

## **Working Document**

### **Review of Access and Outdoor Recreation Legislation: Stakeholder and Workshop Discussion Document**

#### **1. Introduction**

The health, social and economic benefits of outdoor recreation, whether walking, cycling, gardening, or engaging with nature have been well recognised and promoted by the Welsh Government for over 10 years. The Programme for Government lists a number of commitments relating to improving access to the outdoors for the purposes of recreation and leisure, including specific reference to legislate on the amount of land for allotments.

The purpose of the review of legislation in this area is to inform proposals on how a change in the statutory framework could further support the draw down of these benefits. Proposals for reform will be developed with the intention of securing better access to the outdoors for recreation, modernising and simplify the current regulatory framework, and providing clarity and certainty over where people can go and what they can do there. Within the scope of the review will be developing provisions on access to the outdoors, public rights of way, and the provision and administration of green spaces and allotments.

Although changes to legislation may be the primary means to effect certain changes, there may be other policy or programme mechanisms to complement this which emerge from the discussions, and we wish to capture views on these aspects too. We also recognise the interdependencies between our work and that of other parts of Welsh Government, and are mindful of the need to develop a coherent legislative and policy framework.

The purpose of this paper is to stimulate discussion about the current system of access to land and water for outdoor recreation, and to help us to understand different perspectives on its relative strengths and weaknesses, and how it might be improved.

#### **2. Current legislative framework**

The legislation on allotments appears across a number of acts, some of which are more than 100 years old. The **Small Holdings and Allotment Act 1908** established the duty on local authorities to provide land for allotments, and the nature of this duty was last modified by the **Allotments Act 1950**. The legislation prescribes the circumstances when local authorities are required to provide land for allotments, the protection that is afforded to allotment sites, and clarifies the limitations on the duty in terms of the amount of land and associated services. There is no statutory time limit on discharging the duty, and there are significant waiting lists for allotments.

The **National Parks and Access to the Countryside Act 1949** was the first significant legislation to establish rights for visiting the countryside and the associated statutory framework. The 1949 Act acknowledged the need for a constructive approach to issues of access and conservation. It created a National Parks Commission which during the 1950s oversaw the establishment of 10 national parks and it also made provision for setting up nature reserves.

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Under the 1949 Act county councils were given the task of surveying their areas and recording and mapping rights of public access. If necessary, county authorities were also to secure public access to areas of open country within their boundaries.

Most of the provisions relating to rights of way have been repealed but many of those relating to access to open country and nature reserves are still current.

The **Countryside Act 1968** includes provisions in relation to furniture on public rights of way, e.g. signposting footpaths and bridleways, and the riding of pedal cycles on bridleways. The 1968 Act also introduced the power for local authorities to designate country parks.

The **Highways Act 1980** includes the main powers and processes for creating, diverting, and extinguishing public rights of way. It also sets out the duty of local authorities to maintain public paths.

The **Wildlife and Countryside Act 1981** includes miscellaneous provisions on public rights of way, a duty to keep the definitive map and statement under continual review and provides the associated mechanisms for updating these records.

The **Cycle Tracks Act 1984** gives a power to highway authorities to create cycle tracks, either for cycling only or for both cycling and walking. The 1984 Act has not been used much in Wales because it's onerous on local authorities and provides little reward on the ground.

The last significant statute was the **Countryside and Rights of Way Act 2000** [“the CROW Act”] under which access to open country, including mountain, moor, heath and down, opened up 460,000 hectares of countryside (including 100,000 hectares of Welsh Government forests) to walkers. This Act places a duty on Natural Resources Wales to prepare, consult and issue maps of CROW access land; a power on access authorities (local authorities and national park authorities) to ensure a means of access to the CROW access land; and makes various provisions in relation to public rights of way and the creation of local access forums.

There are a number of pertinent **circulars and guidance** such as WO 5/93 on Public Rights of Way, Planning Policy Wales and Technical Advice Note 16: Sport, Recreation, and Open Space (2009). In addition there are circulars on specific matters pertinent to rights of way, including special extinguishments and railway crossings. Most of the formal and statutory guidance associated with access and public rights of way is in need of updating.

### **3. Statutory roles and responsibilities**

The **Welsh Ministers** are predominantly responsible for making decisions on whether to confirm or decline orders made by local authorities (see below) and to deal with appeals relating to mapping under the CROW Act.

Welsh Ministers have powers in relation to the creation, diversion and extinguishment of paths but these are limited and very rarely used.

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Welsh Ministers must also be consulted in relation to the dedication of land under CRoW provisions.

Local authorities must receive permission from Welsh Ministers before they can dispose of land used as statutory allotments.

The **Planning Inspectorate** (PINS) acts on behalf of Welsh Ministers in dealing with case work on public rights of way. Any creation, diversion or extinguishment orders and those cases involving amending the definitive map and statement where objections are received and not withdrawn are dealt with by PINS. The Inspectorate also deals with appeals in relation to CROW access land mapping on behalf of Welsh Ministers.

**Local authorities** are responsible for most aspects of public rights of way work. They have a duty to maintain the surfaces of rights of way and a duty “to prevent as far as possible the stopping –up or obstruction of those highways”.

Local authorities have powers in relation to the creation (including compulsory purchase), diversion and extinguishment of public rights of way. With this they have a duty to have regard to agriculture, forestry and nature conservation.

Local access authorities have the power to make bylaws with respect to the protection of CRoW Access land.

Local authorities have a duty to provide land for allotments where at least six or more people registered on the electoral roll have requested them.

**Local Access Forums** are statutory advisory bodies to the Welsh Government and Natural Resources Wales. They must be consulted over a number of matters included in the CRoW Act, such as bylaws and draft maps.

**Natural Resources Wales** is required to prepare and review maps of CRoW access land and have powers of entry on to land for the purposes of surveying for mapping and to ascertain access rights associated with land. It also has a duty to prepare and promote a countryside code.

#### **4. Recent legislative and policy developments – England and Wales**

The **Deregulation Bill** seeks to make provision for the reduction of burdens resulting from legislation on local authorities and individuals. The Draft Bill includes clauses addressing procedural matters in relation the recording of paths, public path orders and the erection of furniture on public rights of way.

The changes proposed in the Draft Bill will only apply in England. The proposed changes are very technical and will not lead to significantly greater opportunities for access for outdoor recreation. It will extend further the differences between Welsh and English legislation in this area.

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The **Children and Families (Wales) Measure 2010**, relates to play sufficiency. The Measure placed two duties on local authorities, the first to carry out Play Sufficiency Assessments and the second requiring the authorities to address need. The former has been implemented and all 22 authorities have submitted their assessments and they are currently being reviewed. The latter duty has not been commenced to date.

Any new legislation and / or guidance targeted at increasing access to open spaces could help to address the need identified using the assessments.

The **Active Travel Bill** will place a duty on local authorities to publish two maps relating to active travel routes in their areas. The first will advise on the network of routes currently available and the second will show the authorities' plans for future routes.

Any proposed changes to public rights of way legislation will impact on the active travel routes available in each authority.

The **single integrated plan** has been introduced to significantly simplify duties placed on local authorities. A single integrated plan should replace at least four of the existing statutory plans and strategies (the Community Strategy, the Children and Young People's Plan, the Health, Social Care and Well-being Strategy and the Community Safety Partnership Plan (which incorporates the 3 crime and disorder strategies)), thereby reducing complexity and duplication, and freeing up resources.

Should consultation conclude that there is a need for an access and outdoor recreation plan to replace the existing rights of way improvement plans then it will need to dovetail with the authorities' single integrated plans.

### **5. Points for discussion**

There appears to be consensus across user groups, local authorities, and landowners that the current legislation doesn't effectively promote or regulate outdoor recreation activities. In short, the current legislation is out-dated, disjointed, burdensome to administer, and often difficult for the public to comprehend.

The key questions for stakeholders to consider as part of assisting this review are:

- What should be the priority for a new regulatory framework which **increases the extent** of land and water available for responsible recreation on a **secure and clear basis**?
- What needs to be done to allow a **wider range of activities**, yet avoid conflict between users and with land management and wildlife?
- How could legislation help ensure that there is **equitable access** to outdoor recreation opportunities close to where people live, and **adequate provision** of allotments and community gardens?
- Which aspects of the current regime need to be **streamlined and harmonised**, and can we remove some existing anomalies and bureaucracy without compromising the strengths of what we already have?

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- To what extent should legislation deal with the **regulation of users and activities**, and what **safeguards** need to be included for existing activity, land management, and wildlife?

In addition to these headline questions, there are a host of more specific questions which relate to the types of duties, powers, and procedures that new legislation could include.

### **A Cross-cutting discussion points**

In essence this review is considering proposals for new legislation that will provide for a contemporary and fit for purpose framework on 'where people can go, and what they can do there' and the role that users and providers need to play.

*Questions particularly pertinent across all areas of the review are:*

What can be done to maximise the value of outdoor recreation to the Welsh economy, and what part would new legislation play?

Who should be responsible for managing access for outdoor recreation at the local level?

Can better partnership working achieve our aims for improved opportunities for outdoor recreation?

How should legislation best seek to address today's outdoor recreation needs?

How can local authorities and local communities be encouraged to identify needs for outdoor recreation, and to provide for those needs?

Would a power for local authorities to transfer their statutory duties to a competent third party (such as a Trust, Natural Resources Wales, or suitably constituted community group) improve provision and strengthen partnership working?

Is there sufficient and clear information in the public domain about where people can go and what they can do, and how they should act safely and responsibly?

Do we need to further define the role of an 'access authority' and signal a shift away from paths and outdoor recreation being in the domain of 'highway authorities'?

Should the National Access Forum be put on a statutory basis?

Are Local Access Forums still required, and, if so, what should their role be?

### **B Access to the countryside**

The intention here is to look at ways to support a more equitable and egalitarian approach to access, which seeks to acknowledge and formalise some existing activity, and be flexible to address future changes in demand. The need for legislative provision for public

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access to water in particular was highlighted in the report by the Sustainability Committee following its inquiry into access to water.

*Questions particularly pertinent to this area are:*

How do we best secure in perpetuity areas of potentially high recreational value whilst retaining flexibility to meet changes in demand?

How can we provide safeguards for land management and wildlife without resorting to placing limiting or disproportionate conditions on access?

Should the duty on NRW to produce a countryside code be amended to align with new legislation, requiring them to produce a comprehensive statutory code of conduct for all activities along the lines of the Scottish Outdoor Access Code?

Access to, and on water in particular is unresolved, creating areas of conflict. How should new legislation be framed in order to remove conflict?

Would creating a right of responsible recreation to all land and water, with exceptions for the curtilage of property and certain excepted land (e.g. Ministry of Defence) provide the greatest certainty for the public, and allow resources to be targeted at only those areas where difficulties arise?

What powers and safeguards would be required to accompany such extensive rights of responsible recreation? Should, for example, passage on horse and bikes be restricted to paths and roads plus non-cultivated land or would this complicate matters?

Should there be a power to close off areas if they are too heavily used?

Would a duty on Natural Resources Wales to broker multi-use management arrangements where conflict arises between activities, and between activities and other land management, be a suitable safeguard?

Would legislation and / or guidance be the most effective means by which to provide clarity, or reduce, the degree of occupiers liability?

Should there be separate provisions for commercial activity, or should the same rights and responsibilities be shared across all users? Is it desirable to consider licensing commercial operators, introducing limits on size of groups, and measures to regulate events and racing? If so, should relevant stipulations be included in the legislation or the associated guidance?

What sanctions should there be for 'any person' who contravenes anything that would be provided for in new legislation? Should there be sanctions for users, land managers, and local authorities who fail to abide with the requirements of the legislation?

Should legislation create an offence of not adhering to an approved code of conduct?

Are specific measures for the control of dogs needed, beyond existing remedies available to land owners and local authorities?

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What land or water should be excepted from new access rights, and what procedures and tests should be established for temporarily or permanently removing access rights in favour of land management and nature conservation?

Would legislation, or related guidance need to include detail on matters such as livestock and use of machinery?

Is it reasonable that where establishing new access rights supersede historical access agreements, these agreements and associated payments should cease (either immediately or after a reasonable amount of time)?

### **C Public Rights of Way**

We believe it is necessary to look at significantly overhauling current legislation with a view to reducing costs to local authorities and landowners; to add a requirement that the network be reviewed in order to make it more joined up; and to seek to further complement the Active Travel Bill by creating routes for use by walkers and cyclists.

*Questions particularly pertinent to this area are:*

Is there merit in removing the duty on local authorities to maintain public rights of way, and instead replace this with more robust duties and powers on the removal of obstructions?

To what extent do current provisions create confusion over where you can go and what you can do? Is it still necessary to maintain a hierarchy of paths and places?

To what extent does the current provision, focussed mostly on walkers, limit capacity for healthy exercise and the economic benefits of activity tourism?

How should the high cost of administering the existing system be reduced?

Bearing in mind the aim to have greater access to land and water (see above), should we suspend all existing public rights of way procedures, and replace with a simplified approach based on a reduced network of priority paths that are popular, useful or scenic?

The Cycle Tracks Act has been little used, and if other changes are introduced to facilitate use of paths by walkers and cyclists, then should this Act be repealed in Wales?

Should we seek to relax current restrictions on how paths can be used, allowing all paths to be used by all non-motorised users where this is physically possible but allowing for higher rights to be removed where their use could not practically be used?

Should there be a duty on local authorities to publish maps of 'priority' network of multi-use paths?

How can we make it easier to divert and extinguish paths under certain conditions? For example, paths through farm yards or across school playing fields?

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Currently there are different procedures for temporary closure of paths and access land for land management purposes. Should we harmonise these procedures?

Is it necessary to review 'long distance paths' provisions, to make the procedure for formally promoting a long distance route less onerous and more proportionate? Is it necessary to have statutory procedures for this at all?

### **D Public Open Space**

The aim is to have good provision of public open space which is based on robust and contemporary evidence of need. Existing duties on local authorities to plan, prioritise, and provide public paths, open space, play opportunities, and playing fields could be harmonised.

*Questions particularly pertinent to this area are:*

Should there be a duty on local authorities to undertake robust needs assessments on paths and public open space to inform Single Integrated Plans and Local Development Plans?

Would it be desirable to extend a requirement of mapping a network of priority routes, to include all types of public open space, thus requiring local authorities to identify and register all open space sufficient to meet demand for open air recreation?

Should there be a means of designating, and thus offering recognition and protection, to locally important recreation areas?

To what extent should the multi-functional value of public open space be considered when undertaking a needs assessment? For example, its value for biodiversity, management of surface water run-off, and other 'ecosystem services'.

### **E Allotments**

The aim is to see that supply of allotment sites meets local need more effectively, whilst also building in an element of flexibility to allotment legislation to address the growing demand for community growing spaces.

*Questions particularly pertinent to this area are:*

Can legislation address the sometimes patchy provision of green space, including allotments, which exists across Wales and within some of our towns and communities?

Should legislation be used to help meet demand for land for community gardening and growing, currently not served by allotment legislation?

Is it feasible, or desirable, to require local authorities to meet local demand in the area for allotments?



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Would it be desirable for Welsh Ministers, Natural Resources Wales, or another competent body to have intervention powers to direct local authorities to provide growing spaces, and within a given timetable?

Should the definition of allotments be extended to include community gardens with a more community based ethos where food can be marketed and is grown for collective as well as individual benefit?

Should the sale of surplus produce from allotments be permitted?

Should we establish clear and consistent standards for the provision of allotments and the level of service that the public can expect?

Could creating a register of all publically owned land help to increase the amount of land potentially available for allotments or community growing?

Is there merit in creating a standard for allotment waiting lists, to ensure the information which is captured is consistent?

What impact would a time limit for consideration of a relevant request for provision of allotment land have on provision?

Would creating a standard size for allotment plots help increase supply, and make for more equitable provision across Wales?

So that provision can be monitored, should all allotment sites (independent and local authority managed) be registered by the local authorities, and recorded on a national register?

Should there be a statutory performance target on provision of allotments, perhaps based on a set number of sites per head of population or to respond to request within a specific timeframe?