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Dear Sue

NRW Response to Guidance for Local Authorities on Public Rights of Way

Thank you for providing NRW with the opportunity to respond to this consultation and please find attached our completed response form.

NRW's policy in relation to the matters covered in the draft guidance is explained in our Recreation and Access Enabling Plan which sets out how we aim to:

- Manage and facilitate use of our estate for outdoor recreation and access
- Enable and work with others to facilitate and promote recreation and access across Wales, reflecting the needs of our target markets and audience

We note that you have asked that responses reflect current legislation and policy and as such we have not suggested areas where future legislative improvements may be made. These will be included in our response to the Welsh Government Green Paper: '*Improving opportunities to access the outdoors for responsible recreation*'.

Colleagues from a number of different teams have contributed to this response and we set out to focus on the key points of most relevance to NRW, with an expectation that local authority practitioners would be best placed to respond to much of the technical detail. However, on review of the guidance we identified a number of specific points which we felt would benefit from further consideration and we trust these detailed comments will be of assistance.

We have also identified where some key issues, of particular importance to NRW, could be addressed differently in the revised Guidance:

We felt that it might be helpful to include information on how the various public bodies in Wales contribute towards the management of public rights of way. We felt this might be particularly helpful given the relatively recent establishment of NRW as an organisation and its integration of the remits of its three legacy bodies.

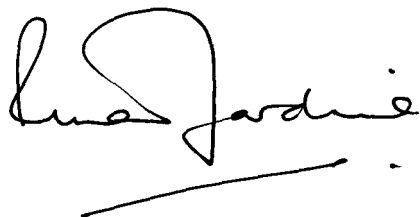
We felt that there should be a much stronger emphasis on the role of Rights of way Improvement Plans in forming and directing local authorities' approaches to managing their networks. Providing support for local authorities in developing their ROWIPs has been highlighted as one of the activities that NRW will focus on over the next 5 years as part of our Recreation and Access Enabling Plan if funding from WG remains in place.

We considered that more detailed guidance on National Trails and the Wales Coast Path should be included under the section on promoted routes. These are projects in which NRW work closely with local authorities as a key partner.

Where NRW is referred to in its capacity as a regulatory body we have sought to provide some clarification but it may be that you will need to make further, specific contact with the relevant teams when redrafting those sections.

In addition to the comments included in the response form we have noted detailed points which relate to style and structure, if feedback of this nature would also be helpful then please get in touch with Mat Stephens and Carys Drew, whose contact details are included on the response form.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rhian Jardine', with a horizontal line underneath.

Rhian Jardine

Head of Sustainable Communities

Guidance for Local Authorities on Public Rights of Way

Consultation Response Form

Your Details:	
Name:	Carys Drew & Mat Stephens on behalf of Rhian Jardine
Organisation*:	Natural Resources Wales
Email address:	Carys.drew@cyfoethnaturiolcymru.gov.uk Mat.stephens@cyfoethnaturiolcymru.gov.uk

* If you are responding on behalf of an organisation please provide details.

Why are we asking for this information? In case we have any queries about your comments, it would be helpful if we had your details so that we can get in contact with you to discuss them further. Your details will not be passed on to the Welsh Government or any other third party.

Specific Comments	
** Please state which paragraph(s) you are commenting on. This will help us to ensure that we understand exactly what changes you would like to see.	
Para No. **	Comment
1.6	The Active Travel (Wales) Act 2013 relates specifically to walking and cycling, including disabled access and not more generally 'travel by non-motorised transport'. We also feel that more information should be included about how the AT(W)A 2013 may influence the management of PRoW. We consider that this section could be further improved by expanding to cover other relevant Welsh legislation such as Wellbeing of Future Generations (Wales) Act 2015 and some indication of relevant prospective Welsh legislation such as Environment (Wales) Bill.
1.8	Suggest rewording to specify that this relates to funding for existing statutory duties.
1.10	This paragraph does not make sufficiently clear that NPAs are also the planning authority for their areas.
2	We feel that this section is currently unstructured and doesn't present a focused start to the document. We suggest splitting this into two sections – 'Engaging with stakeholders and the public' and 'Prioritising and Managing the Network'.
2.1.	This should include a reference to making information available bilingually.
2.2	Add 'use of mobile technology, provision of GPX routes' to the list of what is currently provided.
2.3	This section needs significant further development in light of the importance, statutory nature, and significance which Welsh Government have placed on ROWIPs as the overarching mechanism for managing the network.

2.4	We feel that the phrase “ <i>public access to land for any lawful purpose and outdoor recreation</i> ” does not reflect the wording of the Act re: the scope of LAFs – suggest reword.
2.5	Suggest this is reworded to emphasise the requirement for achieving balance of membership
2.6	LAFs need to maintain their strategic role, the liaison groups mentioned here should be structured around the LAF and its associated sub-groups. Liaison groups outside the LAF could be counterproductive and might devalue the role of statutory Forums.
2.7	Include, alongside information about parking provision etc., ‘public transport’
2.7	Include under ‘information’; information about which routes or section of routes are accessible; levels of difficulty, surface, barriers, and gradient.
2.9	Suggest adding recommendation to take opportunities to work in partnership e.g.; with voluntary sector and involve LAFs
2.9	Commitment to future maintenance – and where applicable to meeting quality standards (e.g. Wales Coast Path, National Trails, other promoted routes – see omissions below).
2.9	Opportunities should be taken to provide and promote routes suitable for activities other than walking.
2.10	We understand that the Railway Inspectorate is no longer part of HSE (since 2006?) Also, as the guidance suggests involving them ensure they are consulted on this inclusion.
2.12	Include reference to the National Trail acorn symbol (Trade mark), and following any accepted hierarchy of waymarking (i.e. National Trail takes precedence over more locally promoted routes to avoid ‘cluttering’).
2.13	Landowner declarations under s31(6) are not of ‘existing rights’ they are a declaration of a lack of intention to dedicate (and to some degree a method by which routes can be dedicated). It is noted that there is no dedicated guidance on s31(6) in this document (see omissions)
2.18-2.20	We consider that this section would be more suitably located under section 5 ‘Definitive Map and Statement’ and that specific guidance should be included about making the working copy available to the public online.
2.21-2.22	Consider dividing and including under other sections e.g. Definitive Map and ROWIP.
2.23-2.28	Consider including more detail on the Equality Act 2010 (as currently only one, very general, line refers to it) and considering the needs of people with protected characteristics and more specific section on equality considerations when authorising limitations.
2.26	These are both old publications (pre-dating EA 2010) should they be included?

2.27	The suggestion that the listed documents and BS5709 “ <i>should provide authorities with enough information on how to assess the needs of people with mobility problems</i> ” should be reworded. In many circumstances it will be appropriate to seek advice from potential users when designing specific access.
2.28	Suggest this should be split and included elsewhere and amended to take account of the Equality Act requirements.
2.29-2.31	This needs to reference Welsh Language Schemes, particularly those of the Authorities and their Welsh public sector partners.
2.31	Suggest final sentence should be expanded to cover all signage.
2.36	It is suggested that Sand Lizard should also be listed as a frequently considered species.
2.39	There is no requirement in either WCA or Habitat Regs for potential licensees to contact NRW for advice when seeking a license. Whilst licensees do consult with NRW regional operational species staff in relation to large infrastructure projects before a license application is submitted. If this paragraph is included it must state in more detail where in NRW such consultation is available. The Species Protection Team in NRW do not give out pre-app advice. If this section is retained it is further recommended that the wording refers to ‘protected species’ rather than ‘wildlife’. See also below for omissions.
2.43	Reference to CROW 2000 28H should read 28H of WCA 1981
2.44	It should refer to declining to “assent” rather than declining an “application”. We feel the use of the word “original” in the bulleted list might be misleading.
2.48-2.49	Query whether required for <i>all</i> works such as; waymarking, replacing a latch on an existing gate, trimming overhanging branches etc. Suggest discussing the exact wording with CADW. The wording of s2 of the AAA 1979 suggests the requirement is not as general as implied here.
2.52	There is scope for expanding the section on volunteers and including it within a new ‘Engaging with stakeholders and the public’.
3	There are a number of inaccuracies in section 3 some of which are identified below. We feel that this section needs to be reviewed.
3.1	More information could be provided to assist authorities in ascertaining which ROW are maintainable at public expense. Examples of routes that will not usually be maintainable would be helpful.
3.3	Suggest referring to availability of user group produced standards such as those produced by BHS.
3.4	The presumption may apply in most cases but there are significant exceptions. Importantly s328 only applies in relation to the interpretation of the 1980 Act. It didn’t bring about any further change to the law regarding the maintenance of highway structures.
3.6	It is suggested that structures may be lawful as a result of provisions other than those listed; such as s66 HA 1980

3.7	Minimum widths relate to internal measurements from post to post which may not be the same at the width of the actual gate, depending on how it is hung.
3.13	The power does not just cover replacement but also the improvement of the existing structure.
3.14	Suggest the fourth bullet point is softened a little. Given that it is an agreement to improve something already lawfully in place, and not a request for a new structure, it may be appropriate to accept a compromise that is not perfect but provides a significant improvement on the existing structure: i.e. a kissing gate to replace a stile even where a wicket gate would be sufficient to maintain stock proofing and would be less restrictive to users.
3.16	The wrong section is given. The correct section is s263
3.17	We feel the phrase "as dedicated to the public" may be misunderstood. It implies that the duty only extends to maintaining to the condition the route was in at the time of dedication, which is not the case. The law anticipates that 'ordinary traffic' may change or intensify over time and that the duty changes with it: see <i>Sharpness New Docks and Gloucester and Birmingham Navigation Company v Att-Gen [1915] A.C.654</i>
3.20	Suggest expanding this section to consider native pest species e.g. Ragwort and powers and duties beyond carrying out works i.e. spread of pest species to or from highway land.
3.21	Perhaps make reference to the Traffic Signs Regulations and general Directions 2002.
3.22, 3.23, 3.24	The wording of these sections would benefit from being simplified. In 3.23 be clear that requirement to consult before waymarking along a route does not require "consent". The owner has no power to refuse unless the waymark will be attached to their property (such as a stile). The wording in the current draft "...placed on his or her property" might be better written "...attached to their property; such as a fencepost or stile"
3.24	Reword the Byway open all traffic section as the term 'wheeled vehicles' also applies to cycles and horse-drawn carriages. We would also question whether other routes i.e. UCRs should be waymarked with red arrows? This is not understood to be general practice.
3.24	No standard waymarking arrows indicate suitability. This does not just apply to BOATs. It may particularly be the case for Restricted Byways that were automatically reclassified under the CROW provisions.
3.37	Suggest heading is misleading. We suggest 'providing access for future maintenance' would be better. This section would be best located at the end of the section, after 3.41, as it deals with possible future access.
4.2	We feel that 'no enforcement action' should only be considered where no offence has been committed. It is expected that where an offence has been committed the very minimum intervention would be to offer informal advice.

4.8-4.12	These sections do not give specific guidance on how and when notices can be served by local authorities, further detail about provisions would be useful. Notices are a very useful, inexpensive method for achieving compliance with legal requirements and are currently often under-utilised by local authorities.
4.22	Insert <i>“recognised”</i> before <i>“dairy breed”</i>
4.23	The section, as worded, suggests that it applies to all cattle, not just bulls. Also, even recognised dairy breeds may lawfully be kept on a ROW if under 10 months old; reword the first sentence.
4.26	<p>Suggest including a paragraph about the positive role of dog ownership in encouraging active lifestyles. The Welsh Outdoor Recreation Survey Key Facts for Policy & Practice 2013 suggests that we should: <i>“Provide for people with dogs: changing our attitude from ‘a problem to be managed’ to ‘an opportunity to encourage’</i></p> <p><i>(i) provide information of ‘dog friendly’ places to visit</i> <i>(ii) provide suitable facilities and ‘dogs welcome’ signage”</i></p> <p>https://naturalresources.wales/media/4265/welsh-outdoor-recreation-survey-key-facts-for-policy-an-practice.pdf</p> <p>There should be more careful and comprehensive consideration of existing legislation as the current wording is not accurate. The statutory requirement to keep dogs under <i>“close control”</i> is limited to where they are in an enclosure with sheep. We feel this section should refer to other relevant provisions within the Animals Act 1971; s3 and s9 for instance.</p> <p>We feel a paragraph could be included relating to communicating messages clearly to the public, referencing the dog walking code and suggesting adoption of the better-defined term ‘effective control’ for public communication. Important however to be accurate when referring to statutory provisions.</p>
4.38-4.39	There should be more detailed guidance for authorities on how to respond to section 130A notices.
4.48	It should be explicitly stated that these widths only apply to reinstatement of paths after ploughing etc. and are not general widths to be applied in other cases. It is a common misconception with landowners, the public, and occasional practitioners.
5.1	We suggest that there is explanation of what a <i>“relevant date”</i> is.
5.20	There was some concern over the phrase <i>“The test also relates to its character and type and whether it is more suitable for use by walkers and horseriders than vehicles”</i> . It implies that there is a suitability test affording discretion to authorities in whether to record a route as a BOAT through a DMMO. This is, it is assumed, in fact referring to whether a route meets the definition of a BOAT as opposed to an ordinary road, rather than any consideration that it is better suited to use as a footpath

	or bridleway, and can therefore be recorded at that status in spite of the evidence. It was felt this could be made clearer.
5.59	There is caselaw relating to what form the List of Streets may be in. See: <i>Fortune, Ayres & Heselden v. Wiltshire Council and Taylor Wimpey (2010)</i>
6.28	We suggest removing the word “current” from the final sentence. This is not used in the legislation and could mislead. Whilst there is a requirement for ROWIPs to be reviewed and amended within 10 yrs there is nothing to say that, where an authority fails to do so, their Plan ceases to be a valid plan for the purposes of this provision.
6.36	Suggest including guidance on the standard of proof of ownership authorities should require before entering into agreements to add PRoW.
6.134	Suggest including guidance on dealing with anonymous objections which are otherwise ‘duly made’.

Please add more rows as required.

General Comments	
Clarity – Is the document easy to understand?	Yes, but with some exceptions
Is the document suitable for the intended audience ie the managers of the Rights of Way network?	Yes, but with some exceptions
How could the document be improved to make it easier to understand?	
<p>Where the text refers highway authorities to external parties e.g. Railway Inspectorate, NRW etc. specific inquiries should be made to obtain confirmation from that body as to inclusion and relevant details. Particularly where the guidance requires authorities to contact them in given circumstances.</p> <p>In places the document does not seem to be written from a Local Authority perspective.</p> <p>The document should be consistent in referencing statutory provisions and relevant case law. This is particularly important to allow readers to easily obtain clarifications or to identify where there might have been changes in legislation after the publication of the guidance. Currently there are parts of the document that make reference to specific requirements etc. without giving the relevant statutory provision/case, and others where sections of Acts are referred to without explanation of what they are (e.g. para 6.50). Some references to specific provisions give the Act but no section.</p> <p>Where referencing other parts of the document it is suggested that the document should avoid using the chapter titles as it could appear to be referring to another document. Simply direct readers to the applicable section by reference to the relevant paragraph numbers.</p>	

Omissions – Is there anything missing from the document that you think should be included?	Yes
If you have answered Yes, please provide details of what you think should be included.	
<p>Consider including a section, under ‘Introduction’, briefly outlining the roles of the key public bodies in relation to the management of PRoW: Local Authorities, NRW, Welsh Government, Welsh Ministers, etc.</p> <p>Although the Active Travel (Wales) Act 2013 is referred to in the introduction (para 1.6) there is no more detailed guidance on how it might affect the management of the PRoW network, nor information on where further information may be found. Given that it is likely that PRoW in urban areas will have potential to become Active Travel Routes, or to link in to them, we feel that Authorities would appreciate further guidance in this document. Similarly the provisions of the Wellbeing of Future Generations (Wales) Act 2015 will have implications for the management and prioritisation of PRoW and should be covered.</p> <p>National Trails and the Wales Coast Path should be included under the promotion section. This should include information about Long Distance Routes and the associated statutory provisions as well as management arrangements (2.7).</p> <p>Requirements regarding dealing with deposits made under Section 31 (6) Highways Act 1980 should be covered in this guidance. It is important that the guidance should not suggest that existing definitive rights of way should be marked on maps by landowners as this is not a statutory requirement, leaves landowners at risk of inadvertently dedicating new rights and serves no useful purpose. This is a widespread misunderstanding and the guidance should address it.</p> <p>Although it is referred to in passing there is no guidance on dealing with notices served on the authority under Section 56 Highways Act 1980. This should be included as it can be a very significant issue for authorities.</p> <p>Section 3 of the document should include more detail on ascertaining which highways are, or are not, maintainable at public expense.</p> <p>A section dealing with emergencies or biosecurity issues could be considered (such as Foot and Mouth outbreaks).</p> <p>It would be helpful to cover the legal implications of coastal and riverbank erosion where PRoW are damaged or destroyed. This should cover the legal differences between the loss of clifftop/riverbank PRoW and those carried by man-made structures such as sea walls.</p> <p>The document should provide guidance on the current legal position regarding 2026.</p>	

The document would benefit from more information on the reclassification of RUPPs particularly relating to the determination of outstanding Orders made under repealed legislation.

Open access could be considered more; particularly powers to create PROW to link to access land areas.

It has been suggested that guidance relating to the law on flying drones from, or over, PROW might be useful.

Is there anything in the document that should not be included?

No

If you have answered Yes, please provide details of what you think should be removed from the document. Please include paragraph numbers.

Although there are some areas of repetition.

Please use the space below to provide any other general comments you may have on the document

NRW welcomes the production of up to date Guidance for local authorities and feel that it will have real potential to assist officers, landowners, and the public in understanding the relevant legislative framework in Wales and to guide practitioners towards best practice.

We feel the level of detail is broadly appropriate but have some concerns over content that appears to be inaccurate or out of date in the consultation draft. Much of the content, understandably, appears to have been sourced from the earlier documents that this will replace but we feel it has not yet been fully integrated into a consistent style or format. We would urge that even content from earlier guidance documents is reviewed for accuracy before being assimilated. We suggest that the document is reviewed, section by section, to confirm all content is correct and up to date and that wording is precise, accurate and consistently presented.

End of form

Thank you for your response