2: Civil sanctions

3 What are your views on the proposals for civil sanctions to enable proportionate enforcement of regulations? Are there any further considerations which are needed?

Please provide comments to support your view, eg potential benefits and impacts associated with the considerations.

We support the proposals for civil sanctions provided they are effective in ensuring that those in receipt of SLM obey the law on paths and access land. There needs to be an effective inspection regime which ensures that transgressions on paths are dealt with swiftly. For example, if a report is made of a crop planted on a path, the inspection must take place before that crop is harvested, otherwise it is pointless.

There does need to be an effective way of dealing with those who repeatedly flout the law, and highway authorities should be ready to take criminal proceedings in such cases.

As stated above, the potential benefits are that good-quality paths and access land give people the confidence to explore and enjoy these assets throughout Wales, and people's health and well-being are thereby improved. There would be a positive impact on highway authorities, and therefore the public purse, since the authorities' role of enforcing public paths would be reduced in the light of an incentive to land managers to obey the law.

Section 3: Sustainable land management: future policy and support

4 What are your views on the proposed purposes for funding in support of the delivery of the SLM? Are there other purposes which you feel should be considered?

Please provide comments to support your view eg potential benefits and impacts.

The Open Spaces Society supports the establishment of SLM as the overarching principle for future agricultural policy, but is dismayed that public access is not listed as a non-market good in para 2.50 and considers this is a grave omission. Clearly public access is crucial to the aims of the far-sighted Well-being of Future Generations (Wales) Act 2015, and never more so than now when the pandemic has highlighted the importance for people of having good-quality paths and open spaces close to home. The new agricultural funding regime provides a splendid opportunity both to ensure that existing access is in accordance with the law, and to improve and increase access for the public benefit.

There is the opportunity to fund, among other things:

- creation of new, permanent paths where people need them, as identified in the local rights of way improvement plan;
- creation of routes to link gaps in the path network; or improve safety, by enabling walkers, riders and cyclists to avoid using roads;
- increase in the number and quality of access points on or within access land;
- provision of higher rights on access land;
- improvement in path width;
- leaving a path across arable land undisturbed and uncultivated;
- regular mowing of a headland path and preventing encroachment by vegetation;
- removing, or improving ease of use of, stiles and gates to comply with the Equality Act 2010;
- additional signposting and waymarking, beyond the statutory requirements.

Section 4: Industry and supply chain: future support

5 What are your views on the proposed priorities for industry and supply chain support?

Please provide comments to support your view, eg potential benefits and impacts.

The Open Spaces Society considers that low-key, sustainable tourism is important to rural development in Wales, and that visits by walkers, riders and cyclists are valuable to the rural economy. The development of the Walkers Are Welcome Towns network in Wales and beyond demonstrates this, people come to these towns to enjoy the walking opportunities in the area, and can be guaranteed a fulfilling visit.

Such visitors depend on a good network of public paths and access land, which are open and in good order so that visitors are not frustrated or disappointed when using them. Therefore, funding for paths and access will contribute significantly to rural tourism and the rural economy.

Section 6: Forestry and woodlands

11 What are your views on the proposed amendments to forestry legislation?

Please provide comments to support your view, eg potential benefits and impacts.

We support the proposal for the Sustainable Farming Scheme to provide payments to farmers who choose to deliver positive benefits from planting and managing woodland on their farms *provided* that those farmers provide new or improved public access to and within those woodlands. Woodlands are known to be popular with the public which will therefore benefit from new and improved access there.

Section 7: Proposals for additional powers

The management of common land

Case for change

The Open Spaces Society is pleased that Welsh Government recognises the role of common land in supporting agricultural production but it must also recognise the enormous public benefit provided by commons—for their natural beauty, wildlife habitats, and historic and cultural interest, and for public access.

Para 2.158: We do not consider that the process under section 38 of the Commons Act 2006 should be combined with the planning legislation process. Reference is made to ‘duplication’ of consents, but the tests are different, and section 38 recognises the special character and features of common land. In the same way, there are parallel consent regimes (in addition to planning permission) for listed buildings, highways, maritime structures, etc. Some works carried out on common land do not require planning permission, or benefit from planning permission as permitted development: for example, stock control fencing, utility installations or boundaries to dwellings.

Planning permission is consent granted for the purposes of controlling development. A grant of planning permission resolves the requirement for obtaining planning permission before development proceeds, and no more. It is not, and never has been, a mechanism to abrogate third-party rights in the land (such as easements or rights to light). Moreover, much common land is subject to rights of common, which are property rights protected by article 1 of protocol 1 to the European Convention on Human Rights. Whereas a consent to works granted by the Welsh Ministers, taking account of all interests, may (according to case law) facilitate lawful interference in, or deprivation of, the exercise of rights of common¹, it would be unprecedented for a planning permission to have such effect on third-party property rights. Thus, either such consent would have no impact on commoners’ rights, so that (for example), any commoner would be able to act at common law to prevent interference with his or her rights notwithstanding any planning permission, or there would be an unwarranted interference with the commoners’ property rights which

¹ See [*ADM Milling Ltd v Tewkesbury Town Council*](#).

would demand provision for an entitlement to compensation. In view of the national importance, character and complex status of commons it is important that such consents continue to be determined by the Welsh Ministers, not by the local planning authority.

Para 2.159: We welcome the proposal to revise the enforcement responsibility and urge the Welsh Government to strengthen this considerably by imposing on county and county borough councils a *duty* to take enforcement action against unlawful works on commons, in line with the legal duty under section 130 of the Highways Act 1980 to remove obstructions from the public highway. At present it is too easy for the various parties with a power to enforce to pass the responsibility on to someone else, so that nothing is done.

Para 2.160: The power to create commons councils is in part 2 of the Commons Act 2006 but requires the endorsement of the environment minister. Because this is not a priority for government, there are no commons councils in Wales (and only two in England)—14 years after the provision came into force. We also question the consultation’s assumption that restricting a council’s powers to manage ‘agriculture, vegetation and rights’ prevents a holistic approach to management. But the consultation fails to explain what powers could usefully be conferred on a council which cannot be done under part 2 of the 2006 Act? For example, is it suggested that the council—constituted to represent commoners and landowners—should have a power to restrict or exclude access under part 1 of the Countryside and Rights of Way Act 2000? Or that it should itself be empowered to authorise restricted works such as fencing? If so, such proposals would be entirely contrary to the ethos of commons councils, which comprise a statutory association of those engaged in the agricultural management of the common, to enable better such management in the interests of the commoners, owners and other agricultural interests. If a commons council is to be granted wider powers encroaching on the public interest in a common, it should be constituted as a body representing that wider interest, including representatives of local and national park authorities and community councils, recreational users and conservation interests.

In our view, the consultation paper advocates a need for wider powers for commons councils merely as an excuse for the Welsh Government’s failure to prioritise the creation of commons councils to date. The answer is not to recast the nature of commons councils, but to promote and facilitate their establishment where they would be useful.

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