

**DRAFT**

**Consultation on improving opportunities to access the outdoors for responsible recreation – Questions**

**Please return this form by post or email to reach the Welsh Government no later than 2 October 2015**

**Consultation  
Response Form**

Your name:

Organisation (if applicable): **British Mountaineering Council ("The BMC")**

email / telephone number:

Your address:

**Question 1: What are your views on the principles outlined above [section 2]? If you would suggest changing them, please explain how and why.**

**Comments**

The BMC broadly supports and welcomes the principles outlined in section 2, in particular that there is a real need to promote and highlight current existing access opportunities. The existing historic network of rights of way is a huge asset and great care must be taken not to jeopardize the protection what we already have in return for slight gains. That access to the countryside for recreational purposes should be free for the end user should be a fundamental and unequivocal right.

However, the BMC feels that the Welsh Government should add a statement to allow for recreational users to take on the liability associated with ( or that are inherent in) any recreational activity. The public should be aware of and make their own decisions about managing and assessing any inherent risks that are ordinarily part of the activity being undertaken -land owners and occupiers should not be exposed to potential liabilities arising from those activities.

The BMC also believes that the term "responsible recreation" needs better definition and agreement on its actual meaning. It could be (wrongly) interpreted as recreation without any risks, whereas there are inherent risks in all activities in the natural environment and the term "responsible" should not be used to prevent legitimate adventurous activities.

The BMC feels that the principles do not emphasis strongly enough the need for a programme of education and interpretation of the current existing rights and responsibilities or of the potential new rights.

Creating new opportunities without having a comprehensive programme of informing and educating both users and landowners of their rights and responsibilities could lead to confusion and conflict.

**Question 2: Tell us your views on the issues highlighted above [section 4], and whether there are other key challenges you believe need to be resolved?**

Comments

The BMC agrees that there is currently a high cost involved in administering the current system, particularly to the Local Authorities and a more holistic, landscape based approach to recreation and the network of paths that join our urban and green spaces is required. Similarly, opportunities for a broader range of pursuits should be addressed and key geographical areas such as our coastline opened up to allow for greater recreational opportunities.

It is the BMC's experience that many of the practical difficulties, as outlined in section 4.4, are based on perceived rather than actual difficulties. There are numerous good practice examples that exist where landowners, competing users and / or land management issues have been addressed with sensible dialogue involving all parties and based on the least restrictive option. E.g. – the system of agreed climbing restrictions for nesting birds.

The BMC also work with private landowners to try and relay any fears around liability – many of these fears are based on myths and the unfounded fears of litigation arising from recreational activities on their land.

It is important that Welsh Government draw on the good practice examples as ways of overcoming any potential conflicts and look at methods that have been used in England with the current implementation of the coastal access scheme. Natural England are working with landowners, conservation organisations and users along each stretch of coast to try and alleviate any initial concerns and to put in place an appropriate framework that works for all.

Simplification of the processes for managing historic and well established rights of ways needs to be balanced with the need to protect the current network and the needs of users. There is a danger that in "reducing the burden" associated with administering the process of rights of way management, that established rights could be lost simply for the personal convenience of landowners or occupiers. There are several examples of land owners/occupiers using spurious claims to have rights of ways diverted or extinguished. If the current administrative process is simplified there needs to be sufficient checks and balances to ensure that the views of the users are also fully considered.

**Question 3: What changes, if any, do you think need to be made to improve and simplify the procedures for recording, creating, diverting or closing public rights of way?**

Comments

The current procedures for amending rights of way are burdensome, expensive and archaic. For instance, the requirement to advertise in newspapers and journals should be replaced with a digital/electronic version.

Similarly, the requirement to consult on and approve both the diversion/extinguishment and creation orders and to have to repeat the process to subsequently modify the Definitive Map is a duplication of costs and administration. Definitive Maps themselves should be available in digital/electronic format.

**Question 4: What changes, if any, do you think need to be made to improve and simplify the provisions available to local authorities for making improvements on the ground?**

Comments

Lots has been said about the need to "unburden" landowners from the bureaucratic processes involved with diverting or extinguishing unused or un-needed rights of ways. However, the opposite is also true; local authorities should be better able to create new paths and rights of ways where there is clear public demand (supported by LAF's?) rather than the current process of creation orders which is expensive, cumbersome and involves a long lead-in time, often resulting in expensive public inquiries and other legal costs.

**Question 5: What non-legislative changes would you like to see in the meantime that you believe would help to improve the rights of way network in Wales and reduce the burden on local authorities?**

Comments

The BMC would like to see greater use of volunteers for both recording path conditions and for managing rights of way as well as wider consultation with user groups. More education and information for landowners regarding their responsibilities with public rights of ways is also needed - many are unaware of paths and their obligations (e.g. providing stiles and gates, clearing overhanging vegetation etc.).

**Question 6: How should the number, role, membership, and purpose of local access forums be redefined?**

**Comments**

Local Access Forums (LAFs) can perform a very useful role but the current situation across Wales is extremely patchy with some LAF's being very effective while others are non-operational.

For LAF's to be more effective they need to be given more powers with greater scrutiny of members' abilities and skills alongside the offer of training. Membership could be based on interest / links with representative groups in order to ensure greater balance of users / visitors rather than on individual interest as is presently the case.

Local authorities need to take greater notice of the recommendations of the LAF's if they are to be more effective. If the legislation around PROW management were to be simplified (such as making it easier to divert/extinguish/create ROW) then LAFs would need to have a greater and stronger role to play in ensuring that the new process of administration was scrutinised and not simply used as means to extinguish rights of access. The scope of LAF's could also be extended to include promotion and support of initiatives around the health benefits of access, tourism issues and move away from simply focusing on "rights".

**Question 7: How should the rights and responsibilities surrounding dogs in the countryside be harmonised to provide greater certainty over what is acceptable and what is not, in a way that makes communicating messages about responsible dog ownership and handling more straightforward?**

**Comments**

The control of dogs is a very emotive issue that creates considerable conflict. However, dog walking is also a major driver for outdoor participation. Too many restrictive controls on dogs could lead to a reduction in the number of people visiting our open spaces.

The BMC believes that greater education of dog owners regarding the behavior, hygiene and control of dogs is the way forward. The key is defining what "effective" control means for each given location, with seasonal guidance on levels of control (the need to be on a short leash at certain times of the year or in the vicinity of grazing stock or ground nesting birds). The current situation where dogs have to be kept on a short leash while on access land during the spring/early summer but only kept under "close control" on a PROW is confusing for all. There needs to be a harmonisation of the regulations surrounding the control of dogs to eliminate this confusion.

The new code for responsible dog walking needs better support and funding so it can be widely publicised.

**Question 8: How could current legislation be changed to make it easier to allow for a wider range of activities on existing and new paths?**

**Comments**

The BMC believes the focus should be on behavior underpinned by access rights. For example, multiple use of paths is possible if those participating in different activities adhere to good practice such as cyclists slowing down or giving way to walkers.

The BMC is also concerned that this question seeks to address the issue of shared paths and is not exploring the wider use of new access land per se. There are many areas of the countryside that are suitable for multiple activities including walking, climbing, cycling and horse-riding. Some urban commons have historic "rights for air and recreation" that predate CROW with very few reported issues.

The initiative and direction given by the Active Travel Act to have "shared routes" that allow people to travel to schools and to places of work should also be adopted on existing and new paths.

**Question 9: How could legislation better strike a balance between the various demands of motorised users, landowners and the natural environment?**

**Comments**

The BMC believes that the issues of the motorised use of the countryside should be the subject of a separate consultation as the issues are very different.

There are issues around the lack of enforcement of illegal use of the countryside by motorised vehicles that requires greater resources to tackle and consideration of greater penalties to act as a deterrent is needed.

There are also problems on the damage to legal byways which require local solutions and resources to tackle, ranging from temporary restrictions to allow byways to recover, from over use and the need for seasonal restrictions to prevent damage during times of prolonged bad weather or similar.

The BMC believes that by simply making the current legal use of byways illegal will only lead to an increase in use and uncontrolled activity on more fragile or sensitive locations.

**Question 10: How should the need for new or improved access opportunities be identified, planned, and provided?**

Comments

Demand-led access: Targeted, demand-driven permanent access provision should be an underpinning principle of future developments to help ensure value-for-money, fair provision and long lasting public and economic benefit. Route or area access should be developed to deliver maximum public benefit where it is most needed. Working with outdoor bodies such as the BMC and their local access representatives to help identify important recreational spaces, will be key to planning appropriate access improvements.

Use existing work: Significant work has already been done at national and local authority levels to identify strategic priorities for access through, for example, the development of ROWIPs. ROWIPs provide a strategic, demand-driven, local access planning tool and could form the basis for improving linear access.

Unfortunately, the content of ROWIPs is not standardised across all authorities. ROWIPs need not be the only way of ensuring access is targeted; the desirability of access might also be demonstrated by Local Community Plans or written support from local communities or more effective and powerful LAF's.

Similarly, work has already been undertaken through the re-mapping process, to identify those 'islands' of open access (under CROW) to which there is a statutory right of access but to which there are currently no means of accessing. Work by local authorities and landowners to create routes and link areas of open access would provide an easy, quick way of opening up more recreational opportunities.

Improved coastal access opportunities – the BMC would like to see an open access corridor along the Welsh coast and a package of measures to mirror what is currently being rolled out in England under the Marine & Coastal Access Act 2009. Coastal cliff climbing in Wales is of international importance but very few of these sites have access secured to them "as of right". The BMC would be happy to work with local authorities and Welsh Government to highlight key access issues along the Welsh coast.

Investment: Investment in the existing rights of way and open access network could be a first step in improving access opportunities. Statutory access is already shown on maps and cuts to local (access) authority budgets mean that there is a real need to support the access infrastructure that already exists, rather than spending money on creating new, short term, permissive (i.e. non- permanent) access arrangements.

Welsh Government could explore the option of permanent access by incentivising more 'taster periods' for instance, during which time landowners could become familiar with any new access requirements of. After this period, they could agree to provide access on a permanent basis if they wished, perhaps for a one-off payment.

Maximise current legislative powers: Current legislation could be used initially to improve access opportunities without the need for a new legislative framework as this may be quicker and simpler to implement. The BMC has already dedicated much of its own land under section 16 of CROW and support Natural England's and NRW's programme of dedicating its National Nature Reserves and woodland as open access land and would encourage other public sector bodies as well as private landowners to adopt a similar approach with their land holdings.

The BMC would also like to see relaxation of the law around wild camping. As defined under the Scottish Access Charter, wild camping could be permitted in some areas- note that is not "free camping" as currently occurs in some honeypot areas close to the roadside, but rather genuine wild or remote camping which is a tremendous experience for those wanting to carry out a cross country expedition.

**Question 11: What are your views on the benefits and challenges of creating a right of responsible recreation to all land in Wales?**

**Comments**

While the BMC fully supports the aspiration and principle of this approach (as is the case in Scotland), the BMC also recognizes that there could be practical sensitivities with this in Wales as land use, topography and management practices are very different with much more developed and enclosed land. However, there is (anecdotal) evidence that greater clarity of where people can go and what they can do would encourage more people to have the confidence to make greater use of the outdoors for recreation.

It is essential that any new rights of access are based on the need to secure people's sense of freedom and adventure rather than imposing restrictions based on a fear of perceived liability. Many land owners and occupiers are happy to grant access for more adventurous activities such as rock climbing but others are fearful due to misguided or misunderstood concerns over legal liabilities. This will be a key issue for Welsh Government to address to overcome barriers to make the outdoors more accessible.

The BMC would like to see land and water made available for recreational access where there is a clear demand and where there is currently no secured access. The BMC believes this should extend to all coastal land including coastal slopes, sea-cliffs and land adjacent to the foreshore, creating a coastal corridor available for responsible recreation and subject to seasonal/conservation restrictions as appropriate. The right to access land for responsible recreation should also extend to all woodlands and semi-rough grazing enclosed grazing land, such as the Ffridd land.

The BMC believes this could be done simply for access land without requiring new legislation by amending the description of open country (as outlined in CROW) with the definition given in the NPACA 1949. S59 states that "open country" means any area appearing to the authority ... to consist

land adjacent to the foreshore.”

The Countryside Act 1968 then extends the definition (at s16) as follows:

“(1) The definition of “open country” in section 59(2) of the Act of 1949 shall include, if in the countryside, any woodlands.

(2) Subject to subsection (6) below [this excludes ‘active’ reservoirs and commercially used canals from the definition], the said definition shall include, if in the countryside—

(a) any river or canal, and

(b) any expanse of water through which a river, or some part of the flow of a river, runs, and

(c) a strip of the adjacent land on both sides of any river or canal, or of any such expanse of water, of reasonable width, and where a highway crosses or comes close to the river, canal or other water, so much of any land connecting the highway with the strip of land as would, if included together with the strip in an access agreement or order, afford access from the highway to some convenient launching place for small boats.

(3) The strip of adjacent land comprised in any access order shall be wide enough to allow passage on foot along the water and wide enough to allow the public to picnic at convenient places and, where practicable, to embark or disembark, and shall include—

(a) the banks, walls or embankments along the water, and

(b) any towpath or other way or track beside the water.

In addition, the BMC would like to see access to disused quarries for recreation made easier. Disused quarries provide a unique venue for rock-climbing, particularly when they are situated in or close to urban venues (most of the rock climbing venues in south Wales for instance are found in disused sandstone or limestone quarries). The current laws around liability and in particular section 251 of the 1954 Mines & Quarries Act, makes it extremely difficult for land owners to allow this without taking on a substantial liability risk.

Access should be based on the "least restrictive options" approach - access rights should be secured in law but tempered by locally agreed access arrangements to protect the conservation, historic, cultural or land management practices of the area. This is an approach that has worked well for the BMC for many years when discussing access for rock-climbing to cliffs and sites, many of which have secured access by virtue of being on open access land but where seasonal or temporary restrictions have been agreed to protect features of conservation interest.

**Question 12: What approach do you advocate to improve opportunities for responsible access for recreation on inland waters?**

Comments

The BMC supports and recognises that there is a considerable demand for secure access for recreation on and beside inland water in Wales

However, as a representative body for hill-walkers, climbers and mountaineers we have not responded directly to this question. However, it is our experience that seasonal access arrangements to natural features of high conservation value work effectively and are well respected and adhered to by c l i m b e r s and visitors alike. This works well particularly well in areas where access is secured i n law and agreements are then put in place to protect conservation and land management interests. Subject to appropriate conservation agreements, consideration could be given to recreational activities such as "gorge-walking" or "canyoning" under this heading.

**Question 13: What approach do you advocate to improve opportunities for responsible access for recreation on the coast and in the marine environment?**

Comments

Many coastal communities attract visitors by providing quality, well-promoted walking routes, as demonstrated by the Wales Coast Path & Pembrokeshire Coastal Path. The Welsh coastline also provides a world class coastal climbing experience with over 169 climbing sites which carry between them some 11,000 rock climbing routes. The recreational opportunities provided generate significant economic benefits and support vital local services and businesses.

Publicising and liaising effectively with the public and recreational visitors will be important to ensure responsible access and raise awareness of the important and often fragile coastal habitats. The best means of doing this is to work with representative bodies and to ensure any access restrictions are agreed by all parties and based on the least restrictive approach. The BMC has been involved in managing environmentally responsible access to the coast for climbing for over 40 years. In 2015, there were over 80 seasonal climbing restrictions in place to protect sea cliff nesting birds, a recognised and well respected practice that has worked well for many years. Welsh Government should continue to liaise with the BMC to ensure responsible access continues around the coast.

Safety around the coast will also be an important consideration. As outlined previously, the freedom to take risks and personal responsibility is an integral part of sport and outdoor recreation and Welsh Government must take this into consideration when looking at ways to support opportunities for

responsible access to the coast. Natural England's approved Coastal Access Scheme contains a useful form of word and could be more widely utilised; 'Safety on the trail -Most people already understand that the coast can be a dangerous environment, and are aware of many of the inherent risks. Our key principle is that visitors should take primary responsibility for their own safety when visiting the coast and for the safety of any children or other people in their care, and should be able to decide for themselves the level of personal risk they wish to take.

**Question 14: What would be the advantages and disadvantages of a statutory code of conduct for outdoor recreation in Wales?**

**Comments**

A country-wide statutory code could be adopted to promote confidence and to clearly outline the responsibilities of recreational users, land owners and occupiers.

To be effective it would need considerable promotion and interpretation. This is one of the main keys to unlocking greater access to the Welsh countryside - in Scotland the embracing of wider open access has been a success, mainly due to the intensive and concentrated efforts to promote the code that goes alongside the right to roam.

Few people in England and Wales seem to be as aware of the Countryside Code (and what it means in practice) compared to users (and land owners) in Scotland who are much more aware and educated of the Scottish Outdoor Access Code

**Advantages:**

- Confidence to take access
- Awareness, knowledge & understanding of rights and responsibilities
- Promotion of responsible behavior
- Clear sanctions for irresponsible behavior
- Degree of reciprocal understanding amongst various recreational users and land managers / owners
- Public understanding of the countryside & natural heritage
- Consistency of approach and standard to ensure 'brand recognition'

**Disadvantages:**

- Difficult to police
- Based on trust and may take time
- Landowners concerns