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Improving opportunities to access the outdoors for responsible recreation

Consultation No. WG25568

Dear Minister

The Cambrian Mountains Society (CMS) welcomes this opportunity to comment on the consultation document; ***Improving opportunities to access the outdoors for responsible recreation***. The Society sees the document as a primer, opening up discussion on how to safeguard and extend access to Wales' rich mix of landscapes. CMS also acknowledges that the document tries to build links with other areas of ongoing WG legislation, all promoting the wellbeing of its people, landscapes and biodiversity.

CMS was established in 2005 and now has a membership of around 350, representing people from all backgrounds but all with a common interest in the future of the Cambrian Mountains. The objectives of the Society include; promoting for the benefit of local communities and the wider public, measures which will sustain or enhance the landscape, natural beauty, biodiversity, archaeology, scientific interest and cultural heritage of the Cambrian Mountains. More details of the Society can be found on our websites detailed above. Also on the websites you will find the programme of our monthly walks which give members and guests a chance to catch up on news whilst also enjoying a walk in the wonderful 'Cambrians'.

Q1. What are your views on the principles outlined? If you would suggest changing them, please explain how and why.

Comments.

CMS appreciates that WG are attempting to both increase the public's access to outdoor recreation and 'tidy up' legislation regarding public rights of way. The Government must, however, be mindful of the precautionary principle and not be too zealous in reducing the number of public footpaths and bridleways across Wales. These rights of way have evolved over centuries, are an integral part of our landscape and an important part of our history. In CMS's opinion drovers' roads, many of which are now public rights of way across the Cambrians, are as an important part of the landscape as its built heritage.

The Society has concerns over some of the principles outlined.

Principle 3. What is responsible or irresponsible recreation? Is wild camping overnight in a remote mountain cwm irresponsible? Or is cycling on a bridleway across a delicate blanket bog responsible? WG must think carefully about the balance between recreation and care for the environment as it moves towards legislation.

Principle 4 (with links to Q8) If more access is allowed for cyclists along footpaths then this should not be done 'carte blanche' but on a case-by-case basis, at least refusing cycle access on paths through sensitive ecosystems as well as on easily eroded trods. If multi-user access is to be introduced to the footpath network then WG must put resources into educating users as to their rights and expected behaviour whilst enjoying their walk/ride.

CMS would also like to point out here that for walkers' and riders' maximum enjoyment, and safety, dedicated ways often offer the best alternative. Examples of such systems can be found in the Cambrians at Bwlch Nant yr Arian near Aberystwyth and Cwm-y-Rhaedr Forest near Rhandirmwyn, both run by NRW.

Principle 5 The Society is concerned over the statement; 'The Welsh Government proposes an approach that streamlines and harmonises regimes.' Whilst CMS sees merit in, for instance, all definitive maps being made available electronically it

questions the benefits of streamlining/trimming the network of footpaths and bridleways.

CMS also consider one further Principle is needed: 'That there is due regard to and safeguards for existing interest in land – rights of ownership etc.'

Q2. Tell us your views on whether there are other key challenges which need to be resolved.

Comments.

It may be that there are that there are lessons to be learnt from recent experience of one of our members – the Elan Valley Trust (EVT) in relation to the Monks Trod. All of that part of the route in Powys is under EVT control; the Powys section is virtually all SAC, SPA and SSSI. From February 2002 to November 2014 the route was subject to temporary TROs whilst future restriction was resolved. During this period the surface, which is predominantly peat with rock strata outcrops, recovered significantly. The restriction was allowed to lapse in November 2014 without notification to EVT or prior discussion. It was open to vehicular traffic until August 2015. The result has been severe damage that destroyed nature's good work over 14 years. It is essential that motorised vehicles should only be allowed on surfaces that are both sustainable and suitable. The problems on the Monks Trod should be contrasted with the position of the Gap Road over the Beacons where there is a motorised vehicular restriction for 10 months of the year on the basis of quiet enjoyment but for 2 months, in the autumn, their use is allowed. The surface of this Way is stone and vehicular use has little impact thereon.

We return to converting paths to cycle trails (The Cycle Track Act, 1984). We would refer you back to our response to [Q1](#), Principle 4. Any such conversion must be considered carefully taking into account; pedestrian usage, safety and potential damage to the path.

We now refer you back to your section **Modern outdoor recreation needs**, page 14. In the Cambrians there are many 'paths that end with no access to other paths or a metalled road'. In CMS's opinion this should not lead to the extinguishment of such a path but rather in creating a new connecting path and therefore extending the network.

Given the focus on widening access to the countryside, there's really very little in the consultation document about provision for disabled people, or motivating people who

don't currently engage with the outdoors. Some LAs are now creating networks of adapted routes for all-terrain buggies for disabled. The Society points you to a recent manifesto produced by Ramblers Cymru with some excellent ideas, including ways to engage hard to reach groups;

<http://www.ramblers.org.uk/news/news/2015/july/manifesto-launches.aspx>

The deadline for recording rights of way on definitive maps in Wales needs extending. WG has the power to do this under section 56 of the Countryside and Rights of Way Act, 2000 (CROW). Without this extension it is almost certain that Wales will lose many historic paths as PROWs.

The consultation document pays very little attention to the equestrian use of PROWs in Wales. Horse riding and carriage driving are important recreational activities in the Welsh countryside and WG should give them greater recognition.

Q3. 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

- There would be merit in digitising definitive maps and statements. The digitisation process must be brought up to date regularly – perhaps at least once a year, but in the meantime records of changes must be made available in appropriate places. The digitised maps should be regarded as the definitive map.
- Applications for DMMOs should, whenever possible, be made electronically.
- The applicants for DMMOs should not be required to effect service on owners and occupiers. This should be reserved for Local Authorities. The ascertainment of interests in land is a complex business and recent evidence has shown that even the Land Registry details are sometimes not correct. If there is a prima facie case for amendment land owners and occupiers should receive an initial assessment from the Local Authority with an opportunity to comment.
- Objections to orders might be transferred to persons appointed by the Local Authority with the necessary skills i.e. prescribed qualifications – thus easing the burden on Government and the Inspectorate.
- The need to make specific modification orders to deal with events that have accrued. The evidence for the event held by the Local Authority should be sufficient.
- Changes in the legislation relating to roads used as public paths brought about by the Natural Environment and Rural Communities Act, 2006 (NERCA) should be reflected in changes by the Ordnance Survey so as to differentiate between 'restricted byways' and 'byways open to all traffic' in their mapping. See relevance to Q8.

- It would be interesting to establish from Local Authorities whether there is any activity under the Removal of Obstructions from Highways Regulations 2004. Depending on the response it may be necessary to repeal or amend them so as to make them more user friendly.
- Advertising of orders could be done by a centralised web site for Wales – administered by one of the local authorities. For those affected by the proposals some more individual basis would need identification.

Q4. 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?

Comment.

Minor improvements on the ground could come into the event category if such DMMOs are to be continued subject to approval by the land owner and a record of the improvement carried out. Improvement needs to be differentiated from maintenance only.

Q5. 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.

Does this question mean 'improve' or maintain?

Voluntary work from wherever it can be obtained could be utilised more effectively than appears to be the case at present. Responsibility for such work should not be laid at the door of Local Authorities though they must take a coordinating role. After wide consultation a code of practice subscribed to by Local Authorities and Government common throughout Wales should be introduced. Given the restrictions in public expenditure which have fallen disproportionately on environmental services of Local Authorities the implementation of a code of practice is more essential than ever.

CMS also considers that landowners need reminding, on a regular basis, of the PROWs that cross their properties and their part in maintaining them.

Q6. How should the number, role, membership and purpose of local access forums (LAFs) be redefined?

Comments.

It is doubted that all forums work well at present. Apart from Brecon Beacons National Park the whole of Powys seems to be covered by one forum. It is difficult for its members to have knowledge of access issues across such a large County, covering some 1800 square miles. Other forums with an interest in the Cambrian Mountains, such as the Ceredigion LAF, appear to work well. CMS believes that one reason for their success, again in a large County, is that they concentrate on principles not individual paths.

Forums currently operate with Local Authority services which the LA may find difficult to provide. Maybe they should become truly independent groups formed under the auspices of LA but working independently pursuant to a code of practice.

[Q7. 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 ownership and handling more straightforward?](#)

Comment.

It should be the responsibility of the owner to determine when to keep their dogs on leads. Scottish Natural Heritage (SNH) defines a dog being under close control as: 'that the dog is able to respond to your commands and kept at heel'. The owner should have 'absolute liability' for damage or injury caused by their dog(s) when on a PROW, or within Access Land. This should be the case whether their dog(s) is on the lead or not.

[Q8. How could current legislation be changed to make it easier to allow for a wider range of activities on existing and new paths?](#)

Comments.

New paths – presumably this means rights of way – will have activities defined in a creation agreement.

As to existing rights of way the Society draws your attention to its comments on [Q1](#) Principle 4 and [Q2](#) paragraph 2. Converting paths for multi use must be carefully considered taking into account; potential loss of amenity value to the walker, surface and habitat damage as well as safety issues. CMS emphasises that conversion to multi use must be done on a path by path basis and not carte blanche.

Again the Society points to the excellent work of NRW in providing dedicated tracks for mountain bike users on some of its estates including Bwlch Nant yr Arian.

Returning to comments to [Q3](#), the Society also has concerns over NERCA as to the mapping and interpretation of 'restricted byways' and 'byways open to all traffic'. The Society contends that much damage has been done in recent years to Ways across the Cambrians due to confusion, at times deliberate, between these two categories of multi-use.

[Q9. How could legislation better strike a balance between the various demands of motorised users, land owners and the natural environment?](#)

[Comments.](#)

- The use of land by motorised users is primarily a matter for private provision of tracks etc. A consideration of the opportunities presented by temporary closures of vehicular highways – no doubt outside the scope of this consultation is recommended.
- Vehicles must be prevented from using routes which are pre-eminently soft whether they have the right to use them or not.
- Some mechanism should be found of protecting the sanctity of ancient green lanes from agreements between motorised groups utilising inappropriate materials in agreement with Local Authorities.
- Stronger legislation, and policing, need to be put in place to stop vehicles, most notably but not always, motorcycles, from moving through Access Land without the Landowner's permission. Greater, and faster, use of public reports of incidents involving the illegal use of motorised vehicles on footpaths, bridleways and access land should be made.
- There are many routes where current rights are not clear - ones which the OS call 'Other Routes with Public Access.' They are not on definitive maps but some motorised vehicle users, following their OS map, seem to treat them as BOATs. Clayden and Trevelyan in their 'Rights of Way: A guide to Law and Practice (2001) disagree with this interpretation used by some motorists and motorcyclists CMS consider that here is an opportunity for Cardiff Bay to clarify the Law, at least in Wales.
- To avoid confusion Cycle Ways should be clearly shown on definitive maps.

[Q10. How should the need for new or improved access opportunities be identified, planned, and provided?](#)

[Comments.](#)

- A requirement for Local Authorities to review their network of paths and access areas etc could be included as part of ROWIP to allow for some prioritisation to secure improvement of used networks and provision of new networks.
- ROWIPs are an essential part of the work of LAFs and they should be updated annually.
- ROWIPs should be implemented by use of traditional means – agreements, orders etc.
- Looking, for instance, at the original Powys ROWIP it seemed too vague. If retained it should discuss the points made above and produce a plan which can be realistically achieved within a time limit and with the limited funds likely to be available.

Q11. What are your views on the benefits and challenges of creating a right of responsible recreation to all land in Wales?

Comments.

Relatively small population densities, relative remoteness, significant relative size of land area and a less developed system of rights of way no doubt influenced the universal right of access in Scottish law.

The position on access in Wales is quite different because:

- There is a long tradition under the common law of public rights of way developed substantially by statute over some 70 years to make it fit for modern purposes which continues to develop.
- As the consultation document points out CROW has extended massively the right of access by virtue of including common land, land over 2000 feet above sea level and other open land; together with the opening up of the public forest estate, and the establishment of the coastal path.
- The argument for access on foot boils down in essence to access over fenced farmland where there are no growing crops.
- There are safety issues with a right of access to coastal cliffs and lakes.
- There will be concerns for habitat, wildlife and interference with other conservation activities.
- Experience has shown that the public is generally more interested in linear routes rather than generalised access. CMS does appreciate, however, that the greater freedom of access delivered by CROW was an important piece of legislation.
- It is felt that there is little to be gained by major legislation which will be fiercely contested and open up fissures in society in a situation where tolerance and cooperation will be the watch word and be seen as nationalisation without agreement and compensation.

- Experience has shown again that new legislation is subject to significant legal challenge at least in early years.

Q12. What approach do you advocate to improve opportunities for responsible access for recreation on inland waters?

Comment.

The Cambrian Mountains are rich in waters for coarse and game fishing as well as canoeing. CMS asks WG to facilitate discussions between interested groups helping to resolve conflict.

Q13.

As the Cambrians are landlocked the Society does not wish to comment on this question.

Q14. What would the advantages and disadvantages of a statutory code of conduct for outdoor recreation in Wales.

Comment.

The Countryside Code is rather like some other 'best sellers' –it sits on our bookshelves but is rarely read. A new statutory code will have the advantage of not being the rather flimsy 'Countryside Code' but may run the disadvantage of being seen as too draconian.

Yours

Prof. Roger Earis, Chairman Cambrian Mountains Society

CMS have no objection to this response being made public.