

REGULATORY APPRAISAL

COUNTRYSIDE, WALES

THE COUNTRYSIDE ACCESS (APPEALS PROCEDURES) (AMENDMENT) (WALES) REGULATIONS 2005

Introduction

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 Act. 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 on 28 May 2005.
2. Section 25 of the Act gives the CCW or, where the land lies within the area of a National park, the relevant National Park authority (the "relevant authority") power to restrict the right of access where they are satisfied that, by reason of exceptional conditions of weather or any exceptional change in the condition of the land, the exclusion or restriction of the right of access is necessary for the purpose of fire prevention. The Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003 set out the procedures to follow when making an application for such a restriction under the CRoW Act. The CRoW Act gives a right of appeal to the applicant against the decision of a relevant authority not to give a direction.
3. In the majority of circumstances, the procedure as set down in the Countryside Access (Appeals Procedure) (Wales) Regulations 2002 will be followed, but, in certain circumstances, there may be a need to "fast-track" these appeal procedures, for example, when the landowner/farmer has not applied for an outline direction in advance and there is no time to go through the whole appeal procedure due to the perceived risk of fire.
4. The Minister for the Environment, Planning and Countryside has decided that the Planning Inspectorate (PINS) should normally handle appeals brought under the Act on behalf of the Assembly. Appeals brought under Section 25 of the Act will be handled via a local hearing to ensure that they are dealt with in a timely fashion.

Purpose

5. The purpose of amending the Countryside Access (Appeals Procedures) (Wales) Regulations 2002 is to enable PINS to determine an appeal in relation to a perceived risk of fire on access land within a relatively short period, i.e. normally within a week to ten days. These Regulations will specify the procedures to be followed by the appellant, the relevant authority and by PINS for these appeals.

Assessment of Risk

6. We do not expect to receive many appeals relating to fire restrictions under the “fast track” appeals procedures as the CCW, in partnership with the Countryside Agency, have commissioned the Meteorological Office and ADAS to develop a fire risk index that will give an objective way of assessing when exceptional weather conditions are occurring and when restrictions may be necessary. The relevant authorities are being advised by the CCW to issue outline directions that authorise specific people to activate the option of restricting access when the fire risk index threshold is reached and the authorised person decides a local restriction on public access is necessary. It is envisaged, therefore, that most appeals will be dealt with under the existing appeals procedures, i.e. without the need for fast tracking.
7. However, if the proposed Regulations were not made, there could be a situation where it could take approximately 3 months to determine an appeal on whether a piece of land should be closed to public access due to the imminent perceived risk of fire. This would not be operationally acceptable and would not be a fair way of dealing with these circumstances.

Options

8. There are two options:

- (a) Do nothing and rely on the current appeal procedures.

9. If the Assembly Government did not amend the current Regulations, an appeal by a landowner/farmer against the decision of the relevant authority not to give a direction to restrict/exclude public access to access land due to fire prevention, could take approximately 3 months to determine. If a landowner has applied for an outline direction and the appeal timeframe has been built into the application process, this would not constitute a problem. However, there may be situations where the farmer/landowner is not in a position to apply for an outline direction in advance (e.g. where he has recently bought the land), and requires his appeal against the decision of the relevant authority to be determined quickly in order to take account of the perceived fire risk. For this reason the option of introducing amending Regulations is the preferred option/approach.

- (b) Make the Legislation

10. To introduce a fast-track procedure for the determination of appeals. The Regulations will allow an appeal to be determined quickly (within 5-10 working days), ensuring that the procedure reflect the perceived fire risk.

Costs

11. The amending and existing Regulations put on a statutory footing the procedures to be followed in the handling of appeals under section 25(1)(a) of the CRoW Act – but the rights of appeal themselves are enshrined in primary legislation. 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 relevant authorities in responding to the

appellant's case; and on the land manager (owner, tenant, etc) bringing the appeal.

12. Work associated with the preparation of these amending Regulations will be accommodated within existing administration costs budgets. The Forestry Commission Wales has received an additional £1million over 3 years (for 2002-2005) for its additional responsibilities under the CRoW Act. CCW has received an increase of 25% in their grant aid between 2001-2005 and the National Park authorities have also received an increase of 20% in their grant support between 2001 – 2004. Their additional responsibilities under the Act, as relevant authorities, have been taken into account in reaching budget decisions during this period.
13. The additional casework for the Planning Inspectorate (PINS) arising from these amending Regulations is not expected to be heavy and the costs have been calculated into their forward budgets. All appeals will be dealt with via a hearing and it is estimated that each appeal may cost PINS up to £2,000. £50,000 annually has been allocated by PINS to deal with all appeals under Part 1 of the Act (which includes Fire Appeals, Restriction Appeals and Appeal against Means of Access). There are no additional costs financial implications for the Assembly as a result of making these Regulations.
14. Although there will be a cost to the landowner associated with travel and attendance at the local hearing, we would expect the hearing only to take about 2 hours and that it would be held on the appeal site – both of which will help keep land manager's costs to a minimum. The costs likely to fall on individual land managers as a result of these Regulations are not expected to be significant (the average hourly wage in Wales is £11.17 (source from National Statistics Office) – based on half a days work and travelling costs we would estimate a hearing would cost the landowner/farmer in the region of £100), therefore no separate consultation is being arranged is being arranged on the potential impact on business interests.

Benefits

15. The benefit of these amendment Regulations is that specific appeals will be dealt with in a timely way (a determination will be given within 5 to 10 days of receiving the appeal) when it is imperative that a quick decision is made due to the perceived high risk of fire on access land.

Consultation

With Stakeholders

16. The proposed amendments to the Appeal Procedure Regulations were the subject of consultation with key stakeholders in Wales – including land-owning interests, recreational users, local authorities, National Parks Authorities and the Farming Unions (National Farmers Union and Farmers Union Wales). As the proposed changes to the Regulations were

technical in nature and not controversial it was agreed that a consultation period of 6 weeks would be adequate (between 20 October and the 3 December 2004). This would also enable the Regulations to be in force by the implementation of open access in May 2005. Nine responses were received from a variety of organisations such as National Farmers Union, Farmers Union Wales, County Land and Business Association, Local Access Forums, the Ramblers' Association Wales and local highway authorities. The responses to the consultation exercise endorsed the proposals made. A summary of responses is attached.

With Subject Committee

17. The Instrument was notified to the Environment, Planning and Countryside Committee via the list of forthcoming legislation on 6 October 2004 (paper EPC(2)-090-04(p.4) – item No.102). The Instrument was not identified for detailed scrutiny.

Review

18. The operational effectiveness of the procedures in the Regulations will be monitored closely by the Assembly Government alongside other Regulations introduced under the Act.

Summary

19. There are no additional costs for landowners/farmers from the introduction of these regulations as the alternative is to rely on the current appeal procedure which could take up to 3 months to determine an application. The benefits of introducing these regulations is that in situations where it is deemed there is a high perceived risk of fire on access land appeals can be dealt with in a timely way (a determination will be given within 5 to 10 days of receiving the appeal). Consequently it seems prudent to introduce these Regulations as a fail-safe system to ensure that such situations are dealt with in an appropriate manner.

Summary of Consultation Responses

Countryside and Rights of Way Act 2000 - Proposals for Regulations on Appeals against the decision of a relevant authority not to act in accordance with an application for a direction under Section 25(1)a - Fire Prevention

Responses to Public Consultation

1. Introduction

In October 2004 the Welsh Assembly Government published proposals for consultation on possible amendments to The Countryside Access (Appeals Procedures) (Wales) Regulations 2002 to take account of appeals for the purpose of fire prevention.

Under the Act, Section 25 (1) (a) gives the relevant authority¹ power to restrict the right of public access to open country and registered common land for the purpose of fire prevention (due to exceptional weather conditions or any exceptional change in the condition of the land). The Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003 set out the procedures to follow when making an application for such restrictions under the Act. The Act gives a right of appeal to the applicant against the decision of a Relevant Authority not to give a direction. In the majority of circumstances the procedure as set down in The Countryside Access (Appeals Procedures) (Wales) Regulations 2002 will be followed, but in certain circumstances the procedure may need to be “fast-tracked”. The consultation paper outlined the Welsh Assembly Government’s proposals for handling such “fast-track” appeal cases (via amendments to the existing regulations).

Nine responses were received - from landowner interests, recreational user organisations, public bodies and local access forums. A list of the organisations which responded is at annex 1.

2. Consultation Responses and Recommendations

The main proposals within the paper were that a person with an interest in the land should appeal against the Relevant Authority’s decision as soon as possible after receiving it (and within two weeks); and also that PINS should determine the appeal within a week to ten days of receiving the appeal.

All those responding to the consultation agreed with the main proposals put forward in the paper. The main comments received were:

a) the Ramblers’ Association commented that they wanted the local access forums and bodies such as themselves to be emailed at all stages of the appeal process

¹ 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.

- b) that telephone appeals should be accepted but then followed up in writing; and
- c) that the appeal should be determined with 5 days of it being served

With regards to third party involvement in the appeals, we believe that due to the tight timescales that these appeals need to be dealt with, it would be impracticable for them to be informed at all stages. However, the Planning Inspectorate will notify the relevant local access forum of the appeal and also place a notice on their website giving details.

With regard to accepting telephone appeals, the Assembly Government's view is that it would be difficult to ensure that the required information was received and verified by telephone (e.g. the area of the land in question). However in guidance to be issued by Planning Inspectorate on these appeals, they will emphasise that it would be beneficial for them to receive early warning of an appeal by telephone, so that they can initiate their procedures and help ensure the earlier possible decision on the appeal.

On the suggested period of time to determine appeals, we believe that it is realistic for the Planning Inspectorate to make a decision within a week to 10 days of receiving an appeal – but to require all to be considered within 5 days could be too onerous and may not allow sufficient consideration time in complex cases.

There were also comments about whether the Fire Risk Index would be flexible enough to reflect local situations. Although this is not within the remit of the regulations we are confident that the work being undertaken by ADAS, the Met Office, CCW and CA will ensure that the Index can assist relevant authorities [and land managers] to make decisions based on local circumstances.

3. Conclusion

The responses to the consultation exercise have endorsed the proposals made in the consultation paper. Other issues raised will be picked up in guidance and other action by the Planning Inspectorate.

**Coastal and Countryside Access
January 2005**

Annex 1: List of organisations which responded

Countryside and Rights of Way Act 2000

Consultation on Proposals for Regulations on Appeals against the decision of a relevant authority not to act in accordance with an application for a direction under Fire Prevention- section 25(1)(a)

National Farmers Union Cymru Wales
Newport Local Access Forum
Forestry Commission
Arfon & Dwyfor Local Access Forum
Gwynedd Country Council
County Land and Business Association.
Farmers Union Wales
Ramblers' Association, Wales
Snowdonia National Park Authority