

Access Reform Programme

Options Identification Paper: Expert Group 1
Changes to Open Access CRoW Land

Options Identification Paper: Reforms 1A and 1B

Introduction

ExG1 met on 12th March 2020 to discuss options for how to implement the policy intent set out by Welsh Government for Reforms 1A and 1B.

This report has been produced following the second meeting of Expert Group 1 (ExG1). The report outlines the main Reform Options identified for implementing the 2 Reforms.

The Reform Options identified from this stage of the Expert Group process will be taken forward for detailed consideration by each Expert Group. This will include providing greater detail and analysis of each proposal – including any common elements and/or cross-cutting issues.

It should be noted that the content of this paper contributes to developing advice to Welsh Government for the reform of access legislation as part of the Access Reform Advisory Group. Any such information and outputs produced during the ARAG process do not represent the policy position of Natural Resources Wales, Welsh Government or other members of the Access Reform Advisory Group (Steering Group/Expert Groups).

Process

Following the first meeting, members were asked to consider the Problem/Issues Identification Paper produced for each reform and submit 'Outline Reform Option Proposals' summarising possible approaches to implementing the Policy Intent set out for each Reform.

These outline Reform Proposals were presented and considered by members of the Expert Group. The various proposals were then compared and grouped according to broadly common approaches.

Options that clearly fell outside the scope of the Reform and Policy Intent set by Welsh Government were discounted.

The remaining Proposals were then considered further in sub-groups. The sub-groups were asked to add further information and detail about the key elements that each proposal would need to include, taking account of the key issues identified in the Problem/Issues Identification Paper.

Reform 1A

Identification of Outline Reform Options

The first stage of the process identified the following broad Outline Proposals and whether they were within scope and should be considered further. The outline options are summarised in the following table:

1A: Outline Proposal Title	Summary Description of Outline Proposal
i. Amended CRoW Sch. 2 Restrictions	Remove higher rights restrictions in CRoW Schedule 2 (excluding 1B coastal land). Use CRoW regime with E+R's as is now/or changed. Strengthen responsible behaviours e.g. through a statutory code.
ii. Higher Rights ⁱ Applied Subject to Assessment of demand/suitability	Apply higher rights selectively to defined areas of CRoW land based on an assessment of suitability.

iii. Higher Rights on Defined CRoW Trails (corridor approach)	A defined linear route/corridor through CRoW land in which Schedule 2 restrictions are lifted for stated activities
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Reform Option Proposals – identification of further required elements

For each of the broad Outline Proposals identified above a summary description and key elements, or ingredients, that would be needed with each proposed option approach were identified. These are summarised below for each Outline Proposal

1A(i) Amended CRoW Schedule 2 Restrictions

Outline Option Proposal Description:

Amend CRoW Schedule 2 in line with policy intent for existing CRoW access land (but not coastal land). Use existing CRoW regime with E+R's as now/or as amended. Include a responsibility clause with lifting of Sch.2 restrictions. CRoW Part I regime amended to strengthen responsible behaviours, e.g. through a statutory code.

Key Elements within Amended CRoW Schedule 2 Option Proposal:

It is possible for an option proposal to have variations in one or more key elements, while retaining the overall approach. These have been noted above within the table.

¹ Reference to higher rights users is as per the policy intent for Reform 1A unless otherwise stated

Ref No.	1A(i) Key element for outline option proposal	Alternative element for outline option proposal
001.	Amend CRoW Act Sch.2 legislation for non-coastal access land to allow for additional recreational activities on current access land as per Policy Intent: <ul style="list-style-type: none"> cycling, horse riding, hang-gliding and paragliding; & on CRoW waters (excluding reservoirs): non-mechanically propelled vessels; bathing / swimming 	Include 1A changes to Schedule 2 to coastal access land as and when 1B reform implemented Do not extend rights to powered water vessels under Sch.2 paragraph 1b.
002.	Existing CRoW mapping would apply [i.e. no requirement to re-map CRoW access as access land mapping was only according to defined types of land – mountain, moor etc].	Coastal access land mapping [Reform 1B] would also apply
003.	CRoW legislation would apply, including: <ul style="list-style-type: none"> Rights of access [including mapping - see above] E&Rs regime Means of access 	Coastal access land regime would apply as modified Review and amend E&Rs regime as necessary for circumstances around additional rights
004.	Apply statutory access code to define rights and responsibilities.	Voluntary code
005.	Education and promotion for code of conduct. Enforcement linked to statutory code with measures, such as Fixed Penalty Notices [excess money to be used for CRoW Access costs].	

Ref No.	1A(i) Key element for outline option proposal	Alternative element for outline option proposal
006.	Provision to allow improvements for accessibility (mobility) of gates and stiles. All furniture to meet accessibility standards, such as BS5709 standard when replaced.	Local Authority funding for furniture or local community funding, e.g. British Horse Society.
007.	New Open Access symbol for on the ground signage (e.g. way marker) – new design needs to incorporate all users. OS and other mapping notation to recognise different CRoW rights apply in Wales.	
008.	Agri-environment funding to be made available for access enhancements and supporting infrastructure.	
009.	Landowner – review their right to appeal definitions within current legislation.	
010.	Communication of changes in Wales - and England, especially in relation to cross-border impact	
011.	Reduced landowner liability reduced in line with existing CRoW access relation to all users. (i) Impact on cycling/horse riders may be higher.	Apply [relatively lower] MACA level of liability for all CRoW access land in Wales For H&S reasons, develop easy spatial referencing system to help find those that may have been in incidents faster.

1A(ii) Application of Higher Rights subject to Suitability Assessment

Outline Option Proposal Description:

Apply higher rights selectively to defined areas of CRoW land based on an assessment of suitability.

Key Elements within Amended CRoW Schedule 2 Option Proposal:

Ref No.	1A(ii) Key element for outline option proposal	Alternative Key element for outline option proposal
001.	Discretionary powers included in CRoW Act Part I for access authorities (AAs) to consider the suitability of defined CRoW access land for Schedule 2 restricted activities within their area.	Duty for AAs to assess all CRoW access land in their area on a rolling basis
002.	Powers to define in regulations: <ul style="list-style-type: none"> • suitability assessment criteria for higher rights access to apply to access land • assessment processes and how applied (including defining an 'area of access land' for assessment purposes) 	

Ref No.	1A(ii) Key element for outline option proposal	Alternative Key element for outline option proposal
003.	Powers for AAs to assess CRoW access land for suitability for application of higher rights	Duty for AAs to assess CRoW access land for suitability for higher rights
004.	Assessments carried out at discretion of AA	Ditto
005.	<p>Case-by-case review on each assessment site/'area of access land' –</p> <p>Define who carries out assessment– access authority</p> <p>Others bodies to be consulted about specific assessment relevant to functions e.g. NRW, CADW etc.</p> <p>Criteria for making assessment based on need/demand</p> <ul style="list-style-type: none"> - Existing and/or latent demand - Remote + popular areas - Evidence for demand, e.g. monitoring; Strava <p>Duty – Sustainability – Impacts on:</p> <ul style="list-style-type: none"> - Land management - Wildlife - Historic heritage - Others to be defined 	<p>Relevant authority</p> <p>Advisory role for LAF, Visit Wales</p> <p>[NB: could excessive demand/ impact be a reason to refuse?</p> <p>Could create honey pot sites.</p>
006.	CRoW E&R's regime would apply. Any restrictions would be considered if/where needed <u>after</u> higher rights applied.	Provide powers for protective restrictions based on clear criteria within revised E&R regime at assessment stage.
007.	<p>Landowner/management</p> <ul style="list-style-type: none"> - Resources to carry out processes - Warden resources to support practical management - Powers to monitor and consider impact on land management - Powers to facilitate crossing of field or other boundaries, obstacles 	<i>NB: any approach requires compliance with human rights / non-discriminatory approach. Consider if a selective approach compatible with HRA</i>
008.	CRoW mapping duty continues to apply, including provision of mapping as now through online mapping. Mapping depiction should differentiate between rights associated with different CRoW areas	NB: requirements for mapping etc aligned with outcome from Reform 3A [Integrated Access Mapping]
009.	<p>Powers to provide associated signage; new higher rights open access symbol/logo for waymarks and signage</p> <ul style="list-style-type: none"> - New waymark discs? - New access point signs? - Directional signage? 	
010.	Change Schedule 2 as per policy intent for any assessed access land areas	Amend Schedule 2 on more limited basis that policy intent, allowing variations as to higher rights applied to areas on selective basis e.g.

Ref No.	1A(ii) Key element for outline option proposal	Alternative Key element for outline option proposal
		only to cyclists and/or horse riders
011.		'Enhanced' Access by demand - Role for Unitary Authority/LAF to determine - Also requires appropriate means of access - Schedule 2 relaxed
012.	E&Rs to remain as currently	Review and revise E&Rs to adapt regime for new higher rights
013.	Revise powers to allow enhancement of means access to and within access land for higher rights and applicable to CRoW access land generally. Would be applied at discretion of AA	
014.	'Enhanced' Access by suitability, considerations could include - Impacts of recreational pressure - Accessibility of land - Demand for access	
015.	Liability/E&Rs to help owner/occupiers - reduced liability stays during E&R; or - liability (same as England – MACA)? - liability reduced due to injury caused by livestock? - poaching around 'honey pot' or access points?	

1A(iii) Higher Rights on Defined CRoW Trails (corridor approach)

Outline Option Proposal Description:

Extend CRoW Act to include powers for access authorities to define linear routes/corridors through CRoW land in which Schedule 2 higher rights restrictions are lifted. CRoW legislation would generally apply to such routes.

Ref No.	1A(iii) Key elements for outline option proposal	Alternative key element for outline option proposal
001.	Amend CRoW Act to provide powers for access authorities to define linear routes/corridors of CRoW access land to which higher rights apply	
002.	Powers for Access Authorities (AAs) to define CRoW higher rights routes would be applicable to all existing access land designated or dedicated under CRoW. Higher rights to be applied to identified corridors would be part of defining process and subject to AA to determine. Include presumption for Least Restrictive Access. Powers for regulations to set process of defining new higher rights corridors including: AA discretionary consideration,	This could also be applied to access land created on the coast (Reform 1B) Duty to consider corridors within access land that higher rights could be defined

Ref No.	1A(iii) Key elements for outline option proposal	Alternative key element for outline option proposal
	<p>application, assessment of proposed route, determination of proposed route; implementation, including</p> <p>Proposal/assessment process to define areas to which new higher rights could be applied including:</p> <ul style="list-style-type: none"> - Proposal by application [individual, LAF]; or - Proposal by and at discretion of AA - Assessment of proposal against set criteria - Consultation requirements [to include LAFs] - Recommendation - Determination by CRoW AA - Implementation of route [including means of access to and within land] <p>Criteria to be defined in regulations including: demand/need, route characteristics [including dimensions of corridor] existing access rights, physical characteristics, nature/heritage conservation</p>	<p>Consider using route definition process used for ECP under MACA [but not NatTrail legislation]</p> <p>Discretion to include or not include some schedule 2 rights for defined routes [e.g. could exclude certain classes of user such as e-bikes]</p>
003.	<p>Review and develop existing CRoW E&R legislation to provide for CRoW higher rights routes; include power to restrict CRoW routes by activity and for prevention of or recovery of damage resulting from impacts of specific activities.</p> <p>E&R restrictions to CRoW routes to include presumption of onward travel and to allow variation of route or provision of alternative route for such onward journeys</p>	
004.	<p>Review and amend CRoW ss34-38 to provide powers for AA to facilitate the means of access to and within access land for higher rights users [and for people with mobility problems] where necessary</p> <p>Powers to provide guidance and advice about the type of provision for facilitating higher rights and for considering Least Restrictive Access.</p>	<p>Retain ss34-38 if legal interpretation is they are already suitable</p> <p>Duty to provide such guidance.</p>
005.	<p>Introduction of statutory code setting out responsibilities and rights in relation to new rights. Powers to include breach of code resulting in 'removal' of rights and/or provide sanction. Powers to enforce to include LA/NPA nominated officers [including FPN] - as well as courts and police. Provision of resources to develop and support code, including information, education and promotion for people in Wales and visitors.</p> <p>Duty to promote the code for WG, NRW, and all AAs.</p>	<p>Statutory access code developed in relation to all statutory access</p>

Reform 1B

Identification of Outline Reform Options

The first stage of the process identified the following broad Outline Proposals and whether they were within scope and should be considered further. The outline options are summarised in the following table:

Key Elements within Amended CRoW Schedule 2 Option Proposal:

1B: Outline Proposal Titles	Summary Description of Outline Proposals
i. Marine & Coastal Access Act (MACA) approach	MACA Approach – define a coastal margin and coastal route for open air recreation on footpaths
ii. Extend CRoW to include coastal land using s3	Extend CRoW using section 3 powers (for rights on foot only) create parallel powers to create higher rights either through a linear route/corridor or by area.
iii. Extend CRoW to include coastal land using s3 with powers to apply higher rights	Extend CRoW section 3 to coastal land with higher rights applicable through Schedule 2 amendments applying to coastal land

Reform Option Proposals – identification of further required elements

For each of the broad Outline Proposals identified above a summary description and key elements, or ingredients, that would be needed with each proposed option approach were identified. These are summarised below for each Outline Proposal

1B(i) Marine & Coastal Access Act (MACA) [England] Approach

Outline Option Proposal Description:

Extend for activities on foot (as existing 2020 CRoW provides) the definition of CRoW open access land to include agreed coastal land or habitat types e.g. dunes, beaches, coastal heath. Map these habitats using the same processes for the original CRoW mapping. Include the ability to route the Wales Coast Path through these areas as a defined path. Apply existing CRoW

Key Elements within MACA Option Proposal:

MACA approach option was considered to require the following elements within it:

Ref No.	1B(i) Key elements for MACA-approach outline option proposal	Alternative element for option
001.	Use CRoW to define a coastal margin for spreading room associated with a WCP coastal route	
002.	Defined Coastal access scheme for implementing provisions, including mapping of coastal margin and defining 'coastal route'	
003.	A coastal route defined as a long-distance walking route under 1949 Act-type LDR provisions [LDR status for WCP]. Allow for WCP to be incorporated as 'coastal route'	Defined 'coastal route' allow rights for walking, cycling and horse-riding [under 1949 Act-type LDR provisions]
004.	Reduced liability to users of rights for landowners and land managers	

Ref No.	1B(i) Key elements for MACA-approach outline option proposal	Alternative element for option
005.	Provision for roll back of coastal route specified	
006.	Provision for management of coastal margin and coastal route	
007.	Duty for 'access authorities' to ensure least restrictive access (LRA) wherever possible. Associated powers for improvement and management of accessible infrastructure to and within coastal margin and for coastal route	
008.	Crown land to be included in coastal margin and for coastal route	
009.	Procedures for coastal land mapping processes	
010.	Exclusions and restrictions regime – modified to ensure access to WCP is retained apart from exceptional circumstances	
011.	Redefining of excepted land	
012.	Recreational code – modification of Countryside Code	Statutory code setting out responsibilities and rights
013.	Rights apply only to those on foot	Or as per 1A reform

It is possible for an option proposal to have variations in one or more key elements, while retaining the overall approach. These have been noted above within the table.

1B(ii) 'Section 3 CROW Act Mapping of Coastal Land for access on foot'

Outline Option Proposal Description:

Using section 3 of the CROW Act to extend rights of access on foot to coastal land types. The definition of CRoW open access land would be extended to include [to be] defined coastal land types e.g. dunes, beaches, coastal flats, cliffs and heath. These coastal land types would be mapped using the same processes as for the original CRoW Part I mapping. Include powers to define a linear coastal route or corridor for the use of higher rights usersⁱⁱ. Use existing CRoW Part I legislation for managing coastal access land, subject to a review of the adequacy of existing provisions, notably E&Rs. Provide a statutory access code that would include responsibilities in relation to coastal access land [along with other public access].

Key Elements within 's3 CRoW on foot Mapping of Coastal Land' Option Proposal:
CRoW mapping option was considered to require the following elements within it:

Ref No.	1B(ii) Key element for s3 CRoW on foot outline option proposal	Alternative element for outline option proposal*
001.	Use section 3 of CRoW Act to allow defined coastal land to be mapped as access land for open air recreation on foot	Change CRoW CH3 to secure access along coastal strip. Could be done at same time or later. Coastal route could be WCP or separately defined, whichever is closer
002.	Develop definitions of coastal land to which CRoW rights (on foot) would apply. Include foreshore, coastal cliff, dunes, flats, beaches, coastal heath	
003.	Mapping regulations amending to reflect change – including defining land parcels	
004.	Procedures for mapping processes and consultation as per CRoW – including defining of inland boundary	
005.	Reduce liability for land owners/managers as for CRoW.	Reduce liability for land owners/managers in line with England's MACA coastal margin.
006.	Exclusions and restrictions regime as for CRoW now	Reviewed and modified to include coastal specific requirements e.g. reasons for closures specific to coastal land; E&Rs to provide for onward journeys; remove provisions for 28 days of E&R by notice.
007.	Review and redefine CROW excepted land to ensure applicability to coastal context	
008.	Extend powers in CRoW to allow for management of access within coastal access land including boundary crossings - for recreational and land management purposes & applying LRA approach	
009.	Introduce a statutory access code covering rights and responsibilities, to include specific provisions for coastal access	Widen duty to promote statutory code promotion to other public bodies, as appropriate
010.	Rights apply only to those on foot [CRoW as now]	Rights apply as per 1A reform

Ref No.	1B(ii) Key element for s3 CRoW on foot outline option proposal	Alternative element for outline option proposal*
011.	CRoW coastal land shown on NRW's website as part of NRW's CRoW mapping and on OS mapping	Include CRoW coastal access land in provisions in Reform 1A as appropriate
012.	Duty to define a 'higher rights coastal route' within coastal land where suitable. Suitability assessment process to be set out. Legislative provisions for route's management, including roll back.	Use MACA coastal route legislative type approach for higher rights within coastal access land where assessed to be suitable
013.	Definitions of 'commercial activity' and 'events'. Redefine what falls in or outside rights following review. Starting with consideration of definitions used in Scottish Land Reform Act. Use regulatory powers to allow easier future-proofing.	Any revised definitions should also be considered within [at least] Reform 1A

*It is possible for an option proposal to have variations in one or more key elements, while retaining the overall approach. These are noted within the table.

1B(iii) Section 3 CROW with Higher Rights Mapping of Coastal Land

Outline Option Proposal Description:

Using section 3 of the CRoW Act to extend rights of access **on foot and for higher rights** to coastal land types. The definition of CRoW open access land would be extended to include [to be] defined coastal land types e.g. dunes, beaches, coastal heath. Map these coastal land types using the same processes as for the original CRoW mapping. Include powers to define a linear route or corridor for the use of higher rights users. Use existing CRoW Part I legislation for managing coastal access land, subject to a review of the adequacy of existing provisions, notably E&Rs. Provide a statutory access code that would include responsibilities in relation to coastal access land [along with other public access].

Key Elements within s3 CRoW Mapping of Coastal Land Option Proposal:

CRoW mapping option was considered to require the following elements within it:

Ref No.	1B(iii) Key element for s3 CRoW higher rights outline option proposal	Alternative element for outline option proposal*
001.	Use section 3 order under CRoW Act to allow defined coastal land to be mapped as access land for open air recreation for higher rights recreational use	Change CRoW Ch3
002.	Relax by regulations Schedule 2 provisions of CRoW to allow higher rights on defined coastal land	

Ref No.	1B(iii) Key element for s3 CRoW higher rights outline option proposal	Alternative element for outline option proposal*
003.	WCP would not be affected – remain as now	Provide for defining of a coastal route within coastal access land where no WCP route currently exists or abuts
004.	Develop definitions of coastal land to which CRoW [higher] rights would apply. Include foreshore, coastal cliff, dunes, flats, beaches, coastal heath	
005.	Mapping regulations amending to reflect change – including defining land parcels	
006.	Procedures for mapping processes and consultation as per CRoW – including defining of inland boundary	
007.	Reduce liability for coastal access land owners/managers as for existing CRoW access land	Reduce liability for land owners/managers in line with England’s MACA coastal margin.
008.	Exclusions and restrictions regime as for current CRoW access land including notices on ground and NRW website	Review E&Rs and modified to include coastal specific requirements, e.g. reasons for closures appropriate to coastal land and allows onward journeys. Remove notifications for up to 28 days/year Or keep 28 days but must provide onward route at all times.
009.	Review and redefine CRoW excepted land to ensure applicability to coastal context	
010.	Provide powers for management of access within CRoW access land, including boundary crossings -for recreational and land management purposes	
011.	Introduce a statutory access code covering rights and responsibilities, to include specific provisions for coastal access	Widen duty to promote statutory code promotion to other public bodies, as appropriate
012.	CRoW coastal land shown on NRW’s website as part of NRW’s CRoW mapping and on OS mapping	Include CROW coastal access land in provisions in Reform 1A as appropriate
013.	Definitions of ‘commercial activity’ and ‘events’. Redefine what falls in or outside rights following review. Starting with consideration of definitions used in Scottish Land Reform Act. Use regulatory powers to allow easier future-proofing.	Any revised definitions should also be considered within [at least] Reform 1A

*It is possible for an option proposal to have variations in one or more key elements, while retaining the overall approach. These are noted within the table.

Appendix A

Expert Group members in attendance at the meeting:

Name	Organisation
Richard Ball	Brecon Beacons National Park
Hugh Craddock	Open Spaces Society
Sophie Dwerryhouse	County Land and Business Association
Arwel Evans	Ynys Mon Council
Kieran Foster	Cycling UK
Jonathan Hughes	National Trust
Elfyn Jones	British Mountaineering Council
Rachel Lewis-Davies	National Farmers Union Wales
James Nevitt	Ministry of Defence
Rhian Nowell Phillips	Countryside Alliance
Pete Rutherford	Snowdonia National Park Authority
Mark Weston	British Horse Society
Sarah Smith	Welsh Government
Joseph Roberts	Natural Resources Wales
Chris Heaps	Natural Resources Wales
Jont Bulbeck	Natural Resources Wales
Jayne Carter	Natural Resources Wales
