

CHAPTER 4

CONSULTATION RESPONSE

QUESTION 15

WILL THESE PROPOSALS DELIVER CONSISTENCY IN THE OPPORTUNITIES AVAILABLE FOR PARTICIPATION IN DIFFERENT ACTIVITIES AND PROVIDE EFFECTIVE SAFEGUARDS FOR LAND MANAGEMENT AND THE NATURAL ENVIRONMENT?

The Vale of Glamorgan Council opposes the proposals as they relate to the expansion of rights on access land and footpaths. Further detailed comments are set out below in Appendix 1. Key observations include:

- Expansion of user rights on land and paths that are not accessible or suitable for that traffic is inappropriate and will provide a less coherent public access offer.
- Proposals on access opportunities would add to the workload of authorities and require additional resourcing (maintenance and enforcement).
- Wild camping is opposed as it would harm economic activity and create additional management burdens. It is further felt it would lead to a deterioration of important tourism assets and deter other tourists.
- Expansion of access land to cliffs should contain safeguards against appearing to promote activity on known dangerous landforms.

QUESTION 16

WILL THESE PROPOSALS DELIVER A MORE INTEGRATED AND UP TO DATE SYSTEM FOR IDENTIFYING, DESIGNATING AND RECORDING PUBLICALLY ACCESSIBLE AREAS?

They would be subject to detailed comments set out below in Appendix 1. Key observations include:

- Careful consideration needs to be given to the definition of expanded access land, including the ability to remove naturally dangerous areas.
- Proposals to amend framework for recording PROW are welcomed.

- Thought should be given to the purpose of Definitive Maps and whether processes reduced beyond deregulation bill proposals should be allowed for certain purposes given the proposed severance of link between status and rights.

QUESTION 17

WILL THESE PROPOSALS PROVIDE SIGNIFICANT CLARIFICATION TO ENSURE THAT THE PUBLIC, LAND MANAGERS AND OTHERS ARE CLEAR ABOUT THEIR RIGHTS, RESPONSIBILITIES AND DUTIES IN RELATION TO ACCESS TO THE OUTDOORS?

In part. Detailed comments set out below in Appendix 1. Key observations include:

- Expectations are likely to be significantly raised amongst certain user groups, which provision will not match.
- Status will no longer be the prime indicator of rights. Information contained on definitive maps will be further from reflecting the access offer on the ground.
- A code of conduct is welcomed, if enforceable

APPENDIX 1

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.

The Vale of Glamorgan objects to this proposal and provides the following comments:

- The proposal will raise demand and expectations amongst riders and cyclists which will not be met and elevate confusion as to which routes should be accessible. These raised expectations will lead to further resource pressures.
- The proposals do not extend to footways alongside roads. Public awareness of the legal distinction between footpaths and footways is very low. It is highly likely that the public will consider, incorrectly, that a principle intention of the proposal is to legitimise cycling on footways.
- Health and safety concerns arise from the shared use of routes by classes of user that are inappropriate to path conditions
- The impact of horse and cycle use on path surface is much more significant than use on foot. The caveat for the authority not to maintain to bridleway standards will be insufficient to avoid increased costs to the authority as the lower requirement to maintain for walkers will be compromised. There will be increased costs in maintaining to footpath standards
- Improvements in accessibility (removing barriers, replacing stiles with gates etc) have been subject to negotiation with landowners. It will, for practical reasons, continue to be necessary to work with landowners even with changes in proposal 21. Proposal 10 may make the task of agreeing these more difficult if their replacement would allow equine/cycle use.
- It has been common practice for furniture that caters for the class of user appropriate to the status of path to be installed (subject to accessibility improvements). This has included widespread compromise arrangements such as stiles and kissing gates alongside field gates, or fitting two in one gates. It will be possible for new classes of user to require authorities to re-

assert rights through the full width of field gates. Where this occurs it is likely to be contentious and lead to increased work for authorities.

- It is not uncommon to respond to complaints of fences being cut by dog walkers where stiles restrict them. It is anticipated that, in a similar vein, there may be an increase in vandalism to structures on footpaths that restrict horse riding and cycling.
- Flexibility should exist for authorities to restrict access by agreeing less accessible structures for safety or management purposes
- The proposal will, presumably, undermine the ability of cyclists or bridle users to claim unrecorded rights as part of a Definitive Map Modification Order application.

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 PARAGLIDING.

The Vale of Glamorgan makes the following comments:

- It should be made clear that the vessels referred to are unpowered
- It is noted that cycling is not included in the list. The Vale of Glamorgan opposes its addition.
- The Vale of Glamorgan has a lack of camping provision and have recently invested in encouraging start up sites along the coast. The proposal will be harmful to the local economy including accommodation providers and visitor economy as a whole. Damage will be particularly pronounced in regions such as The Vale of Glamorgan where the market is less mature and attempting to develop from a position of low existing provision. Free camping will undermine the local economy whilst causing environmental harm due to the lack of supervision.

PROPOSAL 12

TO ALLOW, WITH APPROPRIATE AUTHORITY, ORGANISED CYCLE RACING ON BRIDLEWAYS IN ORDER TO BRING RULES RELATING TO BRIDLEWAYS INTO LINE WITH FOOTPATHS.

WE WOULD WELCOME ANY FURTHER SUGGESTIONS FOR CHANGE IN RELATION TO ANOMALOUS OR UNREASONABLE RESTRICTION ON PUBLIC RIGHTS OF WAY.

The Vale of Glamorgan makes the following comments:

- This proposal would resolve an anomaly and is agreed.
- It is also proposed that provision be made to allow temporary closures of public rights of way and access land to be made for the purposes of filming where timescales are in line with existing Road Traffic Regulation Order 1984 s14 provisions (i.e. up to 6 months with allowance for extensions).

PROPOSAL 13

TO EXTEND CROW ACT ACCESS LAND TO THE COAST AND CLIFFS.

The Vale of Glamorgan makes the following comments:

- No additional liability to maintain or provide access points to the foreshore should be created.
- Cliffs in the Vale of Glamorgan are very dangerous, serious incidents and fatalities recorded as a result of proximity to them are not uncommon. A reduction in liability is insufficient. Provision should be made for excluding them from access mapping. Without this visitors to the area may be led to believe they are safe.
- The extent of land covered that will be defined as coast should be subject to further consultation.
- The authority notes that excepted land includes the below list and suggest that quarries is clarified to describe both active and inactive quarries:
 - *buildings and their curtilage, such as courtyards*
 - *land within 20 metres of a dwelling or building containing livestock*
 - *parks and gardens*

- *land covered by structures like electricity substations, wind turbines or telephone masts (though this does not prevent use of access land around them)*
- *quarries and other active mineral workings*
- *railways and tramways*
- *golf courses and race courses*
- *aerodromes*
- *land being lawfully developed in one of the ways above*
- *land ploughed for the growing of crops or trees within the past year*
- *temporary livestock pens*
- *racehorse training gallops – at certain times*
- *land under Ministry of Defence byelaws, such as most military training areas*

PROPOSAL 14

TO EXTEND PART 1 OF CROW ACT ACCESS LAND PROVISIONS TO RIVERS AND OTHER INLAND WATERS

- Commercial opportunities for boating on inland lakes may be damaged by this.
- The expansion of access to inland lakes is opposed and if implemented would bring about an increased risk to public health. Managing the risk, even with reduced liability, is likely to place a greater burden on public authorities.
- Inland waters within excepted land (e.g. parks) should be excluded.

PROPOSAL 15

TO ESTABLISH NRW AS THE AUTHORITY RESPONSIBLE FOR:

IDENTIFYING APPROPRIATE ACCESS AND EGRESSPOINTS;

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.

- The responsibility for providing ingress/egress points should be clarified and guidance issued to NRW.
- A reduced in liability for landowners who agree to the creation of new access points should be included.

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.

Agreed subject to penalties being enforceable and proportionate for the protection of users. Enforceability and proportionality should be considered in relation to the interaction of users with themselves and not limited to landowner – user interactions.

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.

Agreed.

The reasons allowed for temporary closure of highways via TRO (Road Traffic Regulation Act 1984) should be expanded to allow for filming and media production.

PROPOSAL 18

DOGS TO BE ON A SHORT FIXED LENGTH LEAD IN THE VICINITY OF LIVESTOCK (AND WILDLIFE?) 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.

Agreed. Also support the principle of its extension to important habitats and environmentally sensitive areas though this would need to be implemented in a manner that could be made sufficiently clear to the public.

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.

Agreed

- Additional data is likely to be needed in the light of proposal 10 to properly inform the public of limitations that exist on routes.
- Alternatively a very light touch method of continuous review of status according to appropriate use could be introduced (see also Proposal 20 comments)

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.

The Vale of Glamorgan makes the following comments:

- Proposal 10 will make rights of the public on the vast majority of the network, being bridleways/footpaths and, to a certain extent, cycle paths, relatively fluid. An existing role of Definitive Maps is to record clear categories of rights. This will be diminished. Definitive Maps are not currently records of what is maintainable at public expense and, indeed, may record public rights maintainable at private expense.

It is important therefore to decide what purpose Definitive Maps will serve and what they will be recording. Their purpose is likely to be a mixture of

- Used by the public to inform them of which routes are appropriate for a class of user.

- Used to establish the standard to which routes should be maintained (either privately or publicly)
- Used to determine the the priority of traffic.

The link between rights and status will be broken and the impacts of recording as one status or another will therefore fall predominantly within the domain of public management (maintain to a higher standard, publishing more reliable information and priority of traffic). Authorities should be at liberty to record paths as the most appropriate status by reference to maintenance standard with minimal process.

- A statutory width for public paths in line with crop enforcement widths should be introduced that takes effect where the width is not recorded in a statement or where the highways is not set out by reference to historic boundary features.
- All the changes introduced in the Deregulation Act 2015 in England should be applied in Wales, except:
 - The right to appeal to the magistrates court for non-assessment after 3 months or non-determination after 12 months (Schedule 7 Para 3 & 4) should be replaced by a right to appeal to the Welsh Ministers (PINS) for a direction to assess/determine in line with current non-determination processes. PINS should be empowered to taking into account any scheme of priority followed the authority as they do presently.
 - The right to apply for diversions and extinguishments (sections 118ZA and 119ZA of the Highways Act 1980),
 - Temporary diversions for dangerous works (sections 135A and 135B of the Highways Act 1980),
 - Extinguishment of unrecorded rights of way (sections 53-56B of the CROW Act 2000)
- Proposals to allow electronic communication and advertising are particularly supported.
- There should be a 'minimum evidence' requirement for modification order applications under schedule 14 of the Wildlife and Countryside Act 1981. Authorities should have powers to reject applications that do not reach a minimum standard.
- Authorities should have powers to 'test' diversions (for example around farmyards) by temporarily creating an alternative public right of way for a limited period (up to 2 years?).
- Clause 2(a) of section 119 of the Highways Act 1980 should be repealed to allow paths that are a dead-end to be diverted under s119.
- Implement schedule 5 pt1 (2) of the CROW Act 2000 to enable authorities to make one order not two when paths are diverted, extinguished, etc. This has been in operation in England for the last few years.
- Provide authorities with the power to remove and confiscate illegal signs on public rights of way. Section 57 of the NPACA only allows for prosecution. This would allow Authorities to remove illegal signs that deter use of paths, without having to resort to costly court cases.

PROPOSAL 21

TO INTRODUCE PROVISIONS TO ALLOW FLEXIBILITY IN RELATION TO STOCK CONTROL MEASURES ON PUBLIC RIGHTS OF WAY.

Agreed.

- These may include provisions to allow temporary diversion or closure for stock control purposes similar to existing provisions for access land.

The following themes emerging from WROWMWG discussions are supported:

- Walking along public paths should be as easy as possible for as many people as possible, and therefore that barriers across them should be easy to use and barriers should be limited to those that are actually needed.
- Authorities should be given powers to remove (under s143 of the HA 1980) any gate or stile that is clearly no longer needed to prevent the ingress or egress of animals. It is presently possible for landowners to maintain gates and stiles across public rights of way when they are no longer needed to maintain a stock-proof enclosure. This is because they were present (or may have been present) when the right of way was first recorded on the definitive map.
- Any changes to legislation should enable authorities to exempt a structure on a footpath from being removed if it is considered to be of significant historic value or of value to the landscape.
- In certain circumstances local authorities need powers to impose an improved structure in a boundary to help users. These powers should be restricted to PROW where a public need can be demonstrated and any such new structure should be installed at the authority's expense. Landowners should have a mechanism to appeal to a higher authority if they believe that the structure has been imposed unfairly, which presently not the case under s147 of the HA1980.
- The legislation (i.e. section 146 of the HA 1980) should be updated to refer to the minimum standards (at least) contained in the current British Standard. Since this first became law in 1968 there has been a huge change in the design of gates to make them more stock proof and the British Standard for stiles and gates was substantially updated in 2001. This is especially relevant to gates on bridleways for which there has been a great deal of research and advice published in recent years.
- The responsibility for stiles and gates should continue to rest with the landowner other than where imposed as described above

PROPOSAL 22

TO AMEND THE REQUIREMENT FOR A DECADAL REVIEW OF ACCESS MAPS TO A PROCESS OF CONTINUAL REVIEW.

Agreed

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.

Agreed, subject to the plans replacing ROWIPs

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.

The Vale of Glamorgan council opposes the expansion of horse riding to cycle paths.

Proposed changes for the repeal of the Cycle Tracks Act and recording instead as Cycle Paths on the Definitive Map are otherwise supported.

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.

Agreed

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.

Agreed subject to provision being made for enforcement of the code, e.g. on the spot penalty fines.

PROPOSAL 27

TO REVIEW THE REGULATIONS AND GUIDANCE RELATING TO LOCAL ACCESS FORUMS
WITH A VIEW TO UPDATING AND CLARIFYING THEIR ROLE AND MEMBERSHIP.

Agree to the principle of a review.