

ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE

Date: Wednesday 14 February 2001
Time: 2.00 to 5.30 pm
Venue: Committee Room 3, National Assembly Building

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 - IMPLEMENTATION

Purpose

1. This paper briefly summarises the main provisions in the Countryside and Rights of Way Act (CROW) which received Royal Assent on 30 November. It describes the main responsibilities of the Assembly in relation to the Act, considers implementation in Wales and suggests an outline programme for the secondary legislation required.

Recommendation

2. That the Committee notes the information in this paper and the intentions of the Minister for the Environment in respect of bringing forward secondary legislation.

Main Provisions of the Act

3. The Act is in four main parts. The key provisions are as follows:-

- a. **Part I - Access to the Open Countryside.** The Act provides the public with a new statutory right of access on foot to the open countryside (ie registered common land and open country which is 'wholly or predominantly' mountain, moor, heath and down .) There will be restrictions on the new rights - for example the Act permits landowners to exclude or restrict access for any reason up to 28 days a year ; and to exclude dogs in certain situations, for example at lambing time. Landowners will also be able to apply to the CCW and the National Parks for further exclusions or restrictions for land management reasons. The overall aim is that farmers and landowners should be free to

manage their land as they see fit, within the existing constraints of the law. In line with this, landowners' legal liabilities are not increased (and in certain respects are diminished).

In addition the Act allows for owners voluntarily to dedicate land as "access land". Also relevant here are sections 94 and 95 in Part V of the Act which require highway authorities and National Parks Authorities to establish local access forums - and to have regard to their views in implementing the new provisions.

b. Part II - Public Rights of Way and Road Traffic. Part II contains provisions to improve and strengthen the management of the 25,000 miles of public rights of way in Wales. The Act places a duty on local authorities to prepare rights of way improvement plans and to remove obstructions when requested to do so; provides for a cut off date for the recording of rights of way on definitive maps ; provides for the diversion or extinguishing of rights of way in certain circumstances ; and creates a new category of 'restricted byways' (public routes not open to motorised traffic).

c. Part III - Nature Conservation and Wildlife Protection. This part of the Act strengthens the protection of SSSIs, the most important habitats for plant/animal species and geological features in Wales. Specifically it : places the Assembly under a duty to have regard to biodiversity conservation in exercising its functions; it improves the procedures for notification and de-notification of SSSIs and includes measures to secure better management (balanced by new rights of appeal for affected landowners) ; and it increases the penalties for damage to SSSIs and for wildlife crime.

d. Part IV - Areas of Outstanding Natural Beauty (AONBs). This introduces provisions to strengthen the management of Wales' five AONBs, which contain some of the country's finest landscapes. In particular, statutory management plans now have to be prepared by the relevant local authorities ; public bodies are placed under a duty to have regard to the purposes of AONBs in carrying out their functions in these areas ; and new conservation boards may be established to manage AONBs.

Implications for Wales

4. The new Act represents an important opportunity to maximise the number of visitors to Wales who wish to enjoy the Welsh countryside and who at the same time can provide a very useful boost to local economies. The Act's provisions can also help further the Assembly's own objectives for better quality of life and health for the people of Wales. Farmers and landowners are known to have concerns about the impact of certain aspects of the Act, perhaps especially the access provisions. Through sensitively drafted regulations, meaningful consultation and appropriate guidance and information, it should be possible to respond to these concerns. Doing so, while at the same time ensuring that the Act's provisions are implemented, and in a

way that respects local communities, will be a significant challenge for the Assembly and its key partners.

Implementation in Wales

5. The Act contains a significant number of new powers and duties, principally affecting in Wales the responsibilities of the local authorities, the National Parks, the CCW, the Forestry Commission and the National Assembly itself. A number of the new provisions have entered, or will enter, into force automatically. These include the majority of the provisions in Parts I and III, certain provisions in Part II and the local access forum provisions in Part V. The remainder requires Commencement Orders approved by the Assembly to bring them into effect. In addition, the Assembly will be responsible for approving secondary legislation and new guidance to shape and assist the practical implementation of the Act in Wales. A list of the main areas for secondary legislation is at Annex A; and an outline schedule and broad timetable for the main regulations is at Annex B. CCW estimates that, depending on progress with mapping and the volume of appeals, the new access right could apply across the whole of Wales by the end of 2004/early 2005. A similar (provisional) timetable is envisaged for England.

6. The need for secondary legislation and related guidance means that the new right of access will not come into force immediately. Useful preparatory work is under way however to ensure that the public will be able to exercise their new right in an informed, safe and practical way – and as soon as possible. CCW, with the advice and co-operation of the National Parks and local authorities, is taking the lead – undertaking initial work on maps of access land, considering new guidance for users and landowners on their rights and responsibilities, and setting up ‘pilot’ local access forums. There are obvious benefits - for walkers, tourists, the general public and landowners/farmers alike – if implementation proceeds in a consistent way both sides of the England/Wales border. That does not mean they need to be identical however : where appropriate the Assembly will want to reflect specific Welsh issues, including the Welsh language.

Priorities for Secondary Legislation.

7. Annex A lists the main regulations needed and Annex B the timetable in which the draft regulations might be brought forward. This latter schedule takes account of provisional plans in England. Regulations related to mapping and the local access forums are suggested as early priorities for legislation this year, followed by regulations on appeals, on exclusions/restrictions, and on dogs. The maps and local access forums are in essence the foundations for implementation.

Coastal Land.

8. Section 3 of the Act permits the Assembly to extend, by order, the statutory right of access

to land on or adjacent to the foreshore. This would be in addition to the main provision for access to the open countryside. Considerable parts of the Welsh coastline already afford access to the public - for example Pembrokeshire coastal path. We intend therefore that an assessment of how the access provisions might apply in coastal areas should be undertaken, but that priority should be to implement the right of access to open countryside, including registered common land. This is consistent with the Countryside Council for Wales' advice.

Financial Implications

9. The Assembly's budget makes provision for the implementation of the Act's provisions. For 2001/2 this includes an extra £1.2 million for the CCW, an estimated £360,000 for the three National Parks and some £2.4 million for the local authorities. This will enable progress to be made this year, especially on: mapping and the related consultation, including the setting up of local access forums; for the production of guidance and information for users and landowners; and for improvements to the rights of way network and in relation to the new SSSI procedures. The forward budget allocations for these organisations also include provision to take this work further ahead. Extra provision may be needed to cover appeals to the Assembly arising from the mapping work ; this will be considered in the relevant budget planning round.

Compliance

10. The Act confers on the Assembly the powers to make the relevant secondary legislation in Wales. The responsibilities of the Committee in Standing Orders 9.7 and 9.8 include policy development and advice on proposed legislation affecting Wales.

Next steps

11. The Committee's views will assist in guiding implementation of the Act in Wales. Regular reports will be made to the Committee on progress; and the Committee will be consulted on the main draft regulations involved.

February 2001 Countryside Division

Countryside and Rights of Way Act 2000

Main areas for Assembly Subordinate Legislation Annex A

Part I

1. The mapping of access land and consultation on draft maps. (Section 11)

2. Handling of appeals and issuing of conclusive maps. (Section 11).
3. Voluntary dedication of access land. (Section 16).
4. General circumstances in which exclusions and restrictions may apply, including appeals – and identification of ‘interested persons’. (Section 32)
5. Additional restrictions on access with dogs. (Section 32)
6. Restrictions on access in an emergency. (Section 31)
7. Appeals in relation to means of access. (Section 38)

Part II

8. Vehicular access over common land. (Section 68)
9. Rights of Way Improvement Plans. (Section 61)
10. Amend existing legislation on Reclassification of Roads used as Public Paths (‘restricted byways’). (Section 52)
11. Defining obstacles on rights of way which highway authority must remove. (Section 63)
12. Diversion of rights of way and extinguishing of rights of way in certain circumstances (e. g. for crime prevention and to protect SSSIs). (Schedule 6 Part 1.)
13. Publication of performance reports on rights of way functions. (Section 71)
14. Prohibition of driving mechanically propelled vehicles elsewhere than on roads. (Section 67 & Schedule 7)

Part III

15. Appeals in connection with consents to undertake works on an SSSI, management notices and stop notices. (Schedules 9 & 11)

Part V

16. The establishment of local access forums and appointment of members. (Section 94)

Possible Programme for Subordinate Legislation Annex B

During 2001/2

1. Prepare Commencement Orders to bring into force relevant sections of the Act
2. Prepare, consult on and take through Assembly legislative procedure :
 - a. *form of access maps and consultation procedure (Section 11)
 - b. *local access forums (Section 94)
 - c. exclusions and restrictions, including appeals (Section 32)
 - d. consultation on provisional maps including appeals (Section 11)
 - e. *vehicular access over common land (Section 68)
 - f. appeals in connection with consents to undertake works on an SSSI, management and stop notices (Schedule 9 & 11)

During 2002/3

- g. voluntary dedication of access land (Section 16)
- h. additional restrictions on dogs (Section 32)
- i. types of obstructions to be removed from rights of way (Section 63)
- j. diversions and extinguishing of rights of way (Schedule 6)
- k. Rights of Way Improvement Plans (Section 61)
- l. Prohibition of mechanically propelled vehicles off-road (Section 76 & Schedule 7)

During 2003/4

- m. regulations to exclude access in emergencies (Section 31)

n. Appeals on means of access (Section 38)

o. restricted byways (Section 52)

p. reports on rights of way performance (Section 71)

* To be brought forward by summer 2001.