

REGULATORY APPRAISAL

COUNTRYSIDE, WALES

THE COUNTRYSIDE ACCESS (MEANS OF ACCESS, APPEALS ETC.) (WALES) REGULATIONS 2005

Background

1. The Countryside and Rights of Way Act 2000 (the CRoW Act) provides a new statutory right of public access on foot to open country (defined as mountain, moor, heath and down), registered common land and land voluntarily dedicated for access, under section 16 of the CRoW Act. The extent of access land in Wales has been mapped by the Countryside Council for Wales (CCW), with a view to introducing the new right of access in Wales in May 2005.
2. Access authorities (local highway authorities and national park authorities) have powers under section 38 of the CRoW Act to make agreements with owners and occupiers of land to secure or improve means of access to access land. If the owner or occupier does not abide by an agreement, or the access authority considers it cannot enter into an agreement to open up a means of access on reasonable terms, the access authority may serve a notice requiring the owner or occupier to take action.
3. If the owner or occupier fails to comply with the notice the access authority may undertake the work itself and recover the costs. The CRoW Act provides the owner/occupier with a right of appeal against such a notice. In practice, we expect access authorities, wherever possible, to secure or improve means of access by agreement with owners and occupiers, and, therefore, in most cases owners and occupiers will not find it necessary to exercise the right of appeal provided by the CRoW Act.

Purpose and intended effect of the measure

4. These Regulations cover the initial procedures to be followed in the handling of appeals against notices relating to “means of access” notices. The main appeal procedures for Part I of the CRoW Act are set down in the Countryside Access (Appeals Procedures) (Wales) Regulations 2002.
5. The Minister for the Environment has decided that the Planning Inspectorate (PINS) should normally handle appeals brought under the CRoW Act on behalf of the Assembly. Appeals brought under the Act will be handled via written representations, local hearings, or via more formal public local inquiries.
6. The Countryside Access (Appeals Procedures) (Wales) Regulations 2002 set out the main procedures to be followed on all appeals under Part I of the CRoW Act. The Means of Access Regulations will specify the initial procedure to be followed when the appeal is lodged; and also the advertising requirements for the appeals.

Risk Assessment

7. We do not expect many appeals to be generated under section 38 of the Act as we believe that, in the majority of cases, the access authority and farmer/landowner will come to an agreement as to the action that will need to be undertaken to safeguard existing or create new access. The Assembly will issue guidance to the access authority that will emphasise that, wherever possible, arrangements to secure or improve means of access should be made by agreement without the need for them to serve notices on the landowner/farmer. By specifying the procedures to be followed, the Regulations aim to ensure that:

- a) all appeals are dealt with on a consistent, fair and efficient basis; and
- b) all involved – i.e. the appellant, the authority whose decision is the subject of the appeal (access authority for access appeals), third party interests, and the Assembly (as arbiter of the appeals) are aware of their rights and responsibilities.

Options

(a) Do Nothing

8. The main non-regulatory option would be to cover these procedures in guidance. However, by its very nature, guidance lacks statutory force and can lead to an inconsistent approach.

(b) Make the Legislation

9. The Regulations seek to define the main procedures to be followed (other associated matters will be covered in accompanying guidance) and should help ensure a strong degree of consistency and equity in the way appeals are processed. The Appeal Regulations are there to protect the farmer/landowner to give them a structured appeal process to follow if they believe that the access authority is being unreasonable in its request to improve a means of access. Farmers/landowners would be disadvantaged if no appeal process is put in place.

Costs

10. The Regulations will put on a statutory footing the initial procedures to be followed in the handling of appeals under section 38 of the CRoW Act. However, the rights of appeal themselves are enshrined in primary legislation. The Regulations themselves do not, therefore, add to current burdens or create additional costs. The costs of the appeals will fall in three main areas: on PINS (as the Assembly's agent in the handling and determination of the appeals); on access authorities (in responding to the appellant's case); and on the land manager-owner, tenant, etc - (bringing the appeal).

11. Work associated with the preparation of these Regulations will however be accommodated within existing administration costs budgets of the Environment, Planning and Countryside Department and the Directorate of Legal Services. Local authorities have received additional resources (£2.4 million to be paid annually as part of their block revenue grant) to cover

additional costs to them arising from the implementation of the CRoW Act. However, although there is not any estimation as to the number of appeals that the access authorities will have to deal with, it is not expected to be many, as in practise it is expected that access authorities will secure or improve means of access by agreement.

12. The additional casework for PINS is not expected to be heavy and the costs here have been calculated into their forward budgets. Approximately £50,000 per annum has been allocated to deal with appeals under Part I of the CRoW Act (which includes Fire Appeals, Restriction appeals and Appeals against Means of Access). It is estimated that each appeal may cost PINS up to £1,100 for written representations, £2,000 for a hearing and £6,200 for an inquiry. These figures have been based on PINS experience of handling similar appeals. There are no additional financial implications for the Assembly as a result of making these Regulations.
13. It is expected that the majority of appeals will be handled via written representation, as they are not expected to be complex. However, the appellant and the access authority can ask for an appeal to be handled by means of a hearing or local inquiry.
14. For appeals handled via written representation costs to the appellant should be minimal (photocopying and postage only). With regard to hearings there would be additional costs associated with travel and attendance at a local hearing. The individual hearings are not expected to last more than 2 hours and will be held in the area of the appeal – both of which should help to keep the land manager's costs to a minimum. In a minority of cases – where complex issues are raised – PINS may decide that a more formal local inquiry should be held. In these cases the appellant may need to attend the inquiry for one day and may wish to instruct a solicitor or other agent to provide advice and represent his/her interests. An appellant who decides to be represented by a solicitor or other agent will inevitably incur significant costs. The minimum for an inquiry which the appellant has to attend for a day would be of the order of around £1,000 or more.
15. There is no provision in the CRoW Act for such costs to be recovered, although costs which are unnecessarily incurred because of another party's unreasonable conduct in relation to the appeal may, very exceptionally, be recoverable from that party. Such inquiries are not expected to occur very frequently however – and as noted the majority of cases are expected to be dealt with by less formal and much less costly means. Such costs as land managers will incur in relation to appeal are a consequence of the provisions of the Act and not of these Regulations, which have been designed so as to minimise those costs wherever possible.

Benefits

16. The main benefits are that the Regulations will place on a statutory basis the initial procedures to be followed in the submission and handling of

appeals – thereby helping to ensure a strong degree of consistency and transparency. Standardised procedures should also assist in the efficient processing of appeals. Moreover, as the parties rights and responsibilities will be made clear in the Regulations, this should help minimise the potential for dispute.

Consultation

With Stakeholders

17. The content of the Regulations has been subject to consultation with a wide range of stakeholders in Wales (including land-owning interests, recreational users as well as local authorities, National Park authorities and the Farming Unions). A full list of consultees is at Annex 1. The consultation paper was issued for a period of 12 weeks from 22 June to 24 September 2004. Twenty-six responses were received from a variety of organisations such as the National Farmers' Union Wales, the Farmers' Union of Wales, Country Land and Business Association, Local Access Forums, the Ramblers' Association Wales, and local highway authorities.

18. The majority of those consulted agreed with the main proposals put forward in the consultation paper on the content of the Regulations. The key issues for consultation and the main comments received were relating to:

- the period within which appeals under section 38 are to be brought;
- the manner in which appeals are to be brought;
- advertising of such an appeal; and
- the manner in which appeals are to be considered.

19. The main alterations made to these Regulations as a result of the consultation are:

- The appeal will be served on the access authority at the same time as the Planning Inspectorate (PINS) - this will ensure that the access authority does not undertake works on land that becomes subject to an appeal; and
- For hearings/inquiries, at the Planning Inspectorate's discretion, a notice may be required to be placed on the appeal site, as well as in a local paper. Due to the cost implications, we do not want to require all appeals to be advertised - but for any novel or contentious issue it may be in the public interest for the appeal to be advertised.

With Subject Committee

20. The Instrument was included in the list of forthcoming legislation put to the Environment, Planning and Countryside Committee on 6 October 2004 and 2 February 2005. The Regulations were scrutinised by the Committee on 2 March 2005 (Item 4: Subordinate Legislation Paper EPC(2)-03-05(p.3)). The Committee Members requested clarification on how open access would affect Tir Gofal payments. It was explained that Tir Gofal agreements help ensure that land with rights of way across are open and well marked, and did not necessarily give rights of access to a whole farm. The Committee approved the Regulations without amendment.

Review

21. The operation of the procedures in the Regulations will be monitored closely in line with other Regulations introduced under the CRoW Act.

Summary

22. The main costs involved in these Regulations fall to the Planning Inspectorate, the access authority and the landowner/farmer. As it is estimated that the number of appeals relating to means of access will be very small the additional cost to the Planning Inspectorate and the access authorities are minimal and have been covered in their budget allocations. The majority of appeals will be handled by written representations and, therefore, costs to the landowner/farmer will be minimal. The Regulatory option is seen as the most effective option as it ensures that procedures are followed and that there is a strong degree of consistency and transparency, and ensures that appeals are dealt with in a timely and effective manner.

23. The Regulations are there to protect the farmer/landowner – to give them a structured appeal process to follow if they believe that the access authority is being unreasonable in its request to improve a means of access. Farmers/landowners would be disadvantaged if no appeal process was put in place.

Annex 1

List of consultees to whom copies of the consultation paper has been sent

Andrew Kelly
Arfon & Dwyfor Local Access Forum
Association of National Park Authorities
Auto Cycle Union Limited
Blaenau Gwent County Borough Council
Blaenau Gwent Local Access Forum
Brecknockshire Local Access Forum
Brecon Beacons Local Access Forums
Brecon Beacons National Park Authority
Bridgend County Borough Council
Bridgend Local Access Forum
British Association for Shooting and Conservation
British Driving Society
British Horse Society
British Mountaineering Council
Byways & Bridleways Trust
Caerphilly County Borough Council
Caerphilly Local Access Forum
Cardiff County Council
Cardiff Local Access Forum
Cardiff Ramblers
Carmarthenshire County Council
Carmarthenshire Local Access Forum
Ceredigion County Council
Ceredigion Local Access Forum
City & County of Swansea
Conwy County Borough Council
Conwy Local Access Forum
Council for National Parks
Country Land and Business Association
Countryside Alliance (Wales)
Countryside Council for Wales
County Surveyors Society Wales
Cyclists' Touring Club
Cyngor Gwynedd
Cyngor Sir Ynys Môn
Defence Estates
Denbighshire County Council
Denbighshire Local Access Forum
Department for the Environment, Food and Rural Affairs
Dominic Miles
Dŵr Cymru
Elan Valley Trust
Environment Agency Wales
Farmers' Union of Wales
Flintshire County Council

Flintshire Local Access Forum
The Forestry & Timber Association
Forestry Commission
Gower Commoners Association
Historic Houses Association
Institute of Chartered Foresters
Institute of Public Rights of Way Officers
Isle of Anglesey Local Access Forum
Land Access & Recreation Association
Law Society
Merthyr Tydfil County Borough Council
Merthyr Tydfil Local Access Forum
Monmouthshire County Council
Monmouthshire Local Access Forum
Montgomeryshire Local Access Forum
National Access Forum for Wales
National Association of Local Councils
National Farmers' Union Wales
National Federation of Young Farmers Clubs
National Trust
Neath Port Talbot County Borough Council
Neath Port Talbot Local Access Forum
Newport City Council
Newport Local Access Forum
North Wales Association of Town Councils
North West Water Ltd
One Voice Wales
Open Spaces Society
Pembrokeshire Coast National Park Authority
Pembrokeshire County Council
Pembrokeshire Local Access Forum
Planning Inspectorate
Powis Castle Estate Office
Powys County Council
Radnorshire Local Access Forum
Rhondda Cynon Taff County Borough Council
Rhondda Cynon Taff Local Access Forum
Rights of Way Review Committee
Royal Society for the Protection of Birds Cymru
Severn Trent Water Ltd
Snowdonia Local Access Forums
Snowdonia National Park Authority
Swansea Local Access Forum
Tenant Farmers' Association
The Countryside Agency
The Ramblers' Association Wales
The Ramblers' Association
The Sleeping Giant Foundation
Torfaen County Borough Council
Torfaen Local Access Forum

Vale of Glamorgan Council
Vale of Glamorgan Local Access Forum
Valeways
Wales Tourist Board
Wales Environment Link
Welsh Local Government Association
Welsh Trail Riders Association
Wildlife Trusts Wales
Woodland Trust / Coed Cadw
Wrexham County Borough Council
Wrexham Local Access Forum
Youth Hostels Association (England & Wales)

Annex 2

Countryside and Rights of Way Act 2000

Proposals for New Regulations under Section 38 - Appeals relating to Means of Access Notices

Responses to Public Consultation

1. Introduction

The Welsh Assembly Government published a consultation paper in June 2004 on proposals for new regulations on appeals relating to means of access notices under section 38 of the Countryside and Rights of Way Act 2000 (“the Act”). Twenty-five responses were received from a range of landowner interests, recreational user organisations, conservation organisations, public bodies and local access forums. A list of the organisations that responded is at annex 1.

Under the Act, the access authority¹ may make an agreement with an owner or occupier where it considers that an existing means of access needs to be opened up, improved, repaired or maintained, or a new means of access needs to be constructed. Where there is no agreement in place, the access authority may serve a notice on the landowner/farmer outlining the work that is required. The access authority may also make an agreement under which the owner or occupier agrees not to destroy, stop-up or alter existing means of access. If this is not observed, the access authority may serve a notice requiring him to undertake any remedial work. The landowner/farmer may appeal against the notices served by the access authority.

In the guidance to access authorities, we will emphasise that it would be preferable if arrangements to secure or improve means of access are, wherever possible, made by agreement without the need for access authorities to serve notices on the landowner/farmer. We would also indicate that the issue of notices should be viewed as a last resort mechanism.

2. Consultation Responses and Recommendations

The majority of those consulted agreed with the main proposals put forward in the consultation paper on the content of the regulations. The key issues for consultation and the main comments received are summarised below: -

a) The period within which appeals under section 38 are to be brought

Within the paper, it was proposed that the period within which an appeal under section 38 of the Act must be brought should be the same period used by the access authority in the notice as to the period of time the landowner/farmer has to carry out the work. For example, if the access authority specifies 35 days in the notice as the period of time after which it can carry out the work, the appeal period for that case should also be 35 days.

¹ Access Authorities are, for access land within a National Park, the National Park Authorities and, for all other access land, the relevant local highway authorities.

NFU/FUW/CLA commented that a longer period may be required for landowners/farmers under certain circumstances for example to take account of lambing, condition of weather and time of year etc..

The local authorities that responded were in agreement with the proposal. A number of the Local Access Forums recommended the period should be between 35 - 50 days.

It would be difficult to administer any period of appeal that would be longer than the time given in the notice to undertake the work. As an example - if they were given 4 weeks to carry out the works, and then given 6 weeks to appeal this would be illogical for both the landowner and access authorities. However, we will be advising the access authorities that they need to be realistic in the time period given to the owner/farmer to undertake the work - also considering the time of year e.g. lambing.

We recommend therefore, that the period within which an appeal under section 38 of the Act must be brought should be the same period used by the access authority in the notice.

b) The manner in which appeals are to be brought

The consultation paper proposed that for the efficient conduct of the appeals process, it would be preferable for there to be a standard (though not prescribed) bi-lingual form for lodging an appeal. There was general agreement that a ready-prepared form, obtainable free of charge from the Planning Inspectorate Wales would be preferable.

There was also general agreement with regard to the information that the appellant should be required to include. However there were comments made on the scale of the map (proposed as 1:10,000). In view of this, we suggest that a map to a scale of not less than 1:25,000 can be used as long as it clearly identifies the access point.

Consultees advised that it would be advantageous to send a copy of the appeal form to the access authority at the same time as sending it to the Planning Inspectorate. This will ensure that, if an appeal is being submitted at the last moment, the access authority will be aware and will not undertake work on land where an appeal has been lodged. We agree with this proposal and intend to include in the Regulations.

c) Advertising of such an appeal

The Planning Inspectorate will be required to place a copy of the notice of appeal on its website, unless it is not reasonably practicable for it to do so.

Within the paper, it was proposed that the relevant local access forum be notified of an appeal brought under section 38 of the Act and that, at the Planning Inspectorate's discretion, if the appeal is to be determined via a hearing or local inquiry, it may require the access authority to publish a notice of the date, venue of the hearing or local inquiry in one or more newspaper(s) circulating in the locality

Many respondents were in agreement with the proposal, although a few such as the Law Society, Ramblers' Association, Bridgend Local Access Forum wanted all

appeals advertised in newspapers. The Ramblers' Association also wanted themselves and others to be directly informed of all appeals.

As the appeals can be expected to relate to very local issues such as the provision of an individual gate or stile, we do not think the cost of advertising all such appeals would be reasonable for the access authorities to bear. However, at the discretion of the Planning Inspectorate, we do intend to regulate that notices should be placed on site giving notice of a hearing or inquiry.

d) The manner in which appeals are to be considered

Within the paper, it was proposed that the appeal process should follow the procedures set out in the Countryside Access (Appeals Procedures) (Wales) Regulations 2002 (S.I. 2002/1794) (W.169), which are already being used for appeals against the content of provisional access maps being issued by CCW.

There was overwhelming support for this proposal. However comments were made on the award of costs arrangements for appeals, and a suggestion that all the appeal timescales should be extended by 2 weeks to allow for leave sickness of officers.

The Ramblers' Association also wanted a much greater role for third party interests including being notified of the name of the Assessor and Inspector and also commented that the third party should have a right to appear/hear evidence at inquiry/hearing rather at the Planning Inspectorate's discretion (as under the mapping appeal process).

We believe that adopting similar procedures to those used successfully for the mapping appeals will assist in securing a reasonably consistent approach across Wales and general understanding of the process involved. We do not want to extend the appeal timescales, as it is in the interest of all concerned for the appeal to be determined as quickly as possible.

3. Conclusion

The responses to the consultation exercise largely endorsed the proposals made in the consultation paper. In the light of the comments made, certain improvements will now be made as noted above.

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

CONSULTATION ON PROPOSALS FOR REGULATIONS ON Proposals for New Regulations under Section 38 - Appeals relating to “Means of Access” Notices

List of organisations that responded

NFU Cymru Wales
Isle of Anglesey CC
Dominic Miles
Flintshire Local Access Forum
Planning Inspectorate
Environment Agency
British Driving Society - Wales
WTB
Bridgend Local Access Forum
Northern & Southern Snowdonia Local Access Forum
One Voice Wales
Newport Local Access Forum
Forestry Commission
Law Society
Arfon & Dwyfor Local Access Forum
Gwynedd Country Council
Wrexham County Borough
Wrexham Local Access Forum
Ceredigion CC
Country Land and Business Association
Caerphilly County Borough Council
Caerphilly Local Access Forum
FUW
Countryside Management Association
Ramblers' Association
Vale of Glamorgan Local Access Forum