

Improving opportunities to access the outdoors for responsible recreation

**Welsh Government Consultation response by
OpenMTB, in conjunction with CTC – the national
cycling charity, British Cycling and Welsh Cycling**

Introduction:

OpenMTB and its partners, British Cycling, Welsh Cycling and CTC - the national cycling charity, praise the Welsh Government for providing an opportunity to debate changes to countryside access. We believe these changes have the potential to bring about significant economic, social, transport, recreational and health benefits for both residents and visitors.

A successful outcome would enable the country to further gain from the Outdoor Activity Tourism in Wales evaluation, which indicates that the outdoor activity sector already contributes 10% of the Welsh tourist economy. Positive changes to countryside access would undoubtedly increase these figures, as evidenced throughout Scotland as a result of the access provisions within the Land Reform Act.

Meanwhile, we would of course praise the Forestry Commission, and in turn Natural Resources Wales, for their forward looking approach, and the provision of dedicated mountain bike facilities that have become recognised as truly world leading. It is clear that this has helped transform cycling both as part of an active lifestyle, benefitting local communities, and as a tourist activity, which brings much needed income and employment to rural areas.

Our only question is 'when can we come out of the woods and be accepted as valid users of the rest of this glorious countryside?'

Consultation Answers :

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

We fully support the proposed approach. We are pleased that the Welsh Government recognises the value of engagement with the natural environment, and the importance they have given to ensuring that opportunities for this are available to everyone. We believe that this ability to engage will foster healthier lifestyles as well as a providing greater understanding of the role and importance of nature and a working countryside to society. It will also provide important benefits for both physical and mental health.

We feel that the proposed focus on modernising access provisions to better support a wider range of activities, in tandem with land management priorities, is to be particularly welcomed, along with recognition of the administrative burden placed on all parties by the current legislation.

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

4.1 Current legislation and guidance

1949 National Parks and Access to the Countryside Act - it is clear that the process of surveying and mapping rights of public access carried out under the auspices of the 1949 act was fraught with difficulty and inconsistency - the fact that over fifty years down the line from the initial mapping process we are still attempting to resolve issues of misrecording of rights, where, for example, a surveying authority on one side of the parish boundary recorded a footpath while their contemporaries on the other side recorded a bridleway, shows that the building blocks of the current system were fundamentally flawed, and the time and cost burden resolving these issues, along with those highlighted by the discovering lost ways project, have been a running sore through the middle of countryside access legislation ever since. The currently proposed 2026 cut off date for rights of way maps is looming, and abortive attempts such as the Discovering Lost Ways project show that it is increasingly likely that a great many unrecorded public rights will be lost unless there is either a reconsideration of the planned deadline or very significant investment in researching and updating the definitive maps.

1968 Countryside Act - we note that the report of the Gosling committee, which gave rise to the 1968 act, and the inclusion of a right to cycle on a bridleway, initially recommended the same right was extended to footpaths. Hansard reveals that initial parliamentary discussions at the time went down this path, before being later watered down. We note the position of the government at the time was that:

It may be that there are short sections of paths which are much used where it would be wrong to have this general provision. In that case there is nothing to prevent the local authority, under the bye-law powers of the 1933 Act, which are very wide, from making a prohibition order to prevent cyclists going either on part of the path or the whole path. No doubt there will be cases where the local authority will want to do this. But that is a matter for them and certainly not one for Whitehall.

We can only reflect on the sensibility of this initial advice, and how different things might have been for the development of mountain biking as a widespread recreational pastime had it been taken.

The question must be asked, if we were looking to come up with a workable system for the 21st Century, would we start from here? The 1968 law was conceived before mountain bikes were invented, and this shows. It has led to a situation on the ground where a growing number of mountain bikers are unwilling to be corralled into an inadequate bridleway network. For the mountain bike community in general, the distinction between a bridleway and a footpath is anachronistic - an out of date carry over of a series of badly implemented laws from the middle of the last century.

Highways Act 1980 - we think that the 1980 act is essentially laudable in both letter and intent, whilst proving longwinded, officious, overly focused on historical precedent rather than looking forward, and under-resourced in practice. We would also note that the lack of progress and rare use of Section 26 suggests a reluctance to use powers of creation already available to local authorities, and an unwillingness to act to improve the rights of way network to take into account the "convenience or enjoyment of a substantial section of the public" even where statutory powers to do so exist. Indeed we have witnessed many

discussions over potential routes drag on for several years without bearing fruit, when use of these powers should have occurred much earlier in the process.

Cycle Tracks Act 1984 - the lack of use of this act for creation of cycle tracks in the countryside speaks as to its inadequacy. We recognise that a key limiting factor in this legislation is the veto of development over agricultural land, however this does not explain the continued lack of use in other areas. We also note that one of the common reasons quoted for objection to an order under the Cycle Tracks act by other user groups is concern over the removal of a route from the Definitive Map. Though we remain uncertain whether that is a valid reason or simply utilised to justify a wider position of objection.

CROW Act 2000 - this act was of very limited benefit to the cycling community. We note that Section 16 of the Act allows the relaxing of schedule 2 restrictions, this in principle at least could have given cyclists significant increases in access, which have not been forthcoming - we feel the lack of utilisation of this provision, even by supposedly forward looking government departments and local authorities, shows that compulsion is the only practical way to significantly increase rights access.

Active Travel (Wales) Act 2013 - we see huge potential in the application of this act, however wait to see results on the ground. Our suspicion is that it will be used mainly in a 'town planning' and 'sustainable travel' aspect for transport and utility cycling, and overlooked as an aspect in provision for countryside recreation. We would suggest that there could be useful application of the act in the work of the Rights of Way department, for example, if all public path order applications were reviewed as an opportunity to improve and enhance cycle access.

We also note that Section 4.1 fails to mention the existence S193 of the **Law of Property Act 1925**, which extends open rights of access for air and exercise on both foot and horseback to large areas of common land, we would comment that this appears to be a significant oversight in the review of existing legislation. There is an extensive caseload of planning law reflecting the importance of access under this section, and its importance in creating rights of access for horse riders over and above those under CROW cannot be ignored.

4.2

We note with awe the progress on enhancement of rights of access on foot, including large scale projects such as the Pembrokeshire Coast Path and the Glyndŵr's Way, and look on morosely at the unfulfilled potential, whereby these routes could have benefitted a wider range of users.

We would take this opportunity to praise Natural Resources Wales for their forward looking approach, and the creation by both them and private landowners of dedicated mountain bike facilities that have become recognised as truly world leading - it is clear that this has transformed mountain biking both as part of an active lifestyle, benefitting local people, and also as a tourist activity which brings much needed income and employment to rural areas. We note however that cyclists still have limited access beyond this, with a fragmented bridleway network based on historic use by horses, rather than any objective criteria regards safety or suitability.

4.3

Whilst changes in participation are a relevant factor, we suggest that one needs to look at rights of way in a wider context of social change. The PROW network has a complex origin, and has evolved in a casual way to fulfil both local and national needs. Some were deliberately planned, many evolved as simple accommodation roads between villages and places of work, and through use developed public rights, others as pack horse or drove roads. However, patterns of movement change, and by the 1960's it was accepted by government that the primary use of this network was recreational - as such, it is clear that the importance and use of footpaths and other rights of way, through time, has reflected and moved with societal change. It is therefore vital that as changes in patterns of recreational use are witnessed, the PROW network evolves to better suit them.

4.4

We can only support the broad thrust of this chapter, and comment that one of the major challenges facing cyclists and horse riders, is the disjointed and inconsistent nature of the bridleway network. Overall however, we suspect that the existing system is so broken, that it probably needs to be discarded.

We would comment, that whilst we would cautiously and reasonably support moves to simplify the diversion rights of way away from, for example, working farmyards for health and safety reasons; we would be careful to ensure that homeowners seeking greater privacy, in a manner which damaged the historical context of the right of way, or overall user experience, did not abuse this.

On reflection, we would propose a process which allowed movement of the definitive line of a right of way within a short distance, for example 50 metres from the existing definitive line, as an executive function of the Rights of Way department. This could be done without a need for a longwinded public path diversion process, subject to a consideration of expediency and convenience of use for the public, balanced against the benefits of the landowner of the proposed revision.

Regards cattle and livestock, we feel that the existing rules reflect a reasonable balance, and would not support further general restrictions on grazing. We feel that such isolated incidents as there have been regarding cattle and walkers, generally involving dogs, reveal a requirement for better education of path users, rather than further restrictions on either users or farmers. We would suggest that a general code of responsible access, which could carry attendant advice for both dog owners and landowners too, would be the best way to achieve this balance.

Competing uses of the outdoors will always be an emotive issue, we would however, suggest that where all parties have equal rights, it often results in an equitable and reasonable solution being ploughed out, as has been seen for example in Scotland, with the voluntary agreement on rafting and Angling on the River Tay, and closer to home with the long standing voluntary cycling restriction on Snowdon. As an observation, we would comment that conflict often grows where one user feels that their 'right' outweighs another's.

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?

Minor diversion of PROW permitted by council without need for PPO

Limitations to become compliant with BS5709

Cycle Tracks creation powers brought in line with S26

Active Travel Act duties regarding creation orders

Simplified authorisation for cycling events over public rights of way

As mentioned in our answer to Question 2, we would propose a process which allowed movement of the definitive line of a right of way within a short distance, for example, 50 metres from the existing definitive line, as an executive function of the Rights of Way Department. This could be done without a full Public Path Order, consultation or publication of draft orders. However, it should be subject to statutory consultation with Local Access Forum, who may request that the formal PPO process be followed if they feel there may be a potential loss of convenience or higher rights.

We foresee this being of use in the event of, for example, temporary construction or repair works, or to move paths for health and safety or biosecurity reasons to avoid working farmyards. We would also suggest that this could provide a pragmatic and cost effective solution to problems occurring with erosion and similar issues. We believe that the proposal would result in a significant reduction in the time and cost burden on both Rights of Way Departments and landowners, where minor path diversions were justified by the circumstances.

We would also propose that definitive statements should, in the future, record limitations in the form of gates/stiles as “limitation constructed to the requirements of BS5709 to satisfaction of local authority.” This would mean that, in time, all gates and similar structures would have to conform to the current version of the British Standard for Gaps, Gates and Stiles, and in accordance with this would also have to adhere with the principle that the least restrictive practical option was always chosen. The expectation would be that whenever initially installed or replaced all items of path furniture would have to be BS5709 compliant.

Section two of the Cycle Tracks Act 1984 contains a limitation which prevents the creation of cycle tracks without the permission of any person having a legal interest over agricultural land – we suggest that this provision should be revised to bring it in line with public path creation powers under S26 Highways act, whereby due regard is given to both public convenience and the effect on landowners.

Section 9(1) of the Active Travel (Wales) Act 2013 requires the Welsh Ministers and local authorities to take reasonable steps to enhance provision for walkers and cyclists when exercising certain functions under the Highways Act 1980, where it is practicable to do so, this includes when creating rights of way by agreement, order or prescription. We suggest that clearer advice needs to be given to rights of way departments regarding the duty

under S9(1) to consider upgrading any creation order to include access rights for cyclists. We would further suggest that this duty be extended within the boundaries of any Active Travel Area to place a clear presumption in favour of creating cycle access in the exercise of any public path orders under the Highways Act 1980.

We propose that a simplified method to notify, approve and use public rights of way (or their successor) be available to event organisers. Wales has a substantial and growing participation level in mountain bike, cyclo cross and off-road cycling events and competitions. It also boasts two world champions in downhill mountain biking, providing huge inspiration to other riders, as well as positive representation around the world.

There is an anomaly in the current legislation whereby motor vehicles can use public rights of way for events (through relevant permissions), but the same does not apply for cycling events (DfT also recognise this is an anomaly) The impact of this anomaly was possibly best described in a 2005 parliamentary speech by the former MP for Brecon and Radnorshire, Roger Williams:

There should be some certainty in legislation about rights of way and the byways that cyclists can use so as to enjoy their recreation. The increasing popularity of mountain biking has enabled cyclists to gain access to parts of the countryside that they have never reached before. It would be of great benefit to them and to cyclists in general if legislation were much more definitive and obvious in its interpretation. As the hon. Member for Islington, South and Finsbury (Emily Thornberry) said, the last thing that we want when we are engaged in our activities, recreation and enjoyment is to be challenged by those who wish to dispute whether we have the right to use particular rights of way.

New clause 23 stands in my name. It is an anomaly of the law that, while cyclists can use highways for races if they get appropriate authorisation from local authorities, with local authorities being able to place conditions on such use, there is no way in which cyclists can obtain permission to use restricted byways, including bridleways or footpaths on some occasions, for races or time trials.

The anomaly arises from the Road Traffic Act 1988. The new clause would allow organisations to apply to use rights of way for cycle races, including time trials. Local authorities or highway authorities would be able to put restrictions or conditions upon that authorisation. That may appear a small issue to the Minister, but in Llanwrtyd Wells it is extremely important. Gordon Green has promoted the area over the past years. Llanwrtyd Wells claims to be the smallest town in England and Wales. It was the place where Sosban Fach was composed and has come to international importance through the world bog snorkelling championship. One of the other competitions that has been promoted there is the man versus horse race, an event that has been going on for 27 years and is sponsored by William Hill, which makes available £1,000 every year. The year before last, the man won. He beat the horse and won a prize of £27,000.

The real intention of the competition was that it should be man versus horse versus cyclist. As it is illegal to have races or time trials on byways, including bridleways, Gordon Green, being a man of complete integrity, was not prepared to promote such a competition if it was illegal.

The Minister, by a single stroke, could become popular in Llanwrtyd Wells and famous. I have no doubt that he would be invited to start the man versus horse versus cyclist race. He would join a sequence of famous people such as Lord Sutch and madam Cynthia Payne who have previously started it. This is a serious matter. It is a small anomaly that can easily be rectified by the Minister. Mountain biking is increasing in popularity. The new clause could lead to more activity in rural areas and promote the rural and local economies. By a small token, he could undo an obvious anomaly. When he takes the matter back to the other place, he should know that many of their

lordships would love to partake of cycle races on byways and bridleways. I am sure that there will be considerable support for the proposition. I hope that he can accommodate the wishes of Llanwrtyd Wells.

The growth, development and delivery of mountain bike competition at recreational, grass roots and elite competition levels in Wales has been limited by the restrictions linked to access, particularly in comparison to, for example, Scotland where the access system enables both recreational and competitive use to co-exist happily.

A change in the legislation is essential to the future growth and development of mountain bike events in Wales, where currently opportunities for event organisers are limited due to the restrictions in the legislation. These changes will have a positive impact on MTB events at all levels, from entry level through to national/international, providing increased opportunities for riders of all levels.

Existing procedures for the authorisation of events on rights of way ensure that, where necessary, applicable public access controlling mechanisms can be implemented. These enable event organisers to control public access during events, ensuring public safety whilst facilitating continued access and minimising inconvenience.

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?

A fixed penalty system for obstructions and surface reinstatement offences

Greater use of GIS to replace paper definitive maps

Online national access mapping

Section 28 creation order compensation capped

Alongside our proposals in the answer to question 3, we would propose the introduction of a penalty system which allowed rights of way departments to issue fixed penalty notices to persistently obstructive landowners for obstructions of rights of way and similar breaches - we feel that this proposal would speed up and simplify the resolution of many minor issues, that experience tells us otherwise drag on and require an inordinate amount of officer time to resolve. We would also strongly suggest expanding the principle of extending cross compliance for CAP support as exists under DEFRA guideline GAEC 7b in England.

Investigation should take place on the viability of replacing paper definitive maps with an electronic GIS recording system. This would reduce long term administration costs and allow for integration with a system of public web access for rights of way information. It would also allow greater integration with the existing list of highways maintainable at public expense, allowing the UCR and rights of way network to become better integrated, and the correction of inconsistencies between the two that have led to routes becoming incorrectly recorded and signed.

We would also suggest that a single website, allowing people to locate a database of both rights of way and access land throughout Wales, would make a significant difference in the provision of access information to the public, and would help both local communities and tourists unfamiliar with the area to plan outdoor activities. We note, for example, that the existing government GIS database at www.magic.gov.uk shows overlays from Natural England databases of national trails, common land, CROW access land and Section 15 land (though not rights of way).

Finally for this section, we understand that one of the reasons for the reluctance to utilise section 26 creation orders by highways authorities, is uncertainty over the level of compensation that they may be liable to pay under section 28 through lands tribunal. We would suggest that greater certainty is brought to these proceedings, by introducing a statutory cap on compensation, perhaps in accord with the likely value of Glastir access payments over a period of time.

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?

Expansion of CROW access rights to Horses and Cycles on existing tracks over public land

Glastir access conditions to offer presumption of multi-user access

We are conscious that the timescale for the introduction of radical changes in access law, such as those proposed in Questions 8 and 11, may be considerable. We would therefore urge the assembly to look at significant interim steps that could be made to enhance access in the meantime without the need for legislative change

At the moment, significant expanses of common land, in the ownership or management of public sector authorities, are subject to section 193 of the Law of Property Act 1925, particularly in urban fringe areas. This extends a statutory right for both walkers and horse riders to use the land for 'air and exercise.' Unfortunately however, a clause entered at the time of creation, designed to restrict use of the land by Gypsies, serves to make use of the land by cyclists, without permission of the landowner, a criminal offence.

It is clear that this clause predates the existence of mountain biking as a recreational pastime, and we think the continuation of this inequity of access is no longer viable in the modern world. Mountain biking is clearly accepted as a valid common method of enjoying 'air and exercise,' and we would suggest that extension of this right, on common land, in the ownership or management of public bodies, is long overdue. This could be achieved either by minor amendment of the legislation, to exclude bicycles from the S193.(1)(c) definition of "carriage, cart, caravan, truck, or other vehicle," or through the issuing of a blanket permission for the use of bicycles on those areas of public land where rights of 'air and exercise' are already enjoyed by walkers and horse riders.

We feel strongly that other public sector and quasi-public sector landowners need to take note of, and follow, the example of dedication of forest areas as access land under the Countryside and Rights of Way Act by Natural Resources Wales. Indeed, we would go so far as to suggest that all public land should be managed with a view to allowing full access, except at places where doing so would conflict with the primary purpose of the control of the land (for example military training areas, where Section 28 directions can be used to impose restrictions on CROW access).

Section 16.(6)(b) of the Countryside and Rights of Way act 2000, allows for the relaxation of Schedule 2 restrictions on the exercise of rights of access on access land. At the moment, Schedule 2.(1)(a) does not entitle access where a user "drives or rides any vehicle other than an invalid carriage". Again, it is clear that land under public ownership or management could see that restriction relaxed and increased access by cycles created under existing powers.

We would also comment here, that we note a great many access roads on agricultural land and moorland were funded by government grants under EU FHDS funding schemes. And that landowners who have received funding under the Tir Gofal and Glastir schemes have been in a position to increase access for cyclists and horse riders as well as walkers,

though that has not been forthcoming. We suggest, that it is vital that the current Glastir funding scheme is reviewed to ensure that, in the future, landowners were expected to offer multi-user access as a basic requirement in order to qualify for access payments. Only where it was physically unsuitable should a dispensation from this provision be considered.

We would stress that the above proposals could be delivered immediately at minimal cost, and without a long, drawn out program of legislative change. Thus opening up large areas of land in public ownership to cycle and horse access that at the moment is restricted to walkers.

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

Regional access steering groups

We believe that the current role of Local Access Forums suffers through disproportionate representation of user interests, and these should be rebalanced to reflect the volume and nature of user types. We also believe that the current model of Rights of Way Improvement Plan (ROWIP) is ineffective, and those we have reviewed generally have few tangible results

We would suggest that the current model is reduced to a regional basis, with the amalgamation of existing LAF into regional access forums, based broadly upon the historic counties. These regional groups should act as more of a steering group for increased provision, with ability to identify areas that need greater provision and to direct funding.

An additional important role of the regional forums could well be in the resolution of disputes over a future right of responsible access, acting in a role to help settle disagreements.

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?

Clearer guidance over duty to keep dog under control

We believe that current guidance is unclear, and does not place enough responsibility on the owner to keep their dog under control. Current guidance places different expectations on dog owners between rights of way and access land. There have been myriad situations where countryside users and livestock have been attacked by dogs that were not on a lead. In our opinion, as a matter of public safety, dogs should always be under full control on any form of public right of way, access or recreational land.

We believe that guidance in any proposed recreational code should point towards a clearer presumption that dogs ought to be on leads in the countryside. This should be allied to the other messages already contained in the existing Dog Walking Code, published by Natural Resources Wales. We would point out that this clear message would reinforce the position of Section 3 of the Dangerous Dogs Act 1991, that it is a criminal offence for the person in charge of a dog to allow it to be 'dangerously out of control' in a public place at any time.

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?

Consolidation of Rights of Way classes under test of Reasonable and Responsible Use

CROW rights extended to permit cycle and horse use on existing tracks over access land

We would support legislative reform, which led to the consolidation of rights of way into two classes of 'public way,' with access focused around a simple test of reasonable and responsible use.

We suggest the existence of two classes of public right of way:

- One that can be accessed by non-motorised vehicles; foot, hoof and cycle
- One that can be accessed by carriages and motorised vehicles as well as foot, hoof and cycle as per current byways. It would not be envisaged, as a result of this consultation, that the current access rights for this category would be expanded from the current byway network, but that additional facilities for motorised access would be found through the solutions developed in our response to question 9

As a result of the development of this test of reasonable and responsible use, a simple method for altering access class in the future will then exist (for example, in the circumstances a route is resurfaced for farm access), which can be evaluated by the local authority or the LAF.

We would note that the concept of reasonable use is already established in highways law, with DPP v Jones (1999) stating: *The public highway was a public place, on which all manner of reasonable activities might go on. Provided those activities were reasonable, did not involve the commission of a public or private nuisance, and did not amount to an obstruction of the highway unreasonably impeding the primary right of the general public to pass and repass, they should not constitute a trespass.*

We would strongly suggest that as an outline basic framework of reasonableness, the above common sense test is both logical and fair. For example: riding a bike or horse on a narrow public right of way with high walls on both sides that left no room for others to pass would clearly be unreasonable, whereas riding the same bike or horse on a farm access track that was built for vehicles and left plenty of room for users to pass each other without conflict, is clearly not unreasonable.

The importance of common sense was suggested in Parliament during debates on the 1968 act:

Surely this is a matter of common sense and courtesy. People in the countryside know that one can ride a bicycle on certain footpaths and that one cannot do so on others. I do not believe that there is any need for legislation on this point... Surely it is common sense and courtesy for a person walking on the footpath to step back and say, "How do, maister". I never heard anything so

ridiculous as the suggestion that legislation is needed on matters like this. This is a waste of the time of the House. We are taught courtesy at an early age. If an old lady comes along, one gets off one's bicycle and allows her to pass.

We believe that the simple common sense test of reasonableness, allied to responsibility, as set out in an outdoor access code, that outlined expectations of each type of user (dogs on leads, do not leave litter etc.) more than covers the safe operation of our proposed single class of public path. We would also point out that irresponsible use is, in most cases, already adequately covered by existing road traffic legislation & offences.

We would point out that the introduction of S30 of the 1968 act, permitting cycles to use bridleways, saw no increased burden on landowners or local authorities, to improve existing bridleways to make them suitable for cycling. We would propose a similar clause in any new legislation, so that it placed no duty to improve existing rights of way surfaces or furniture for new users.

We repeatedly hear that it would simply not be safe to allow cycles to interact with walkers on footpaths, as it would bring them into conflict, however experience tells us that the artificial 'prohibition' itself is often the very cause of conflict, rather than any actual issue with the interface or interaction between users. Opposition usually being voiced by a tiny minority, not due to any damage, risk or disturbance, but simply because they perceive a cyclist to be 'breaking the rules' (although the law as it stands is clear that it is an issue for the landowner, indeed several of our experienced members have encountered arguments with walkers over their supposed 'illegality' in riding on a footpath despite having permission from the landowner to do so).

At the same time, there are some six thousand miles of bridleways in Wales where access is shared between users happily, with conflict between users being extraordinarily rare. Indeed, even in areas with the highest risk of conflict, the mountain bike community has shown extraordinary willingness to cooperate to minimise this, as seen with the almost total compliance with existing voluntary restrictions on the Snowdon bridleways.

We would also point to the extensive work done by the Countryside Commission on how people interact on off road routes as part of their series of research notes that concluded:

The results of the behavioural observation demonstrate that actual conflict is a rare occurrence. The questionnaire survey supported this and found that perceived conflict too was extremely low. Even when people recalled their route experience later, it was not seen as conflictual, although perceived conflict was recalled as higher than when in the route environment. It is only when people talk about conflict that the incidence, or assumed incidence of conflict escalates and appears to be more serious. Therefore, in the scenarios and focus groups, conflict emerged as a serious issue, although it was not considered a serious problem. We conclude, therefore, that the discussion and focusing of attention on conflict serves to escalate its perceived existence.

Allied to this single class of public path, we would support legislative reform which led to a revision of existing open access legislation, allowing bicycles to use, reasonably and responsibly, any existing track or path on areas of access land (i.e. areas where walkers already have the much more extensive unrestricted right to open access) or S193 common land (where both walkers and horses already have unrestricted rights of open access).

The current access settlement in England and Wales carries little semblance of logic. Safety and sustainability have never been categorised as relevant criteria in the existing legislation underwriting designation of footpath or bridleway rights, as a result we have

many much loved bridleways consisting of narrow rocky sheep tracks on steep ground that carry a statutory right to ride bikes on, along with thousands of miles of public footpaths lying on wide, metalled farm and forest tracks from which mountain bikers and horse riders are prohibited.



image 1: single-track public bridleway

image 2: wide, tarmac public footpath

Alongside this we have tens of thousands more miles of farm, forest and moorland vehicle tracks spanning the country, where cycles remain prohibited. It seems on the face of it inconceivable that a stone track, built to carry HGV's to the top of a wind farm, on open access land where walkers can roam freely, should remain off limits to cyclists for no justifiable reason. This inadequacy is even more alarming when it is realised that most of these routes were paid for with public funding.

Simple revisions on issues such as those above, would see the opening of large areas to a right of reasonable and responsible access with minimal impact.

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

Alternative provision to relieve pressure on mechanically propelled rights of way network

We would be concerned at any proposals for a blanket approach to the problem of mechanically propelled vehicle routes. There are extensive powers already in the armoury of the highways department where use is causing a problem, and we believe that restrictions have in many cases resulted in simply shifting the problem into other areas. As a result gradual concentration of motorised users onto a decreasing number of routes has regrettably aggravated rather than reduced damage.

We suggest that as a counter balance to this, Natural Resources Wales should have a duty of provision placed upon them whereby identified areas of forestry and post industrial land such as quarry sites, were used for the provision of permissive, or reasonable cost, access facilities, to take the pressure off the rights of way and UCR network.

The maxim, once a highway always a highway has good historic reasoning. Highway use is cyclical and waxes and wanes to reflect the needs of society over time, while the legal process to acquire new highways is laborious. At some time in future years, societal changes that we cannot predict now may well see the importance of these routes return as important sustainable transport links. This would be compromised if we have terminated highway rights.

We are minded to think of the closure of railways during the Beeching era, where thousands of miles of public owned disused rail routes were disposed of, as nobody could envisage a future use for them. This has resulted in many of these routes being bulldozed and built over. As a result, the creation and connectivity of green transport links and safe cycling routes, not even considered at the time, has been put back by decades.

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

Regional access steering groups

Active Access Areas

Test of reasonable and responsible use

We believe this is an important role for the revised Local Access Forums as suggested in our answer to question six.

We note the comment in the green paper over a suspected landowner reluctance to permit access due to fears over occupier liability. We feel that this claim is a result of either ignorance or disingenuousness, since the Countryside and Rights Of Way act 2000 clearly contains provisions which serve to limit liability to the lowest possible level in law. It is clear to us that this continued reluctance despite such provisions reveals the inherent failure of clauses which allow voluntary dedication, and that compulsion is now the only realistic way to achieve widespread change.

We feel that this criticism should weigh heavily towards local authorities and quasi-public landowners such as the National Trust, all of whom have been wholly ineffective in increasing access for cyclists, horse riders and other groups despite adequate chances over many years, This was at a time when Natural resources Wales were investing heavily in enhanced access provision. We would also point here to the longstanding exemplary lead taken by FC/NRW in offering permissive access to horses and cycles to over 4500km of their forest road network, though note that this regrettably remains a revocable privilege rather than a permanent right of access across the forest estate under CROW, as dedicated to walkers.

We note that the Active Travel Act requires networks of cycle and walking routes in identified urban and semi-urban Active Travel areas, We suggest that since we now have Active Travel areas we could consider identifying areas for Active Access – for example, regional access forums, tourism groups and major landowners such as NRW, NT or MOD could identify block areas for access enhancement efforts, particularly where these areas may take visitor/access pressure off more sensitive landscapes.

Once designated an Active Access Area we would suggest the local authority, in conjunction with stakeholders, has to prepare an access improvement plan. This would lead to the identification of priority areas for access improvement funding, for example landowners in the area would receive access funding under Glastir and will thus be rewarded for access improvements.

We suggest this will deflect a number of problems caused by increased access to sensitive areas, and the different implications of rolling out access across all of Wales. Instead it will create planned recreation and access honey-pot locations where access facilities and opportunities are easily accessible to users, with, for example, dedicated waymarked paths and facilities, parking etc.

We suggest that this planned approach will also allow local authorities to maximise the economic opportunities of increased access to better benefit local communities.

As per our response to question 8, a test of reasonable and responsible use should be generated and applied through the LAF (or its successor) where new access ways are identified, created or modified.

Question 11: What are your views on the benefits and challenges of creating a right of responsible recreation to all land in Wales?**Scottish example proves that it can be managed effectively and delivers significant benefits across both rural and peri-urban landscapes**

We are fully in favour of reforms in the access legislation that bring about a system of responsible access with significant similarity to the Scottish access model, allied to a clear code of conduct. We would caution that we feel that discussion of this concept as "open access" is both misleading and inflammatory, and we feel no need for the repetition of the Scottish 'core paths' network, given the existing Welsh rights of way system

Initially, the argument that simply opening public footpaths to cycles and horses seemed appealing. It is clear however that this is not just an issue of extending users rights on existing public rights of way. For years, increased access for walkers as delivered under CROW was opposed on the basis that it would lead to devastation in the countryside. Years of evidence since that introduction has shown those fears to be largely unfounded, and proved that those limited problems that have occurred are largely site specific and be handled through good management, sadly though, the same tired arguments get trotted out to oppose access to a much, much smaller number of cyclists. It is difficult to regard a route classification based on historic use as a rational basis to meet current needs; suitability, reasonable use and responsibility should be the key considerations for any future settlement.

It is notable that erosion on both footpaths and access land has been an issue since long before the CROW act. For decades significant efforts have gone into repairing and managing erosion caused by walkers without any question of this justifying prohibition or repeal of open access on foot, it is accepted as an issue which can, and should, be managed. At one point Snowdonia National Park was spending in excess of £200k annually on footpath repair and improvement, while the National Trust invest a similar amount in repairing the effects of erosion by walkers in the Lake District. Despite this we repeatedly hear that many public footpaths would simply not be sustainable for cycle use and would suffer badly from erosion. By that logic a great many footpaths are simply not sustainable for use by walkers either, however there is no clamour to restrict or ban walkers from sensitive areas.



image 3: public footpath repaired after erosion by walkers

On the whole, erosion by walkers appears to be seen as somehow ‘benign’, whilst that by cycles is used as a justification for continued exclusion, despite extensive research showing that in the majority of cases the impact of cycling is no worse than that of walking (and considerably less than horse riding)

Cross the border into Scotland, where a right of responsible access already exists and conflict between trail users has all but disappeared, because everyone is on an equal footing. Repeated predictions of significant path erosion, or indeed of risk of conflict or blossoming accident rates created by increased access for bicycles, voiced prior to the land reform act, have failed to materialise. Estimates of the value of the mountain bike tourism market to the Scottish economy suggest a direct addition of £48-50m per annum. Scottish National Heritage have highlighted in particular the importance of opening of access in lowland and urban fringe areas:

Part 1 of the Act was therefore developed to address the uncertainties attached to the pre-existing legal framework that was seen to discourage residents and visitors alike from enjoying Scotland's outdoors to the full. A key driver for change was the low level of confidence of the public in accessing many low-ground settings, especially enclosed farmland and the urban fringe. Such arrangements were seen to be as - if not more - relevant to lowland Scotland, where most people live, as to the hills and mountains which had traditionally been the focus of many access issues. This policy approach is even more relevant today as it contributes directly to key Government priorities in terms of addressing health inequalities and boosting the economy.

Cyclists find it inexplicable that they can cycle freely in Scotland - and on nearly any public trail in nearby France, but are denied the vast majority of countryside paths in England and Wales!

It often feels as if the goal posts are being moved against mountain bikers; the continued differentiation between rights of access on bike and on foot reveal a mix of value-laden and quasi-scientific judgments, unsupported by any objective data. The problem of erosion specifically caused by mountain bikers is minuscule compared with that already caused by walkers. Therefore, unsurprisingly, the preponderance of expensive and visually imposing

restorative works and constructed paths which have been constructed to deal with this problem sits uncomfortably with the mountain biking community, who are being told that bikes are not welcome due to their environmental impact. When the mountain biking community then point to established scientific evidence that shows that riders cause no greater damage than walkers, we get told that the reason for our exclusion is the risk of wildlife disturbance. So further research is done, claims are proven to be unfounded, and we are then told that landowner liability is the reason for exclusion. Inevitably, at some point along this cycle the people responsible for giving this permission will have changed, and the Sisyphean task of justifying access begins again.

Further, the scope to increase access opportunities means reduced burden on the trail network. With a finite number of mountain bikers, the more widely distributed they are, the less the impact overall per individual route.

Regards the actual impact of a right of responsible access, we can best point to the experience in Scotland since the introduction of the Land Reform Act, and the published final report of the Land Use Reform Group, commissioned by the Scottish Government, which concluded (chapter 29):

The Review Group recognises that, in the past, there were significant concerns amongst both access and land owning interests about developing a statutory framework for public access, and that years of discussion were involved in developing the provisions contained in Part 1 of the Land Reform Act. Now, ten years after the legislation came into force, the Group's view is that the new statutory framework should be judged a considerable achievement that has delivered significant public benefits and is "generally working well on the ground". There are undoubtedly problems to be addressed in some areas as described below and there have been some prominent recent issues. However, the Group considers that these are essentially issues over implementation rather than with the terms of the legislation.

We would suggest that this review provides the strongest possible indication that a right of responsible access both can and will work in Wales, and that those isolated problems that are encountered can be managed and overcome. For example, one of the key problems that has been witnessed in Scotland has been with anti-social behaviour at popular camping locations such as the East bank of Loch Lomond. In this case a set of byelaws was introduced to tackle the problem in 2010, leading to an 81% reduction in reported problems. This seems like a reasonable and achievable solution for any localised problems in Wales, and goes to show that problems can be tackled effectively and proportionately without undermining the overall intent of the access laws.

We would also point towards an extensive document published by the James Hutton Institute, which explores in detail the issues of understanding and resolving land use conflict regards mountain biking in Scotland,

Recent development of mountain biking in Wales has concentrated on dedicated trail centres, predominantly on Forestry Commission/NRW land. This has led to a significant blossoming of the pastime in Wales, both as a source of recreation and sport, and also as an important tourist activity. The popularity and success of the NRW site at Coed y Brenin is illustrated by the change in visitor numbers following the development of the mountain bike trails, These increased from approximately 27,500 in 1996/7 to 110,000 in 1999, with mountain bikers making up 87% of the visitors to the site. At the same time, a similar explosion of use has not been witnessed in the wider countryside, which suggests that there is a clear demand for the sort of experience that a trail centre can offer mountain bikers and that is potentially not being met by PROW

This leads to an interesting paradox, whereby surveys of the cycling community show that over 80% of the mountain bike community ride predominantly on public rights of way rather than dedicated trail centres, and expressed no preference towards trail centres (36% state a clear preference for PROW, 40% no preference, only 23% prefer trail centres)

In addition, the expansion of trail centres in Scotland appears to have led to a different result to that in Wales, to the point whereby the majority of mountain biking trips are made to the wider countryside rather than purpose built facilities. This suggests that the latent demand for mountain biking is not restricted to trail centre facilities, and unlike Wales, the Scottish access legislation has led to a wider increase in mountain bike tourism across the country.

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

Scottish example shows that an outdoor access code is vital to the good operation of any new responsible access settlement

The term responsible access is one closely associated with the Scottish Outdoor Access Code. Indeed the term is almost synonymous with it. The Code is an accessible, easy to read document, containing ‘common sense’ messages relating to responsible behaviour in the countryside, directed at both recreational users and land managers. We believe that it is of vital importance to the good functioning of the Scottish access settlement.

The evidence from Scotland, allied with the example of the voluntary restrictions on Snowdon, show that the vast majority of the mountain bike community demonstrate an almost over-exaggerated awareness of social interaction with other users. Notwithstanding the long-running debate over public footpaths, by and large mountain bikers have chosen to exercise their right knowing they may meet opposition, and they therefore manage their time and space to avoid this if possible – without compromising the satisfaction of their activity.

Regards cycling, the Scottish Outdoor Access Code recommends that:

Access rights extend to cycling. Cycling on hard surfaces, such as wide paths and tracks, causes few problems. On narrow routes, cycling may cause problems for other people, such as walkers and horse riders. If this occurs, dismount and walk until the path becomes suitable again. Do not endanger walkers and horse riders: give other users advance warning of your presence and give way to them on a narrow path. Take care not to alarm farm animals, horses and wildlife. If you are cycling off-path, particularly in winter, avoid: going onto wet, boggy or soft ground; and churning up the surface.

We think this advice is both pragmatic and reasonable. The evidence shows that mountain bikers on an individual basis tend to show a strong accord with the principles of responsible access through both individual choice and decision-making. It is clear that most people likely to take advantage of an outdoor access code are also likely to be passionate about their sport and its reputation and are careful to judge for themselves and exercise caution in their exercise of that right. The small minority of problem users likely don't even know there are access restrictions, or indeed care.

We also note the role in the Scottish Outdoor Access Code of advice for landowners, and we think this is a highly beneficial addition to any code of conduct.

Advice for Landowners: Where possible, work with your local authority and other bodies to help identify paths or routes across your land which are suited for cycling. If you need to put a fence across a path or track then install a gate which allows multi-use access.

In reviewing the overall effectiveness of both the code, and the right of responsible access, we would draw the Welsh Government's attention to the evidence submitted to the Scottish Land Reform Review Group. For example, discussing access, the John Muir Trust response stated that:

The principles on Access set out in the Land Reform (Scotland) Act 2003 and the accompanying Code of Practice are some of the most successful and most valuable aspects of this legislation.

Far from leading to major conflicts between landowners and outdoor activities, they have provided an effective framework which has encouraged all those who use the hills for recreation or production to respect each other's role.

Again, we would suggest that this points towards the efficacy and acceptance of the Scottish access code, and that there exists no evidence that it would be any less effective in Wales




<p>How to go</p> <p>You can exercise access rights as long as you act responsibly, which means following the Scottish Outdoor Access Code</p> <p>The guidance in dark blue summarises the Code's key messages.</p> <p>Scottish Cycling and CTC Scotland have provided additional advice on good practice</p> 	<p>Take responsibility for your own actions</p> <p>Use common sense to avoid accidents—show care and consideration and make sure your speed doesn't alarm or endanger others</p> <p>The outdoors is not risk-free! Be aware of natural hazards such as cliffs, loose rocks, tree roots and ice</p> <p>Follow advice on signs advising of activities such as tree-felling, crop spraying or other activities / events — you may need to alter your route</p> <p>Take extra care if you are in charge of children to ensure they enjoy the outdoors responsibly and safely</p> 	<p>Respect the interests of others</p> <p>Respect people's privacy by keeping a sensible distance from houses</p> <p>Respect people's property, including machinery, gates and fences—leave gates as you find them</p> <p>Be considerate to other users of the outdoors such as walkers and horse riders; slow down and alert them to your presence. On narrow paths give way or dismount if necessary</p> <p>Take care not to alarm farm animals, including stock on open ground, horses and wildlife; take extra care during the lambing season</p> 
<p>Where to go...</p> <p>People now have the right of access to most land in Scotland, including private roads, tracks and paths, for recreation and to get from place to place. This right is conditional on people acting responsibly</p> <p>The main exceptions to the new right are: people's gardens, farmyards (although access is often possible—if in doubt ask), and land in which crops have been sown or are growing (but you can use field margins as long as you avoid unnecessary damage to the crops)</p> <p>You can take access to golf courses (except greens and tees), but only to cross the area and without interfering with play – cyclists need to keep to paths at all times</p>	<p>Check your bike and kit before you ride, and plan your route so that know where you're going and how long it will take</p> <p>Carry a pump, inner tube, puncture repair kit, basic tools, and a map and compass if necessary, and know how to use them !</p> <p>Take something to eat and drink, including enough for emergencies, and carry suitable wind/waterproof clothing in case of bad weather</p> <p>It is advisable to wear a helmet at all times for your own protection</p> <p>Be visible riding on tracks or roads and use effective lights for night riding and in poor daylight conditions</p>	<p>If you have a dog with you, keep it under proper control at all times</p> <p>Avoid crossing land when shooting or deer stalking is taking place; find out if your planned route will be affected and seek advice on alternative routes</p> <p>Keep noise levels and potential disturbance to a minimum, especially if riding at night</p> <p>Keep access points clear; park your car where it won't cause problems and don't lock your bike to gates</p> <p>Follow the direction arrows on designated mountain bike trails, especially on singletrack</p>

image 4: Scottish Cycling access leaflet