

**ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE**

**Date:** Wednesday 13 March 2002  
**Time:** 2.00 to 4.30 pm  
**Venue:** Committee Room 1, National Assembly Building

**COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 – DRAFT CONSULTATION PAPERS ON RESTRICTIONS ON ACCESS FOR LAND MANAGEMENT AND OTHER REASONS; AND VOLUNTARY DEDICATION OF ACCESS LAND**

1. The attached draft consultation papers contain proposals for regulations to implement two important provisions of the CROW Act 2000 :
  - a. Restrictions on Access (Paper1)

The CROW Act provides a public right of access on foot to most open country and registered common land in Wales. The extent of this is currently being mapped by CCW. This land is used for a variety of important agricultural and other purposes, however – and the Act provides for access to be restricted in certain circumstances, in particular to help avoid conflict between access and legitimate land management reasons. Paper 1 sets out proposals for new regulations governing the restrictions regime in Wales – and on the associated appeal arrangements (where applications for restrictions are turned down by the relevant authority).

- b. Voluntary dedication of land as access land (Paper 2)

Section 16 of the Act provides for an owner of land formally to dedicate that land irrevocably for public access. Paper 2 contains proposals for regulations governing how the dedication process would operate in Wales.

1. It is intended that both papers would issue for public consultation later this month – and in bilingual form (they are currently being translated in to Welsh).
2. Prior to initiating public consultation the Committee's views are sought. A report on the outcome of the consultation exercise will be made to the Committee in June.

DRAFT

**PROPOSALS FOR NEW REGULATIONS ON RESTRICTIONS ON ACCESS TO OPEN COUNTRY/REGISTERED COMMON LAND FOR LAND MANAGEMENT AND OTHER PURPOSES**

**Introduction**

1. The Countryside and Rights of Way Act 2000 provides a new public right of access on foot to most open country and registered common land. The extent of this new "access land" is currently being mapped by the Countryside Council for Wales - and it is anticipated that about 300,000 hectares of land in Wales could potentially become "access land" (an area larger than the existing three National Parks). This land is already used for a variety of important agricultural purposes - and also contains significant wildlife habitats and important historic and archaeological sites which will continue to need protection. In recognition of this, the Act makes provision for public access to be restricted in certain circumstances.

2. This paper makes proposals on the content of the new regulations governing the restrictions arrangements that are envisaged for Wales. In drawing up these proposals, two key aims have been kept in mind: -

- a. to make it as straightforward as possible for restrictions on access to be introduced by land managers where there are good reasons for them and where they will help avoid potential conflict between access and other land uses;
- b. for the arrangements to provide timely and reliable information for walkers and other users of the countryside on the restrictions agreed.

3. The proposals in this paper will also apply to land that is voluntarily dedicated by the owner as access land under section 16 of the Act. They do **not** however apply to land which is excepted from the new right of access – e.g. parkland; land covered by livestock pens; and

land which is subject to access agreements or rights which were in place before the CROW Act. The public's use of existing rights of way are also unaffected.

4. Decisions on applications from land managers for additional restrictions will be determined by the relevant authority – normally the CCW, or the National Park Authority for access land within a National Park or in the case of dedicated woodland, the Forestry Commission.

## **Restrictions on Access**

5. The Act provides two main ways in which land managers and others can restrict access with an interest in the land. First, landowners and tenants have the discretion to limit access on up to 28 days each year (subject to certain limitations). In addition, landowners, tenants and others with a legal interest in the land – e.g. those with shooting rights - can apply for a direction from the relevant authority for land management purposes or to avoid the risk of fire and other dangers to the public. In these latter circumstances, the relevant authorities under the Act can themselves issue directions to limit access to areas of risk and they can similarly restrict access to certain sites in the interests of nature conservation or to preserve heritage/archaeological sites. These different situations are covered in the proposals for regulations made below.

## **Discretionary Restrictions (Section 22 of the Act)**

6. As noted above, landowners and tenants have full discretion to restrict access to their land for up to 28 days per calendar year. However, there are some limitations to this discretion. No more than four of the 28 days may be a Saturday or Sunday; Saturdays between 1<sup>st</sup> July and 11<sup>th</sup> August are excluded from the discretion as are Sundays between 1<sup>st</sup> June and 30<sup>th</sup> September and any Bank Holiday. In addition the land manager must give advance notice to the relevant authority of the day or days on which he plans to restrict access. Clearly the more notice that can be given the better so that walkers and others can be adequately informed in advance. At the same time, practical land management means that the need for a restriction may arise at short notice. And some activities will be weather dependant – and the notification arrangements need to be flexible enough to accommodate this. **It is therefore proposed (proposal 1)** that before restricting access, the land manager should notify the relevant authority - by e-mail or in writing – and provide the following information: -

a. the person's name and address and the interest in the land;

b. a sufficient description of the land in question (preferably via a map) to enable the relevant authority to identify the land concerned and the number of days the restriction will apply;

a. the nature of the proposed restriction e.g. temporary ban on dogs or requirement

to keep to certain paths.

- b. The number of days that the individual is entitled to if the discretionary allocation is divided.

Normally five days notice should be given by the land manager to the relevant authority of an intention temporarily to restrict access. However, to provide additional flexibility, **it is proposed (proposal 1A)** that land managers will be able voluntarily to register one or more areas of land with the relevant authority as likely to be the subject of (discretionary) restrictions during the year. Then the land manager would be able to give short notice – 24 hours normally and by telephone – of an intention to apply a restriction on access.

## **Restrictions on Dogs**

7. While dogs may be taken onto "access land", the Act requires that they are kept on a short lead between March and July or at any time near livestock. In addition, section 23 of the Act gives landowners the discretion to prevent people taking dogs onto land in certain circumstances. The restrictions may apply for up to: -

- a. five years (renewable) on land managed for the breeding and shooting of grouse.
- b. one period of not more than six weeks in any calendar year on any field or enclosure of not more than 15 hectares in connection with lambing.

To ensure adequate notice can be given to potential access users, **it is proposed (proposal 2)** that landowners wishing to exercise such restrictions should give notice to the relevant authority. The notice should contain the following information: -

- i. the name and address of the person applying the restriction and his/her interest in the land;
- ii. **sufficient description - preferably by way of a map - to enable the relevant authority to identify the land concerned;**
- iii. **the reason for the restriction (either a. or b. above) and its intended duration. The relevant authority should receive the notice at least 28 days before the start of the restriction period in the case of a. above and normally at least five working days in the case of b.**

## **Discretionary Restrictions - Other Interests**

8. The Act allows for regulations to prescribe others (apart from the landowner/tenant) with a direct interest in the management of the land and who could then also have the right to impose discretionary restrictions on access. Our initial view is that it would be unnecessary to seek to cover here those who have short term agreements with the landowners for shooting or other field support purposes, since restrictions needed could be implemented by the landowner on their behalf. The position may be different, however, for people with longer term shooting and other rights contained within leases. We would welcome views on this aspect and on whether any other interests should be specifically prescribed in the regulations. At this stage, however, **it is not proposed (proposal 3)** to prescribe any additional interests. (The special position of commoners is covered in paragraph 16)

9. If other interests are to be prescribed, however, then the regulations must also determine how the 28 day discretionary allocation (per year) is to be divided between them. It could be argued that this is a matter best left to the interests concerned to determine. In cases of dispute, however, some method of resolution would be needed. One of the possibilities being considered would be to give the relevant authority the discretion to determine how the discretionary day allocation is to be apportioned in cases of disagreement between the parties. Another alternative would be to utilise a specific formula for this with the formula being prescribed in the new regulations. Views are invited on these and other possible approaches here.

### **Boundaries of Land Subject to Discretionary Restrictions**

10. Section 22(8) of the Act allows for the regulations to specify that any discretionary restrictions may only relate to areas of land with identifiable boundaries e.g. land bounded by a stream, ditch or fence. There would be clear advantages to the walker and other access users if those areas subject to temporary restrictions were clearly identifiable. However, the nature of open country and common land means that defining distinct boundaries will not always be possible. **It is therefore proposed (proposal 4)** that the regulations simply specify that existing physical boundaries should be used wherever practicable to mark the "restricted area".

### **Applications by Land Managers for Additional Restrictions (Sections 24 and 25 of the Act)**

11. Landowners and others with a legal interest in the land (tenants and commoners) may apply under section 24 to the relevant authority for access to be restricted for land management reasons e.g. spraying. Similarly applications can be made under section 25 of the Act in circumstances of fire risk or other perceived danger to the public (and here the relevant authority itself may also make directions of its own volition). Applications can be made for any valid reason and for any duration. In determining the application made the relevant

authority has to take account of the extent to which the applicant has made use of his/her discretionary right to restrict access for up to 28 days each year.

12. To be operationally efficient and effective it will be important that the applications for restrictions on access are submitted and determined in a timely manner. If the relevant authority refuses the application, the land manager will have the right of appeal (covered in paragraph 24 below). Allowing time for the appeal process to run its course (up to six months possibly) will be a factor land managers would need to bear in mind in planning to apply for non-discretionary restrictions and to plan ahead accordingly. As in the case of discretionary restrictions, however, there could be circumstances when it would not be practical for a land manager to give much advance notice of an application for an additional restriction – e.g. where timber is ordered at short notice or an activity is weather dependant. In these cases **it is proposed (proposal 5)** that the regulations should provide for the relevant authority to approve the application in advance, subject to later notification of the actual dates the restriction would apply on (with such notification normally being a minimum of 24 hours).

13. **It is proposed (proposal 6)** that in submitting an application under section 24, land managers should provide the following information: -

- a. The name and address of the applicant.
  - b. The nature of the applicant's interest in the land.
  - c. A sufficient description - preferably included in a map - to enable the relevant authority to identify the location and extent of the land affected by the proposed restriction.
  - d. The period of the proposed restriction and its nature (restriction of access to the public or to dogs or both; or a requirement to keep to specific paths).
  - e. An explanation as to why the restriction is needed.
- a. If the applicant has an allocation of discretionary days, the extent to which this allocation has been utilised in the year in question and for what purpose.

### **Restrictions Imposed for Other (Non-Land Management) Reasons - Sections 26 and 28 of the Act**

14. The following organisations/relevant authorities may also themselves restrict access to certain access land - in the following circumstances: -

- a. In the interests of wildlife or habitat conservation - CCW.

- a. For the purposes of defence or national security - Secretary of State for Defence or Home Secretary.

In addition, Cadw can apply to the relevant authority for the restriction of access in order to protect sites of historic or archaeological importance.

15. Except in the case of long term restrictions (over six months and where consultation with the local access forum is required - see paragraph 20 below), **it is proposed (proposal 7)** that the following requirements be specified in the regulations: -

- a. That in the case of directions under 14 b. above at least 28 days notice should be given to the relevant authority in Wales of the proposed direction.
- a. That the relevant authority ensures that information on the proposed restriction is made available to the public in a timely and clear manner (e.g. via CCW's access management database).
- b. The relevant authority should also notify the landowner/tenant of directions issued under paragraph 14 above.

### **Common Land - Holders of Rights of Common**

16. (NB These new regulations will only apply to registered common land, as mapped by CCW. The provisions will not apply to certain other commons – e.g. urban commons where rights of access are conferred under other legislation)

In general it is not expected that the new access right will interfere with the exercise of grazing and other rights on common land. However there are circumstances - for example at lambing time - where some restrictions could be warranted on this land. **It is therefore proposed (proposal 8)** that the regulations should specifically provide for individual holders of rights of common to apply to the relevant authority for access to be restricted for a specified period in the following situations: -

- a. To exclude dogs - on a temporary basis - at lambing time.
- b. To help prevent fire, or
- c. To avoid danger to the public [e.g. burning of heather]

**It is also proposed (proposal 9)** that holders of rights of common should apply for restrictions in the same way as other land managers and provide the same information as indicated in paragraph 13 above.

17. These arrangements will work best if others with an interest in the common involved are aware of the application, and they and the public informed of the outcome. **It is therefore proposed (proposal 10)** that the relevant authority should: -

- a. Notify the applicant of the decision taken and provide a copy.
- b. Publish information on decisions on the authority's website.
- c. Notify other relevant bodies of the decision taken, including the landowner (where known).

### **Restrictions Under Sections 24, 25, 26 and 28 - Decisions**

18. Applications for access restrictions from land managers, holders of rights of common and others clearly need to be determined by the relevant authority in a reasonable timescale: otherwise the public could be unnecessarily exposed to risk and legitimate land management activities could be disrupted. However, where proposed restrictions on access to land would last for more than six months, consultation with the local access forum is required under the Act and before the application is determined. Reflecting this, **it is proposed (proposal 11)** that: -

- a. In cases where the proposed restriction is for less than six months, the relevant authority should determine it within eight weeks of receiving the application.
- b. In cases where the proposed restriction is for six months or longer, the relevant authority should determine it within four months of receiving the application.

### **Reviews of Decisions on Longer Term Restrictions/Closures**

19. In circumstances where the relevant authority has agreed to the annual or long term restriction of access to certain land - for land management purposes, for nature conservation, or the protection of heritage or to avoid risk of fire or other danger - the Act provides for these restrictions to be reviewed at least every five years. This is sensible as the reasons for the original restriction may well change with time. The same review provisions apply to restrictions

or closures agreed for the purposes of defence or national security. To guide this review process and to ensure relevant information is made publicly available, **it is proposed (proposal 12)** that the regulations make provision for: -

- a. The relevant authority or the Secretary of State in carrying out a review should have specific regard to whether the circumstances applying when the application was agreed have changed; and
- b. If so, whether the restriction is still needed or if it should be modified.
- c. The relevant authority or the Secretary of State should prepare and publish a report of reviews undertaken under section 27(3) or 28 (4) of the Act.

### **Consultation arrangements – longer term restrictions/closures**

20. Before giving a direction restricting access to certain land for periods of 6 months or more, Section 27(1) of the Act requires the relevant authority to consult the local access forum for the area. In addition before revoking or varying any direction given, the relevant authority has to consult the original applicant (or his successor in title). In the case of directions granted to Cadw, the relevant authority must similarly consult it. Moreover, as noted in paragraph 19 above, where the restriction applies annually, for more than five years or indefinitely, the approval has to be reviewed every five years.

21. To help ensure that relevant information is made available to the key interests and also to the public, **it is proposed (proposal 13)** that:

- A. Before giving a direction which would restrict access to an area indefinitely or for 6 months or more, the relevant authority should :
  - i. provide the local access forum with a copy of the application made and information and about the nature and purpose of the proposed direction ;
  - ii. provide the applicant with a copy of the information supplied to the local access forum (apart from the application itself);
  - iii. publish a notice in one or more local newspapers circulating in the area; place a copy in the main local public library (ies); and place relevant information about it on the authority's website including information as to where relevant documents may be inspected. Representations should be invited [ and a time limit set for these]

B. Before revoking or varying an existing direction for a long-term restriction on access, the relevant authority should:

- i. consult the original applicant (or his/her successor in title) and explain the reason for the proposed change;
- ii. provide the relevant advisory body with a statement of the reasons for proposing the change;
- iii. place information on its proposals on its website

C. Before reviewing existing directions for long term restrictions on the access the relevant authority should:

- i. consult the local access forum for the area concerned;
- ii. consult the public by placing a notice in one or more local newspapers circulating in the area; and publish this on its website and in the main local public library (ies). The notice should invite views and say where the relevant documents may be inspected [timescale for views to be expressed]

22. Longer term restrictions/closures required for the purpose of nature conservation could potentially result in putting vulnerable species at risk if information on sites is published. There may be grounds for restricting public consultation in such situations – and we will consider this aspect further. Meanwhile views on how this issue might best be addressed in the regulations would be welcome.

### **Informing the public of restrictions agreed**

23. Up-to-date, reliable and readily available information on access restrictions is clearly important if local people and visitors are going to be able to take account of them. The relevant authority will need to use a variety of means to ensure that this information is readily available - so the system of restrictions can operate properly for the benefit of land managers and access land 'users' alike. Little of this needs to be prescribed in regulations as such, but **it is proposed (proposal 14)** that, as a minimum, the regulations should require:

a. landowner/tenant/holder of rights of common to be responsible for placing adequate notices\* on the boundaries of land to which access is to be restricted on a short term basis (less than 6 months)

b. for the relevant authority (possibly via the local access authority) to place notices\* around land subject to longer term restrictions (six months and over).

c. the CCW to publish, as soon as practicable, information on a central website of discretionary restrictions notified to it (under section 22) and of other restrictions (agreed under sections 24, 25, 26, and 28).

d. other relevant authorities similarly to publish information on restrictions agreed on the central (CCW maintained) website.

\*a standard bilingual sign or notice would be devised for this purpose

## **Appeals**

24. Appeals can be made (to the National Assembly) by landowners/ managers against the decisions of the relevant authority in two main situations. These are:

- a. where an application made for a restriction direction under sections 24 or 25 is not agreed
- b. where the relevant authority does not act in accordance with representations received from the landowner/manager in considering the revocation or variation of a restriction arrangement.

**It is proposed (proposal 15)** that the same arrangements as are envisaged for the handling of appeals against the showing of land on provisional maps (under Section 6 of the Act) should apply to these appeals. The arrangements proposed are covered in the Annex to this paper

March 2002 Countryside Division

## **Annex A – Appeals Procedures - Restrictions**

1. Appeals can be made (to the National Assembly) by landowners/ managers against the decisions of the relevant authority in two main situations. These are:

- a. where an application made for a restriction direction under Sections 24 or 25 is not agreed
- b. where the relevant authority does not act in accordance with representations received from the landowner/manager in considering the revocation or variation of a restriction arrangement.

The paper has been devised in consultation with the Planning Inspectorate – and is consistent with the plans for the handling of equivalent appeals in England. It is intended that the administration and determination of appeals under Part 1 of the Act should be undertaken on the Assembly's behalf by the Planning Inspectorate, Wales – or by any other body subsequently appointed by the Assembly.

## **2. Submitting an appeal**

### **Period of appeal**

2.1 It is proposed that the period for bringing an appeal against a restriction should be 3 months from the date the relevant authority made a decision. However, at the Planning Inspectorate's discretion, a longer appeal period may be allowed in exceptional cases where the appellant can demonstrate that it was not reasonably practicable for him/her to submit the appeal within three months.

### **Information required to submit an appeal.**

2.2 We do not propose to specify in regulations the precise format in which an appeal should be submitted but for consistency and ease of handling, to make provision for a model form obtained from the Planning Inspectorate, Wales which,

if used, would satisfy the procedural requirements for initiating an appeal. This would be made widely available via the relevant authorities, the Planning Inspectorate and other bodies such as the farming unions and the local authorities. The model form could be submitted in writing or in electronic format.

## **Notification to the Relevant authority**

2.3 The regulations would require the Planning Inspectorate to send a copy of the completed form to the relevant authority so they are aware of the appeal.

## **3. Handling of appeals**

3.1 Appeal process - It is intended that appeals for Restrictions under Section 30 of the Act should be determined in one of three ways:

- i. After an exchange of written statements (provided that the appellant, the Relevant authority and the Inspectorate agree), or
- ii. After a hearing before a person appointed by the Assembly. (A hearing is a discussion of the appeal led by the appointed person in a more informal setting than a local inquiry. Hearings are not suitable for appeals which involve cross-examination of witnesses or which have generated such interest that large numbers of people, other than the main parties, may wish to appear).
- iii. After a local inquiry, also before a person appointed by the Assembly. (An inquiry is the most formal of the three procedures and witnesses may be cross-examined.)

In many cases appellants may be content for their appeals to be determined via the written representations procedure. The Act gives each party to the appeal – the appellant and the relevant authority – the right to be heard if either party so wishes. In these cases it would be for the Planning Inspectorate to determine whether a hearing or (more formal) inquiry would be more suitable.

### **3.2 Common procedure**

The Assembly is keen to ensure that the appeals process minimises the risk of undue delays in reaching a decision, while at the same time ensuring that all material factors are properly considered. To that end we propose a common procedure for the initial stages of cases proceeding on the basis of written representation or by a hearing. However, we do not believe a common procedure would be appropriate for appeals being handled at an inquiry because, by their nature, inquiries are more involved. Again, however, the aim would be to ensure that such appeals are processed within a reasonable timescale.

## Procedure for written appeals and hearings

3.3 The common procedure envisaged for the initial stages of cases to be determined by written statements or by a hearing would comprise the following steps (all to be covered in the regulations):

- i. The Planning Inspectorate to notify the appellant and the relevant authority of a "starting date" for the appeal from which the prescribed timescales proposed below would run. Prior to giving notice, the Inspectorate must be satisfied that it has received all the documents from the appellant required to enable them to proceed with the appeal.

### ***Within two weeks of the "starting date"***

- ii. Relevant authority to notify third parties of the appeal and providing the information under 3.2 below (inviting those who made representations on any restrictions to decide if they wanted those representations to be disregarded or if they wished to submit additional representations).

- iii. Relevant authority to submit its statement of case to the Inspectorate. This may be an outline statement at this stage – if so, the relevant authority should indicate, when submitting it, if a further full statement is to be sent within six weeks of the starting date.

- iv. At the same time as it submits its case under paragraph iii. above, the relevant authority should indicate its choice of procedure (i.e. handling via written representations, hearing or inquiry – final decision to rest with the Inspectorate) and provide any additional information which may be required. The relevant authority should send a copy of its statement, the other information and documents to the appellant at the same time as the Inspectorate.

### ***Within six weeks of the starting date***

- v. The appellant and relevant authority to submit any further statements to the Inspectorate.

- vi. All third parties to submit any representations to the Inspectorate.

- vii. The Inspectorate should send the appellant and the relevant authority copies of relevant statements received under paragraph vi.

above; any additional information required by the Inspectorate; and copies of any representations received from the people or organisations notified at paragraph iii. above and from any other third parties.

***Within 9 weeks of the starting date***

viii. The appellant and relevant authority to submit to the Inspectorate any comments on each other's statement or any representations from third parties sent to them at paragraph vi. above.

### **3.4 Provision of further information by the appellant or the relevant authority**

The regulations would also provide the Inspectorate with the power to require further information from:

- the appellant in respect of matters raised in the form of appeal and any further statement which has been provided at paragraph 3.3 v. above
- the relevant authority in respect of its statement provided at paragraph 3.3 iii. above or if this were an outline statement, in respect of its statement at paragraph 3.3 v. above.
- from third parties as appropriate.

### **Inspection of Land**

3.5 Regulations should enable the Planning Inspectorate to arrange for an inspection of the land and require it to do so if asked by the appellant or the relevant authority. If an inspection has been arranged, the Planning Inspectorate should be required to give the appellant and the relevant authority an opportunity to be present during the visit.

### **Assessors**

3.6 The Inspectorate may consider that an appeal raises complex or technical issues on which it would be helpful to have specialist advice. In such circumstances we propose that the Inspector would be able to appoint an assessor to assist him/her in these matters. It is proposed that the regulations should require the Inspectorate to notify the name of the assessor to the appellant and the relevant authority and the matters on which the assessor is to advise the Inspector.

## **4. Advertising an appeal**

## **Third party representation**

4. 1 As in the case of planning appeals, the Assembly believes that members of the public should be given the opportunity to make representations on any appeal brought under section 30 of the Act. Accordingly it is proposed that the regulations should provide that:

- a. once notified by the Planning Inspectorate that an appeal has been lodged, the Relevant authority should inform the Inspectorate of the name and address of any person who made a representation to it about the restriction; and
- b. for the relevant authority then to give notice of the appeal to those who had originally made representations.

## **Availability of documentation**

4.2 To assist public understanding, the relevant authority should provide an opportunity for anyone to inspect and where practicable to take copies of documents relating to the appeal including:

- i. the relevant authority statement of case and accompanying documents, any written comments, information or other documents sent by the relevant authority to the Planning Inspectorate.
- ii. any other statement of case, comments, documents or information sent to the relevant authority.

## **Giving notice of hearings/inquiries**

4.3 The Assembly expects that as appeals under Section 30 are not normally likely to raise numerous issues or complicating factors, many appellants may be content for their appeal to be determined via written representations. However, where a hearing or inquiry is arranged, it is clearly important that those with an interest are given adequate notice. To this end it is proposed that the relevant authority should publish a notice of any hearing or inquiry in one or more newspapers circulating in the area covered by the appeal and to send a notice to any persons specified by the Planning Inspectorate (for example, anyone who made representations to the Planning Inspectorate in respect of the appeal). A copy of the notice should also be available on the relevant authority website.

## **5. Decisions on appeals**

### **Decisions – written procedure cases**

5.1 Where the appellant, the relevant authority and the Inspectorate have agreed that the appeal should be determined on the basis of written representations then, on completion of the procedure outlined above the Inspectorate would proceed to a decision. In doing so the Inspectorate should be able to:

- i. Disregard any further information from the appellant or the relevant authority that was not submitted within 9 weeks of the starting date unless such information had been requested by the Inspectorate.
- ii. Take into account only representations, statements and any other information which have been submitted within the relevant deadlines.

## **Decisions – Hearing cases**

5.2 Where it is decided to proceed by way of a hearing, in addition to the procedures outlined in paragraph 3.3, it is proposed that the following additional requirements be specified in the regulations:

- i. A requirement for the Inspectorate to notify the appellant and the relevant authority of the name of the Inspector.
- ii. A requirement for the Inspectorate to fix a date for the hearing within 12 weeks of the starting date or the earliest practicable date after that period.
- iii. A requirement for advertising any hearing or inquiry (in line with paragraph 4.4 above).
- iv. A power for the Inspectorate at any time before or during a hearing to decide whether an inquiry instead of a hearing should be held if requested to do so by one of the two main parties and after consultation with the other main parties.
- v. A power for the Inspector, during a hearing and after consultation with the appellant and the relevant authority, to close the proceedings and arrange for an inquiry if he decides that it is more appropriate.
- vi. Provision for the appellant and the relevant authority to be entitled to appear at a hearing and power for the Inspector to permit any other person to appear.
- vii. A power for the Inspector to determine the procedures to be followed at a hearing (while following the guidance in Annex 2 of Welsh office Circular 7/97).

## **Decisions – Inquiry cases**

5.3 In line with the procedure for planning appeals, we propose that regulations for inquiries should be based on the rules of procedure set out in Welsh Office Circular 7/97. These include similar timescales for the submission of documents as proposed in the common procedure above but include additional stages – for

example, a power for the Inspectorate to require third parties who have notified them they would like to appear at the inquiry to provide a statement.

#### 5.4 Other key provisions include:

- i. A requirement for the two main parties to prepare and submit to the Inspectorate a statement of common ground – i.e. the matters on which they agree or disagree. This would enable the Inspector to identify the key points to be addressed and reduce the time needed for the inquiry.
- ii. A requirement for either of the main parties, if either intends to read a proof of evidence at the inquiry, to provide copies in advance.
- iii. Provision allowing the appellant and the relevant authority to cross-examine persons giving evidence. Otherwise cross-examination to be at the discretion of the Inspector who would, in any event, have discretion to refuse to allow cross-examination which he considered to be irrelevant or repetitious.
- iv. Provision for a pre-inquiry meeting if this appears to the Inspectorate or the Inspector conducting the appeal to be necessary.

### **Procedures after a hearing or inquiry**

5.5 In line with the existing procedures on planning appeals, it is proposed that the regulations make provision for the Inspector:

- i. To be able to disregard any written representations, evidence or other documents received after a hearing or inquiry has been closed.
- ii. To be required to consult the appellant and the relevant authority if he is proposing to consider any new evidence not raised at the hearing or inquiry and which he believes to be material to the decision. Also to allow them to make written statements or ask for the hearing or inquiry to be re-opened.
- iii. To be able to re-open a hearing or inquiry in the circumstances at paragraph ii. above and to be required to do so if either the appellant or the relevant authority request it.

### **Other matters to be covered**

#### **Notification**

5.6 Regulations should make provision for the notification of decisions made by the Assembly or an Inspector on appeal. In each case notification should be in writing. To this end it is **proposed that the regulations should require the Inspector to notify his/her decision and the reason for it to the appellant, the relevant authority and any person who made representations in respect of the appeal and asked to be notified of the decision. In the case of a hearing**

## **or inquiry, the regulations would require the inspector:**

- i. to notify his decision to the main parties and any person who appeared at the hearing or inquiry and asked to be notified of the decision;
- ii. to enable anyone entitled to be notified of the decision to inspect any documents listed in the notification on application to the Assembly.

## **5. Costs**

### **Costs**

5.1 In most cases, each side will normally be expected to bear its own costs in the proceedings. The Assembly **proposes** that in cases where an inquiry or hearing is held (or in certain circumstances where one is arranged, but not held), costs may be awarded, on application, where it can be shown that any party has acted unreasonably in their conduct of the proceedings. This would include the costs incurred in making the appeal, in preparing and submitting representations or attending the hearing or inquiry. This follows the guidance on the award of costs in planning appeal cases set out in Welsh Office Circular 23/93 (reading references to planning appeals as references to restriction appeals, and references to the local planning authority as reference to the relevant authority.) In line with this the power to award costs applies only in hearing or inquiry cases and not for cases determined by written representations.

**PAPER 2**

## **DRAFT CONSULTATION PAPER**

### **Proposals for new regulations on voluntary dedication of access land under section 16 of the Countryside and Rights of Way Act 2000.**

#### **1. Introduction**

1.1 Part I of the Countryside and Rights of Way Act 2000 provides for a new public right of access on foot to open country and registered common land. The extent of this new "access land" in Wales is currently being mapped by the Countryside Council for Wales (CCW).

Section 16 of the Act allows the owner of any land, or a lessee with not less than 90 years of the lease remaining, formally to dedicate that land for public access.

### ***Voluntary dedication***

2. The Assembly's Minister for the Environment would like to see landowners and occupiers dedicating land for access for the benefit of the public good and also in order to protect the land against any existing permissive access being withdrawn at a later date. Dedication is applicable to all land types. The Forestry Commission has already indicated its intention to dedicate important parts of its woodland estate in Wales (especially where the land is held on a freehold basis). Charitable organisations in Wales and local authorities will also wish to consider if dedication of some of their land would be appropriate.

1.3 Dedication of land is irrevocable, binding successive owners and occupiers of the land, except where a lessee makes a dedication for the un-expired term of the lease (in this case the dedication ceases to have effect on the expiry of the lease.) Moreover, if the dedicated land becomes "excepted land" under the provisions of the Act e.g. part of the land is developed, then the right of access will no longer apply.

1.4 Dedicated land will also be subject to the full range of safeguards available under the Act to avoid disruption of legitimate land management and other activities on the land. This includes, for example, the use of provisions to restrict access via the discretionary 28-day allocation available to landowners and tenants under section 22 of the Act each year. A consultation paper, setting out proposals for new regulations on restrictions and exclusions of access is also currently out to consultation.

1.5 The Minister for the Environment is keen to make the process of dedication as straightforward as possible – consistent with ensuring that the necessary legal requirements are met in the interests of all parties. The proposals made in this paper for the necessary regulations reflect this approach.

## ***2. Dedication of land – key requirements***

2.1 Section 16(1) of the Act enables regulations to be made to prescribe the steps

to be taken in dedicating land for access and section 16(6)(a) of the Act enables regulations to be made to prescribe the form of any instrument to be used for such purposes. Explanatory guidance notes will be issued on the process of dedication, which will support the regulatory framework proposed here.

2. It would be beneficial for the CCW, the National Park authorities (in respect of land within a National Park) and the Forestry Commission (in respect of woodland) to be aware of an individual's intention to dedicate land. This would enable these organisations to discuss the process and merits of dedication with the person or persons making the dedication and to offer general advice and assistance. **It is not proposed (proposal 1)** to include advance notification to CCW as a specific requirement in the regulations – but this will be encouraged in the guidance notes as a matter of good practice. It is envisaged that on receipt of such advance notification, CCW would inform the relevant National Park authority or the Forestry Commission as appropriate.

### ***3. Removal or relaxation of restrictions***

3.1 Any land dedicated under section 16 of the Act is subject to the same right of access as land mapped as open country and registered common land in accordance with the Act, i.e. access on foot for the purpose of open-air recreation. However, it is possible for the new regulations to enable the person making the dedication to remove or relax the restrictions that would otherwise apply to access to the land by virtue of Schedule 2 to the Act, e.g. to allow people to ride on horseback or to camp on the land as of right.

3.2 **It is proposed (proposal 2)** that regulations should enable a dedication to include provision for removing or relaxing any of the general restrictions in Schedule 2. The regulations would also enable a dedication to be subsequently amended by new owners/occupiers of the land so as to further relax or remove restrictions contained under Schedule 2.

### ***4. Obtaining consent from Interested Parties***

4.1 Dedication of land may be undertaken by: -

- a person who has a freehold interest in the land or

- a lessee with an un-expired term of not less than 90 years (in these circumstances the lessee will not require the consent of the landlord but the dedication will end on the expiry of the lease.)

4.2 Before a person who is entitled to dedicate land can proceed, other persons who have a specified interest in that land must either give their consent to, or must join in, the dedication. Such an interest includes a leasehold interest in the land and the new regulations could prescribe other interests too – for example those with shooting or grazing rights over the land; or those with a financial charge over the land.

4.3 **It is not proposed (proposal 3)** to prescribe those persons with reserved sporting or grazing rights to be required to consent to the dedication, since their interests are protected by the ability to restrict or exclude access under the provisions of Chapter II of the Act. Views are invited on this and on whether consent should be required to be sought from persons with other interests – for example those with a financial interest in the land.

4.4 Where another party has a leasehold interest or such other interest as may be prescribed by the regulations, the dedication must be made by the owner of the land, either with the necessary consent from that party, or jointly with him. We believe that it should be for the person who made the initial decision to dedicate to decide which approach to adopt – and **we would not therefore propose (proposal 4)** to cover this specifically in the regulations.

### **Information for interested parties**

4.5 While, as noted above, we do not consider it necessary to prescribe the process of obtaining consent to a dedication, **it is proposed (proposal 5)** that the regulations should specify the information to be provided to the person from whom consent will be required. The guidance notes will contain a model form, which the dedicator will be recommended to use to ensure that a valid consent is obtained.

The following information would be required to be provided in advance to any individual who is requested to consent to the dedication:

i. the interest in the land which the person from whom consent to the dedication is required.

ii. the extent of the land to be dedicated

iii. any proposals to remove or relax the Schedule 2 restrictions which would otherwise apply to those exercising a right of access.

iv. the un-expired term of the lease where the dedication is made by

an entitled long leaseholder.

4.6 Where a dedication is made jointly, we believe that it is fair to assume that all persons signing a joint dedication will be fully aware of the commitment into which they are entering. All parties will be able to see the information provided under proposal 5 in the dedication instrument itself, and therefore we see no need to provide this information separately to those who are making a joint dedication.

## **5. Making a Dedication**

5.1 For administrative and legal convenience we think it would be helpful to persons wishing to dedicate land to have a 'model' dedication form available for their use. This should facilitate the dedication process, ensuring that the dedicator entered all the information required of him. Rather than seeking to prescribe the form itself in the regulations – which would make the form difficult to update/revise – **it is proposed (proposal 6)** to specify the information the model dedication form should contain, as follows:

Regulations would require an instrument of dedication to include the following details: -

- i. name and postal address of the person making the dedication
- ii. the extent and location of the land to be dedicated shown on a map at a scale of not less than 1:10,000
- iii. description of the interest which that person holds in the land
- iv. the consent (where required) of any other person (where the dedication is not made jointly)
- v. details of any of the general restrictions in Schedule 2 of the Act which will be removed or relaxed in relation to any of the land to which the dedication relates.
- vi. the un-expired term of the lease where the dedication is made by an entitled long leaseholder.

## **6. Notifying a dedication**

6.1 Section 16(6)(d) of the Act enables regulations to be made requiring any dedication to be notified to the Countryside Council for Wales and the access

authority (the local authority or National Park authority for the area concerned). Without such notification, the dedication will be of limited benefit because few people will be aware of their rights of access to the dedicated land.

2. Where the dedicated land contains woodland, the dedication could also usefully be copied to the Forestry Commission (so that the Commissioners may decide whether to exercise their powers to become the relevant authority for all or part of the dedicated land under section 21(6) of the Act).

6.3 Clearly it would make sense for notification to the CCW and access authority to take place within a reasonably short period of the dedication being made. This would help ensure that the public can be made aware of the new opportunities for access arising from the dedication.

6.4 Other persons with an interest in the land will also wish to be notified of the dedication having been made, in order that they should have the opportunity to seek directions to restrict access to the land in order to protect their interests. However, it may not be practicable for the owner to identify all such interests in his land — for example, where the land is subject to rights of common, and the register of right holders is not up to date.

5. **It is therefore proposed (proposal 8)** that the regulations should require a copy of the dedication instrument to be sent to
  - a. those who have given their consent to the dedication
  - b. to the CCW
  - c. and to any other persons with an interest in the land affected (where it is reasonably practicable to do so)

within 28 days of the dedication. CCW would be under an obligation to pass on details of the notification to the relevant access authority and to the Forestry Commission in relation to woodland – and to do so in a timely manner.

## 7. Amendment of a dedication

7.1 The Act enables regulations to be made to allow for a dedication to be amended, providing the amendment only removes or relaxes the general restrictions imposed under Schedule 2. Section 16 does not allow a dedication to be amended so as to re-impose restrictions on the right of access removed at the time of the original dedication.

7.2 As with the original instrument of dedication, a person entitled to amend a

dedication will be required to do so either jointly or with the consent of any person (or their successors) who consented to the original dedication (and providing those parties still have an interest in the land to which the dedication relates. A model form would be devised for the purpose of amending a dedication. While this form would not be prescribed in the regulations, **it is proposed (proposal 9)** that the key information it would contain should be specified - as follows:

i. name and postal address of the person amending the dedication,

ii. the extent and location of the land to which the amendment applies, shown on a map at a scale of not less than 1:10,000, or confirmation that the amendment relates to the same land as was specified in the earlier dedication.

iii. description of the interest which that person holds in the land

iv. the consent (where required) of any other person (where the amendment is not made jointly).

v. details of the general restrictions in Schedule 2 to the Act which will be relaxed or removed in relation to the land.

**7.4 It is also proposed (proposal 10)** that any amendments to a dedication should be subject to the same requirements for notification etc. as set out in paragraph 6 above.

## **8. Right of access to dedicated land**

**8.1 It is proposed (proposal 11)** that the right of access over dedicated land should come into force nine months after the date on which a dedication is made. This would ensure that any other person with an interest in the land (including those whose consent is not required to the dedication) would have a reasonable time in which to seek directions to restrict access to the land in order to protect their interests. A period of nine months would also give enough time for the CCW and the relevant access authority to publicise the new opportunities for access as a result of the dedication.

## **9. Registration of dedication as a local land charge**

**9.1** Section 16(8) of the Act provides that a dedication is a local land charge. Under section 5(2) of the Local Land Charges Act 1975, the dedicator is under a duty to apply to the registering authority (the local authority for the land dedicated)

for the registration of the dedication as a local land charge. It is not possible for regulations under section 16 to vary this duty, or to assign it to a third party.

We envisage that information and advice about registration of a dedication as a local land charge would be provided in the guidance notes.

## **10. Occupiers Liability**

10.1 Section 13 of the Act which amends certain provisions about occupiers liability, applies to dedicated land in the same way as it applies to all other access land. It reduces the liability of occupiers of land owed to those exercising the right of access to the same low level of liability that would be owed to trespassers. The Act also provides that, at any time when the right of access is exercisable, occupiers of access land (including dedicated land) will owe no liability to those exercising the right of access, nor to trespassers, in respect of risks arising from natural features of the landscape, any river, stream, ditch or pond, or when a person passes across a wall, fence or gate (except by proper use of a gate or stile). This important issue will also be covered in more detail in the guidance notes for those thinking of dedicating land under section 16.

## ***11. Responses to this consultation paper***

11.1 Views on the proposals made in this paper should be sent to Angharad Huws in Countryside Division, National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ (countryside.division@wales.gsi.gov.uk) – (8 weeks after publication). If you would like to discuss any matter in this paper before submitting comments please contact Gerry Quarrell or Angharad Huws on 029 2082 3557 or 5168

Further copies of this paper can be obtained from Angela Forster in Countryside Division (tel. 029 2080 1398). The text is also published on the National Assembly's website at <http://www.wales.gov.uk/keypubconsultation/>

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