

**ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE**

**Date:** Wednesday 29 November 2000

**Time:** 12.30 to 4.00 pm

**Title:** **Countryside and Rights of Way Bill: Submission from NFU Cymru Wales**

NFU Cymru Wales have argued all along that the introduction of a statutory right of access to open land is unnecessary in view of the huge success of voluntary agreements on such land. However, as the Government have chosen this line, NFU Cymru Wales welcomes this opportunity to submit views to the National Assembly about the implementation of the Countryside and Rights of Way Bill prior to its Royal Assent later this year. In our view this represents the beginning of the process rather than its culmination; important challenges remain to be addressed which will ensure that the Government achieves its objective of providing significant new areas of statutory access for the public without placing costly or unnecessary burdens on the farming community.

We believe that most concerns about the Bill's aims are foreseeable and can be addressed through effective national, regional and local partnerships that can determine practical ways forward. Such partnership working needs to be accompanied by clear and consistent advice to implementing authorities combined with financial assistance, where necessary, to meet the extra costs faced by land managers and local authorities charged with taking forward the Bill's provisions. Clearly this should be supported by unambiguous advice on the rights and responsibilities for access users.

It is important to recognise that the Bill does not only introduce a new statutory right of access; Parts 2 and 3 are also important legislative achievements in their own right. They too require a commitment to partnership and funding to be implemented successfully and with the consent of the farming community.

In this submission we have identified outstanding parts of the Bill which are of particular concern. Clearly in questioning or in submitting further evidence we would be happy to expand on this initial submission.

**Part 1 - Access to the Open Countryside**

1. Definition of "open country" - we have very significant reservations about the definition of open country as included in the Bill. The terms 'mountain, moorland, heathland and downland' convey very different meanings and land types depending on the perception of the individual. Downland in particular is commonly perceived to be a landscape of southern England, but the working definition adopted by the agencies appears to simply be concerned about calcareous soils and slope. Farmers need assurance that the land to be subject to access is primarily unenclosed and not subject to regular husbandry. The National Assembly should instruct CCW to be flexible in their approach when deciding on a deminimus area of land that can be included. Having a patchwork of open areas will be in no one's interest.
2. Mapping process - to achieve successful implementation of the Bill we believe that CCW must engage in a fully inclusive mapping process, with particular regard to the land management community. Ministers have stated that semi-improved and improved land should not be subject to statutory access. However, the NFU remains concerned that improved and fridd land may still be included in that it falls outwith the definition of crops given in the Bill. This land is permanent grassland and is therefore not ploughed or drilled in any given 12 months.

Despite the fact that the mapping process has been designed to be inclusive, mistakes can happen and land management uses can change over relatively short periods of time. The NFU therefore supports amendments (again rejected by the Government at Report stage) which seek to reduce the time period before there is a review of the maps. We feel that it would not be in the interests of visitors or owner occupiers to have out of date maps which do not accurately show the status of a given piece of land.

The Bill should not become statutory until the mapping exercise is complete for the whole of Wales. There should not be a fast track for common land or land over 600 m. It is essential that CCW take every conceivable step to ensure that all land owners and occupiers are contacted if they own or occupy land affected by the Bill at the consultation stage.

3. Curtilage of a building - At Report stage the Government introduced an amendment that will have the effect of excepting all land within 20 metres of a dwelling place. Amendments were also tabled extending this to 30 metres. Whilst the NFU welcomed the Government's recognition of the importance of the privacy and security of rural dwellers, we are nevertheless of the opinion that this distance should be increased somewhat. Should a large group of visitors pass only 20 metres from the window of a private dwelling, it is more than likely that there could be both the aural and visual intrusion on the privacy of the occupier. At Report stage the Government did not accept amendments to increase this distance.
4. Nighttime access / rural crime - The NFU remains extremely concerned about the provisions in the Bill for nighttime access and feels strongly that access at night ought to be discouraged. Our concerns on this issue arise in particular from the fact that owners

and occupiers will have no grounds on which to question people acting suspiciously on their land after dark. These people could potentially be poachers or people intending to commit a criminal act, but if questioned, they can say that they are quite legitimately exercising their legal right to be on the land at night. Rights of way and other existing forms of access already provide plenty of opportunities for visitors to partake of night-time activities, we therefore do not see the need to place owners and occupiers at further risk by extending this practice to all areas of land within the access scheme.

5. Land management closures - CCW is given considerable discretion to permit closure of all or part of land for land management reasons (as well as wildlife conservation or public safety). We regard these opportunities as an important means of assisting land managers to continue their farming without unreasonable hindrance. We would be interested in hearing how CCW are proposing to assess and process access proposals and would welcome dialogue in this important aspect of the regulations.
6. Wardening - throughout the Bill's passage we have emphasised the importance of adequate funds to support the provision and management of new access. Nowhere is this more important than in respect of the need for wardens to oversee and assist in the management of open country. We are extremely concerned that the Government has under estimated the costs of this important role.

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The National Assembly should ring fence an adequate budget to ensure a satisfactory wardening service. The service needs to start from day one of the new legislation. Every effort should be made to employ local bilingual persons to the wardening posts.

7. Dogs - The Government package on provisions for dogs on access land now goes some way towards achieving the reassurance that we sought. Dogs must now be kept on a 'short' lead for four months of the year on access land, from 1<sup>st</sup> March to 31<sup>st</sup> July and on a lead at all times in the vicinity of livestock. Furthermore owners and occupiers now have the power to exclude dogs from fields or enclosures of up to 15 hectares where lambing is taking place for a period of up to six weeks annually. There are also powers for owners of grouse moors to exclude dogs for a period of five years. All these amendments to the Bill are a step in the right direction.

However, concerns still remain. Not least of these is the concern that in many areas in the uplands, lambing occurs on areas of land far greater in size than 15 hectares. Here it would be inappropriate for the lambing ewes to be enclosed. The NFU therefore seeks an assurance that the proposed Code of Conduct should discourage the public generally from taking their dogs onto access land when and where lambing is taking place. The new right of access, as has often been stated by Government Ministers, is for people and people bringing dogs with them onto the land are being granted an extended privilege for which they should accept extended responsibilities. The damage done to livestock by an out of control dog can be extreme and we therefore feel that there ought

to be some mechanism in place which strongly deters people from breaking restrictions in this regard. The early summer period is particularly critical to the correct hefting of sheep on open mountains.

8. Occupier's Liability - The NFU broadly supports the liability regime that the Government proposes. However, we share the concerns raised by some that the new provisions still require the decision of a judge in deciding whether or not the owner-occupier owes a duty to the injured visitor. This may well lead to significant costs being incurred on the part of the owner or occupier in taking the case to court. They also have to consider the fact that they risk losing the case. Many people may decide to bypass this expense by making an out of court settlement and thus accepting liability. The NFU is concerned that this due regard is in itself a huge and new liability for the occupier.
9. Local Access Forums – These are seen to be essential to the implementations of the CROW Bill. It should be a pre-condition of membership that all members reside in the local access area and landowners and occupiers are fairly represented. Local access forums need to be as a minimum linked to local authority or National Park boundaries.
10. Conclusion – With statute comes responsibilities. Owners and occupiers of land must not be disadvantaged in any way and compensation should be paid for damage suffered, any necessary changes in farming practices and any loss in the value of the land that would come from this section of the CROW Bill.

## **Part II RIGHTS OF WAY**

1. Rights of Way Improvement Plans - the NFU broadly welcomes the principle of Rights of Way Improvement Plans and the strategic role that they may play in prioritising a local highway authority's network improvements. However, we had a number of concerns with regard to the Improvement Plans which we feel remain to be resolved:
  - There is no requirement currently for improvement plans to be implemented.
  - We believe that the Government should ensure that authorities are guided to implement proposals in consultation with key interests, such as farmers and landowners.
  - We are also concerned that in preparing Rights of Way improvement plans, authorities are not required to consider the potential for creating, diverting, or stopping up rights of way at a local level. We believe that this is a significant omission from the Bill.
1. Cost of Rights of Way diversions - while welcoming the commitment to adapt and modernise the network, we are concerned that the cost of obtaining creation, diversion or stopping-up orders can be prohibitive. Therefore we are continuing to press Government to introduce regulations to ensure that fees charged by highway Authorities are not only reasonable but also affordable. To this end we believe that a cap should be

introduced to prevent excessive charging that we know to be the case in some authorities.

2. Vehicular Rights Over Common Land -The NFU, whilst welcoming Government proposals to regularise this situation to seek to end the existing uncertainty for those living beside commons and village greens, remains concerned over some of the details which are not to be found on the face of the Bill. We welcome the Government's reduction to 1% the easement payable on commons where residents have had longstanding (since 1930) vehicular access over commons or greens. However, we remain concerned that the debate has so far focussed exclusively on residential property - what is the situation with regard to farmland, woodlands or other 'developed' land and buildings that can only be accessed over common land? We would wish to ensure that the regulations are subject to full and thorough consultation - this is important to ensure all parties' concerns are accommodated.

### **Part III Protection of Sites of Scientific Interest**

1. Statutory status for UK Biodiversity Action Plan - The NFU is disappointed that the Government has decided to place the formerly voluntary partnership surrounding the UKBAP process on a statutory footing. Experience has shown that the former status has been no bar to successfully developing and taking forward the action plans. We are particularly concerned that the listing authorities (National Assembly in Wales) should only consult with "appropriate conservation bodies" (such as CCW). This too our mind overlooks the vital role that land managers play and the inclusive process that the Government ought to be encouraging. The Government has responded that the primary consultation would be with the nature conservation agencies with "a fuller opportunity through the UK Biodiversity Group for consultation with other interests". In our view this is insufficient. We would welcome moves to put on the face of the Bill a requirement for the consultation process to go beyond Government agencies and statutory agencies, and to consult with interested parties.
2. Financial Guidelines for Management Agreements - appropriate remuneration for managing SSSIs is vital, however we are yet to see the National Assembly's final views on how remuneration should be calculated. Payments must reflect the full cost of managing SSSIs in a sustainable manner, not just in terms of the SSSI itself, but also the remainder of the farm. In addition we believe that there is a very real role for incentives to encourage SSSI enhancement, rather than simply stabilising wildlife levels.

### **Areas of Outstanding Natural Beauty**

The provisions on areas of out-standing natural beauty in the CROW Bill were tabled by the Government for Committee Stage in the Lords. They were not previously the subject of a

consultation exercise and the Lords' debates at Committee and Report stages have both taken place late at night. These are not ideal circumstances for creating good-quality legislation. In principle the NFU sees merit in strengthening the statutory base for AONBs and we consider that AONB conservation boards could offer more appropriate solutions than might be the creation of new national parks. The key test is whether they adequately safeguard the interests of those who live and work within AONBs. We welcome the fact that the Government has agreed that conservation boards should only be established where a majority of local authorities support the proposal, and any adjustment to the original proposals serves to ensure that Parish members of boards would be appointed by the parishes themselves rather than by the Secretary of State. Although any boards that are set up will be obliged to foster 'the economic and social well-being of local communities', it is a matter of regret that this duty is restrained by the phrase 'but without incurring significant expenditure in doing so'. If Government truly believes in devolving power to such bodies, then they must trust them to spend money in appropriate ways!

**NFU Cymru Wales**

**November 2000**