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Wales



Llywodraeth Cymru
Welsh Government

Access Reform Programme

Analysis Report: Reform 1B

Coastal Access

Executive summary Reform 1B – Coastal Access

Summary of Policy Intent for Reform 1B

” To extend Countryside and Rights of Way Act (CRoW) access land to the coast, coastal cliffs and foreshore and to facilitate continuous onward recreational journeys along the whole of the Welsh coast. Consideration is to be given to the merits of including the Wales Coast Path as part of the definition of new CRoW coastal access land.”

Three options were considered to deliver the 1B Policy Intent. They were:

- i. Use a Marine and Coastal Access Act 2009 (MACA) approach to define a coastal margin and coastal route for open air recreation on foot. Modify sections of the Countryside and Rights of Way Act 2000 (CRoW) for the definition and management of the coastal access rights.
- ii. Use CRoW section 3 powers to define coastal access land as open country. NRW would use CRoW procedures to produce maps of the coastal access land to which CRoW rights on foot would apply. Coastal access land would be managed under legislative provisions within CRoW, modified where necessary.
- iii. Extend CRoW section 3 to coastal land (as outlined in 1B(ii) above), with higher rights applicable through amendments to CRoW Schedule 2 applying to coastal land.

A fourth option was identified at the analysis stage to replace option 1B(iii):

- iv. Apply higher rights¹ to coastal access according to the approach developed and decided for Reforms 1A and 1B.

The key common issues identified in the delivery of the 1B Options were:

- For any 1B option, the definition of coastal access land (including excepted land) and coastal route will need to consider how to provide for onward recreational journeys along all sections of the coast.
- Extending rights of access at the coast will impact land management, including nature and heritage conservation, at some sites and locations. A reformed coastal CRoW exclusions and restrictions regime can provide a means to prevent and/or mitigate such impacts.
- Reduced occupiers' liability should apply to any newly provided 1B coastal rights of access. Any change to reduce liability further should be consistently applied to CRoW access land including coastal access land.
- CRoW should be amended to provide local authorities with the additional powers they will need to manage coastal access land and a coastal route.
- Codes for responsible recreation should be developed to include new rights of access at the coast. There should be a responsibility for NRW and other defined bodies to promote the code.

Key issues raised that are specific to the various 1B options proposed:

- There is around 110kms of coast where the 1400kms long WCP could be aligned closer to the coast. Option 1B (i) proposals include a legislative mechanism to define a 'coastal route'. Option 1B(ii) would rely on the coastal access land rights created, the creation of new public rights of way (PROW) or the route of the existing Wales Coast Path to provide the coastal route.
- Given the links between Reforms 1A² and 1B, the development of a 1B option applying higher rights to coastal land and associated advice would best be done once the approaches to Reform 1A and Reform 1B are decided.

Introduction

The Access Reform Advisory Group (ARAG) was tasked with developing advice and recommendations to Welsh Government about the delivery of their policy intent for the reform of recreational access legislation in Wales.

The process established for the development of the advice is summarised below:



The legislative reform areas ARAG is considering are:

- **Reform 1A:** Extending the rights to use existing Countryside and Rights of Way Act (CRoW) access land
- **Reform 1B:** *Changes to CRoW legislation extending access land to the coast, coastal cliffs and foreshore*
- **Reform 2A:** Extending the right to ride a cycle or horse on public footpaths
- **Reform 2B:** Temporary restrictions of public paths
- **Reform 3A:** Providing an integrated map of public access in Wales
- **Reform 3B:** Integrated planning of public access in Wales

For further information about the ARAG process and for the outputs from each of the stages to date, please go to: <https://gov.wales/access-reform-advisory-group>.

This Reform 1B analysis report of Reform Options has been produced following evidence and other contributions provided by:

- Local Access Forums [22]
- National Access Forum members [37 organisations]
- ARAG Expert Group members [28 representatives]
- Cadw

Natural Resources Wales' (NRW) recreational access policy advisors provided specialist input together with specialists from across the organisation's remit, including nature conservation, marine policy and land management. A report of the responses can be found via the web link above.

Each reform area has an analysis report using the evidence and key responses from stakeholders to present an assessment of each Reform option. This analysis consists of three main parts:

- **Criteria assessment table:** Comparing key facts and issues for each option against the established programme criteria
- **Commentary** about the options
- **Option revision tables:** Summarising matters for consideration with each option

Across the reform areas, 1A, 1B, 2A (etc) a number of common themes have been identified:

- Responsible Recreation
- Equity, inclusivity and accessibility
- Local access forums' responsibilities within reform options
- Commercial Activity and Events

While these will be considered within each reform area, a separate cross-cutting analysis report addresses the common issues arising and how the themes apply across the ARAG reforms. The final cross-cutting analysis report will be also be available through the [Welsh Government Access Reform Advisory website](#).

Reform 1B – Coastal Access

Total number of responses received: 23, total number of organisations responding: 12, NRW internal responses made: 11.

Summary of Policy Intent for Reform 1B

To extend CRoW access land to the coast, coastal cliffs and foreshore and to facilitate continuous onward recreational journeys along the whole of the Welsh coast. Consideration is to be given to the merits of including the Wales Coast Path as part of the definition of new CRoW coastal access land.

Table 1: Reform 1B Option Titles & Outline Descriptions

1B: Outline Proposal Titles	Summary Description of Outline Proposals
i. Marine & Coastal Access Act (MACA) approach	MACA approach – To define a coastal margin and coastal route for open air recreation on foot
ii. Extend CRoW to include coastal land using section 3	Extend CRoW using section 3 ¹ powers (for rights on foot only)
iii. [Removed Option 1B(iii)] Extend CRoW to include coastal land using section 3 with powers to apply higher rights	Extend CRoW section 3 to coastal land with higher rights applicable through Schedule 2 ² amendments applying to coastal land.
v. [New option 1B(iii)] Apply higher rights to preferred 1B(i) or 1B(ii) option	Application of higher rights to coastal access once the approach to 1A and 1B have been developed.

¹Section 3 can be seen here:

<https://www.legislation.gov.uk/ukpga/2000/37/section/3#commentary-key-7b19a5beb6f3a251dfd9b1369d04260>

² Amending Schedule 2 could allow some activities (such as cycling or horse riding) to be undertaken at the coast. Link to Schedule 2:

<https://www.legislation.gov.uk/ukpga/2000/37/schedule/2>

Note: at the option identification stage both Option 1B(ii) and Option 1B(iii) included consideration of higher rights (i.e. for activities such as cycling, horse riding,

para/hang gliding, bathing or swimming) applying to coastal access. During analysis of the options, it was felt that it would be clearer to separately consider coastal higher rights within a single option.

With consultation with Expert Group 1 it was decided to remove the consideration of higher rights from options 1B(i) and 1B(ii). Those options therefore only consider the application of access to the coast on foot.

A new Option 1B(iii) now considers how higher rights could be applied to coastal access. This is through either the Option 1B(i) MACA mechanism, through the Option 1B(ii) CRoW section 3 mechanism or based on reform 1A – see table above.

REFORM 1B(i) OPTIONS

Title: Marine & Coastal Access Act (MACA) approach

1B(i) Description:

MACA approach – define a coastal margin and coastal route for open air recreation on foot.

Summary Description of Proposed Reforms within Option 1B(i)

Option 1 B(i) is based on the approach taken by the MACA which applies to England only. This has two basic elements:

1. Designation of the line of the coastal route as a long-distance route, for walkers only, around the coast under the National Parks & Access to the Countryside Act 1949.
2. Designation of a *coastal margin*. Coastal margin includes the ‘coastal route’ and all land between the coastal route and the sea. The margin may also extend inland from the coastal route if it is identified as coastal land under the CRoW Act, is identified under section 15 of the CRoW Act, or if it is agreed with the landowner to follow a clear physical landward feature (such as a boundary fence or wall).

Access rights would apply to areas defined as coastal margin, including ‘spreading room’ and the coastal route. CRoW rights do not apply to excepted land under CRoW Schedule 1³ (e.g. land on which there are parks, gardens, buildings or PROW).

³ <https://www.legislation.gov.uk/ukpga/2000/37/schedule/1>

The approach in Wales would need to consider adding to or modifying a number of sections within CRoW to fit the approach needed e.g. whether to amend excepted land definitions in Schedule 1, or provisions for the management of coastal access land in Schedule 20.

1B(i) Commentary of issues on reform focussing on legislation

Key Elements Common to all options - 1B(i), 1B(ii)

- Extending CRoW access land to the coast i.e. area rights of access; and
- Provision of CRoW rights to a linear 'coastal route' for onward journeys

Options 1B(i) and 1B(ii) consider reforms related to:

The requirements identified as **Key Elements** (**bold text** headings below) are common to the 1B(i) and 1B(ii) options. It should be noted that all involve maintaining or revising existing provisions within CRoW.

(NB: All the following Key Elements would need to be reviewed to ensure their adequacy for applying and managing higher rights to coastal access.)

Welsh Parliament (Senedd Cymru) to amend the Definition of CRoW Act 'Open Country' to include Coastal Access Land

Option 1B(ii) would use existing CRoW section 3⁴ that gives the Senedd the power to extend by order the definition of 'open country' to include 'coastal land' or to 'coastal land of any description' and to make consequential amendments to other provisions in Part I of the CRoW Act. Section 3 defines coastal land as including the foreshore and land adjacent to the foreshore (including in particular any cliff, bank, barrier, dune, beach, or flat). It does not provide powers for defining a coastal route.

Option 1B(i), using a MACA-based approach, would introduce a new CRoW section 3A⁵ which includes scope to provide for the line of a 'coastal route' and land adjacent to the coastal route to be included in a 'coastal margin' to which public have CRoW rights of access. The details for defining the coastal margin are set out by Natural England within a 'Coastal Access Scheme' that must be approved by the Secretary of State. As such, a MACA approach would need to give power to NRW to develop a Coastal Access Scheme to detail how the coastal margin will be defined, consulted on and managed.

For the 1B option approach taken forward it will need to be considered:

- whether the definitions of 'coastal land' as currently defined in legislation are adequate (CRoW section 3A for option 1B(i) or section 3 for Option 1B(ii)).
- What consequential amendments to CRoW Part 1 (such as for exclusions and restrictions) are necessary and whether they provide sufficient scope to deliver what is needed

⁴ <https://www.legislation.gov.uk/ukpga/2000/37/section/3#commentary-key-7b19a5beb6f3a251fd9b1369d04260>

⁵ <https://www.legislation.gov.uk/ukpga/2000/37/section/3A#commentary-key-7b19a5beb6f3a251fd9b1369d04260>

NRW to prepare maps of coastal access land

CRoW (sections 4-11) and regulations place a duty on NRW to prepare maps of 'open country' (and common land). Extending the definition of 'open country' would, therefore, require NRW to produce maps that include coastal access land. The mapping requirements of Option 1B(i) are somewhat different from Option 1B(ii). As such, if an option is taken forward it will need to be considered if and what amendments to the mapping duty and associated mapping provisions are required in relation to coastal land.

Rights and liabilities of owners and occupiers to be reviewed

CRoW section 13 highlights owners and occupiers have reduced liability towards people exercising CRoW rights, notably in relation to:

- Natural features of the landscape, including rivers, streams, ditches and ponds, whether natural or not, and
- Persons crossing walls, fences or gates except by proper use of a gate or stile

While not essential to implementation of any option there was wide support for the liability of occupiers to those using coastal access rights to be reduced further following the model of MACA. Section 306 of MACA, 'Occupier's Liability', introduced section 1 (6AA)⁶ of the Occupier's Liability Act 1984, reducing occupiers' liability for physical features (whether of the landscape or otherwise). It would be preferable for there to be a consistent approach to reduced liability on both CRoW open access (see Reform 1A) and coastal access land.

Introduce a statutory access code covering rights and responsibilities, to include specific provisions for coastal access

Options 1B(i) and 1B(ii) propose introducing a statutory access code [along the lines of the Scottish Outdoor Access Code] that would include provisions related to coastal access. (Such a code would have enforceable provisions about the rights and responsibilities of recreational users, landholders and recreation managers). While many stakeholders feel it is preferable, delivery of the 1B options is not dependent on such a code being in place (as demonstrated by new coastal access in England). CRoW section 20, titled 'Codes of Conduct and other Information', places a statutory duty on NRW to produce and review a code of conduct for users and persons interested in access land. NRW also has a duty under the National Parks and Access to the Countryside Act 1949 (NPACA⁷) to provide and disseminate a recreational code for those accessing the wider countryside (the Countryside Code is produced to meet this requirement). These resulting codes and guidance are advisory only. Consideration will need to be given as to whether:

- A code should place statutory and enforceable responsibilities on recreational users and other persons with an interest in CRoW [coastal] access land (such as landholders)

⁶ <https://www.legislation.gov.uk/ukpga/1984/3/section/1>

⁷ <https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97/contents>

- A statutory access code relevant to all reforms should be developed – or other mechanisms used
- NRW and other defined bodies should have a statutory duty to promote the code

Additional proposals about responsible recreation have been developed that can inform these matters as part of the ARAG Cross-Cutting Themes Analysis Report.

Review Exclusions & Restrictions provision to ensure it is fit for purpose in a coastal context

Powers to exclude or restrict access will be essential for the management of coastal access land for any option proposed as part of reform 1B. CRoW sets out provisions for 'exclusion or restriction [of access] at discretion of owner and others' (section 22) and 'restrictions on dogs at discretion of owner' (section 23). It also provides for the 'relevant authority' to exclude or restrict access for the purposes of 'land management' (section 24), 'avoidance of risk of fire or of danger to the public' (section 25) and 'nature conservation and heritage preservation' (section 26). In addition, the Secretary of State can exclude or restrict for the purposes of 'defence or national security' (section 28).

Both long term and short-term exclusions and restrictions (E&Rs) are used on existing CRoW access land. For coastal access land in England where introduced by MACA, for example, on the 13 stretches of the England coast where CRoW access rights (on foot) are in force, Natural England has made a total of 44 exclusions and restrictions.

If following the same approach as in England, the 1B(i) MACA Act option would include amendments to exclusion and restriction provisions to better ensure continuity of public access. For example, CRoW section 22 'exclusion or restriction at discretion of owners and others' has been amended by the MACA Act to state that 'nothing in this section applies in relation to land which is coastal margin'. This has the effect of removing the right of landowners (and others) to notify to exclude or restrict access to land defined as coastal access land. Landowners still have rights to apply for exclusions and restrictions for other purposes (see above). All exclusions and restrictions on coastal access land in England are therefore considered by and subject to authority approval.

Public rights of way in the (MACA defined) coastal margin are not subject to CRoW exclusions and restrictions, including Public Rights of Way (PROW) on which the defined *coastal route* is aligned. If a coastal access option is taken forward exclusions and restrictions provisions and options should be reviewed in detail to ensure they are fit for purpose in the Wales coastal context, including the aim of providing continuity of access and onward journeys.

Extend powers in CRoW to allow for management of access within coastal access land including boundary crossings - for recreational and land management purposes & applying least restrictive access approach

For Option 1B(i) the MACA (Schedule 20) provides additional powers to manage coastal access land including the coastal route. Options 1B(ii) would use existing CRoW provisions.

CRoW sections 34-38 ('Means of Access') already makes provision for facilitating access to CRoW land, including boundary crossings. However, there is a question whether the powers extend to providing crossings across internal boundaries and obstacles and requiring a least restrictive access approach.

The Means of Access legislation would therefore need to be reviewed to ensure it will also enable the facilitation of access across internal boundaries and obstacles (including higher rights if applied), for onward journeys and to place a least restrictive access duty on access authorities. There would be resource implications for access authorities and relevant authorities from additional duties if introduced.

Review the CRoW excepted land categories to ensure they are suitable in a coastal context

CRoW Schedule 1⁸ (Excepted Land for Purposes of Part I) describes certain types of land, being used for defined purposes, to be 'excepted land'. CRoW access rights do not apply to the excepted land types listed in Schedule 1, including, for example, land used for buildings, gardens, planted for crops or trees, used as a golf course, for railways, aerodromes (see Schedule 1 for the full list).

The MACA Act amended Schedule 1 excepted land categories, for example, allowing for access rights to apply to the line of the coastal route where it runs on some otherwise excepted land. This amendment was intended to better secure continuity of access for the MACA defined coastal access margin, including onward journeys on the coastal route. However, it is also a consideration if taking a 1B(ii) option approach.

In the light of the approach in the MACA Act, Schedule 1 excepted land should be reviewed to ensure any Reform 1B coastal access provisions are fit for purpose in a Welsh coastal context.

CRoW Schedule 2, 'Restrictions to be observed by persons exercising right of access', would apply to CRoW coastal access land and exclude 'any commercial purpose' from such rights (permission from the landowner would be needed for excluded activities). However, Schedule 2 does not define 'any commercial purpose' - although advisory guidance has interpreted the term in relation to CRoW rights.

⁸ <https://www.legislation.gov.uk/ukpga/2000/37/schedule/1>

Clarify and define Commercial Activities and Events in the context of Restrictions contained in CRoW Schedule 2

Similarly, organised recreational events can, in some cases, result in large numbers of people using areas with CRoW rights of access, impacting on the land and land interests, as well as the rights of other users. CRoW Schedule 2 does not mention 'events' in the list of excluded activities, although events may fall within the scope of commercial activities. A weight of views from stakeholders felt that larger events, including non-commercial ones, should be excluded from CRoW rights by amending Schedule 2.

A more precise definition for 'commercial activities' and 'events' could be drafted - applicable to all access land, not just coastal land – and included, for example, either in Schedule 2 or in a new statutory access code, if brought forward.

(Note that consideration of commercial activities and events will also be in the ARAG report on cross-cutting themes.)

Key elements specific to Option 1B(i) Marine and Coastal Access (MACA) Approach

In addition to the common issues above the 1B(i) option identified the following Key Elements:

Define a Coastal Margin for spreading room

For England, MACA powers provided for the making of the Access to the Countryside (Coastal Margin) (England) Order 2010, to define the 'coastal margin'. The coastal margin includes the mapped 'coastal route' (i.e. the England Coast Path (ECP)) and all land between the ECP and the sea. Coastal margin may also extend inland from the ECP if it is identified as coastal land under section 3A of CRoW, or if there are existing access rights under the other enactments listed in section 15 of CRoW, or Natural England and the landowner agree to follow a clear physical feature. In Wales, if taking a MACA-type approach, it would need to be considered if this definition of the coastal margin is appropriate, with or without amendment.

It should be noted under a MACA approach that the land that makes up the coastal margin between the coastal route and the sea would not be mapped; also that access rights could **not** be used on excepted land in the coastal margin (see section above for more about excepted land).

Provide for roll back of coastal route

There is clear evidence of a current and future need to realign a coastal route, however defined. A proportion of the WCP at the coastal edge is subject to erosion and on occasion the path has to be realigned, generally using agreements with landowners under PROW legislation. Coastal changes, including to shoreline management (identified in Shoreline Management Plans), will increase pressure to realign the Coast Path/coastal route along some sections of coast.

NRW analysis estimates that up to 24.5 km of PROW at the coast could be affected by coastal change in epoch 1 (0-20 years) of Shoreline Management Plans, 76.8 km

of PROW in epoch 2 (20-50 years) and 92.1 km of PROW in epoch 3 (50-100 years). However, it should be noted that these numbers represent high level estimates of PROW that could be affected by the implementation of these policies over these timescales.⁹

For MACA in England, roll back is provided for by MACA section 302 ('long-distance routes') inserting into the NPACA 1949 Act section 55B 'route subject to erosion etc'. This provides for defined sections of the 'coastal route' (i.e. the England Coast Path) to be automatically realigned, subject to mapped limits, if the existing route is lost to erosion. If this option (or other approach) is taken forward, consideration needs to be given as to the same, or other similar provision, applying to Wales.

Define a coastal route as a Long-Distance Route under NPACA¹⁰ 1949

Around 185kms of the WCP across 43 individual stretches is not at the coastal edge. Of this total around 75kms is likely to be excepted land (e.g. military, railways, industrial land) under either CRoW section 3 or MACA definitions of coastal land. The Wales Coast Path programme of NRW estimates that for the remainder, up to 110kms of coast, it is preferable the WCP is closer to the coastal edge than the current alignment of the WCP.

The 1B(i) MACA approach would provide for the defining of a 'coastal route' by NRW putting proposals to Welsh Government for approval under the 1949 Act. The coastal route is included in the definition of the coastal margin to which access rights apply. How best to integrate the WCP (largely made up of PROW) and coastal route sections defined under MACA would need to be considered further.

Consideration would also need to be given as to whether the coastal route/WCP would also be branded and promoted as a National Trail.

⁹ Advice on locations where Coastal Adaptation measures may affect Coastal Access over the lifetime of the Shoreline Management Plans: NRW Report No 435
10 National Parks and Access to the Countryside Act 1949:
<https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97/contents>

REFORM 1B(ii) OPTIONS

Title: Extend CRoW to include coastal land using section 3.

1B(ii) Description:

Use section 3 of CRoW to extend rights of access on foot to mapped coastal land types.

Summary of Proposed Reforms within Option 1B(ii)

This option uses existing powers within section 3 of the CRoW Act to extend rights of access on foot to coastal land types. Section 3 refers to coastal land types as including the foreshore and land adjacent to the foreshore (including in particular, any cliff, bank, barrier, dune, beach or flat which is adjacent to the foreshore). The definition of CRoW open access land would be extended to include [to be] defined coastal land types.

The coastal land types would be mapped using broadly the same processes as for the original CRoW Part I mapping. Existing CRoW Part I legislation would be used for managing coastal access land, subject to a review of the adequacy of existing provisions, notably exclusions and restrictions. A recreational access code would need to be provided that would include responsibilities in relation to coastal access land, along with other public access.

1B(ii) Commentary of issues on reform focusing on legislation

Key Elements Common to all options - 1B(i), 1B(ii) and 1B(iii).

See entry in 1B(i) above.

Key elements specific issues for 1B(ii)

[Note that the application of higher rights as part of this option are now considered only within 1B Option (iii) below.]

A CRoW section 3 approach allows the Senedd to use existing legislative provisions and processes within CRoW. This has the benefit of not requiring new primary legislation. Within CRoW section 3(2), the Senedd has scope to amend provisions in Part I of CRoW (such as those identified with bold headings below) to adapt them in relation to coastal access land.

The existing CRoW legislation has delivered rights of access to CRoW open access land, its management and enjoyment by the public since 2005.

Although using a CRoW section 3 approach does not provide for defining a coastal route, the WCP already provides a 1400 kms mostly PROW-based coastal route. Around 185 kms of the WCP is not preferably aligned at or near the coastal edge, of which an estimated 110kms could be realigned.

The Option 1B(ii) approach as currently identified does not include proposals for reforming existing CRoW legislation for the defining, administration and management of open access. A review of some of the detailed provisions is likely to be needed. The key ones for 1B(ii) that will need consideration (headed in **bold**) are listed below:

CRoW mapping – Coastal access land would be identified using existing mapping processes. All coastal land would need to be mapped, unlike the MACA approach in 1B(i) where coastal land between the line of the coastal route and the sea is defined as coastal margin. Coastal access maps would need to be reviewed every 10 years (subject to any reform introduced).

Excepted Land – Definitions of excepted land and their suitability for provision of coastal access land would need to be reviewed.

Exclusions and restrictions – Existing exclusions and restrictions provisions would allow the use of so-called ‘exclusions and restrictions notifications’ to close sections of coastal access land by landowners and occupiers at their discretion. This provides greater flexibility for land managers to restrict access. However, sections of coastal access land without existing PROW would not be available for public access at such times. Applications, subject to relevant authority approval, could also be made for longer term exclusions and restrictions. For example, for land management, public safety, nature or heritage conservation.

Accessibility improvements and management – Powers to facilitate and improve access across boundaries and obstacles in coastal land will be needed in some places. The applicability of sections 34-38 of CRoW for improving access within access land needs to be determined. Ensuring ongoing access management and the use of least restrictive access approaches for coastal access would also need to be reviewed - although existing duties within the Equalities Act apply to all public bodies.

Roll back of a coastal route – Realignment of the WCP is necessary at times due to changes, typically due to coastal erosion. Where the WCP runs on PROW such cases are subject to negotiation and generally agreement with landowners. There is no legislative power in CRoW that would allow the roll back of CRoW rights to enable onward access at the coast. The extent this could arise, given the existing WCP and other PROW, has not been assessed, but coastal change is projected to increase.

Identification of coastal access land – To correctly identify accessible areas, reference will need to be made to online or other published maps. Land to seaward of a MACA defined and mapped coastal route will be coastal access land (accessible apart from Excepted Land).

Defining a coastal route - No mechanism has been proposed for a coastal route under option 1B(ii). Provision of a route through coastal access land would be possible (see for example the MACA provisions for a walking coastal route) and would be subject to the exclusions and restrictions as implemented with the reforms, including potential exclusion of access at times for entire sections of coast. Onward access would be reliant on other available access rights such as PROW. Alternatively, reform to exclusions and restrictions provisions within CRoW should be considered.

REFORM 1B(iii) OPTIONS

Title: 1B(iii): Extend CRoW to include coastal land using section 3 with powers to apply higher rights

1B(iii) (Alt): Apply higher rights to preferred 1B(i) or 1B(ii) option (application of higher rights to be addressed at a later time once the approaches to 1A and 1B have been developed.)

From the ARAG Option Identification stage, all three Reform 1B options had key elements that referred to applying higher rights¹¹ to coastal access land. Having been through the analysis stage, and consulted again with Expert Group 1, certain limitations were identified in the 1B(iii) approach. The main limitation is that it omits the possibility of using the MACA based approach from Option 1B(i) for the application of higher rights to the coast (part of which would include a defined coastal route). The second is that it makes a judgment on how to apply higher rights without considering the decision taken by Welsh Government for the preferred Reform 1A option.

We propose a simpler approach for the 1B reform: to consider how existing CRoW rights could apply to the coast in Options (i) or (ii); with 1B(iii) option considering how to then apply higher rights. We have therefore removed previous references to higher rights within the sections about Options 1B(i) and 1B(ii). Instead these options consider the provision of rights of access on foot to coastal access land or coastal access margin. Matters that relate to the application of higher rights for coastal access are instead considered in the commentary for 1B(iii) below (*see Reform 1A information for the consideration of approaches to providing higher rights on existing CRoW access land*).

¹¹ Reform 1A policy intent refers to allowing these higher rights: cycling, horse riding, para/hang gliding, bathing, swimming & use of non-mechanically powered water craft. Sch 2 of CRoW currently excludes these activities.

Commentary on Matters Related to Option 1B(iii)

Defining of higher rights within coastal access land/margin

Reform 1B options (i) and (ii) set out proposals for developing CRow coastal access. Currently, Schedule 2 of CRow effectively limits CRow access rights to activities on foot. Revisions to CRow Schedule 2 would allow higher rights to extend CRow coastal access. As such, higher rights could be applied to all or specified types of coastal access land/margin - and potentially to a 'coastal route' identified under a MACA-type 1B(i) reform.

Applying higher rights would require detailed review of provisions in CRow legislation, such as in relation to excepted land, exclusions and restrictions and managing access to ensure they provide for the application and management of all applicable access rights (see sections above for further discussion about such provisions).

Reform 1A, if taken forward, could apply higher rights to all or any specified 'CRow access land', which could include or exclude coastal access land/margin (see Reform 1A for more information about extending higher rights on existing CRow access land, including area based or selective routes or corridors of higher rights on access land).

Define a higher rights coastal route

In England MACA provisions define a continuous coastal route which is part of the coastal margin to which CRow access rights apply. The route will include the land 2 metres either side along the entire English coast. By excluding specified activities, Schedule 2 of CRow has the effect that CRow rights for the route, and spreading room, are for people on foot (including with dogs). Relaxing Schedule 2¹² could be made to apply higher rights only to the coastal route or defined sections of it (for more about the MACA type approach see Option 1B(i) above).

For Option 1B(ii), CRow does not provide legislation to define a coastal route for Wales. The ability to amend existing CRow section 3 powers to provide for a coastal route to which access rights applied would need to be further assessed.

See ARAG Reform 1A for detailed consideration of extending higher rights on existing CRow access land, including area based or selective routes or corridors on access land.

An alternative option raised during discussions within Expert Group 1 was using existing legislation (CRow Schedule 2 paragraph 7) to seek voluntary dedication for higher rights of either CRow access land. There has been one dedication of CRow access land, apart from the dedication by the Forestry Commission Wales of the Welsh Government Woodland Estate, since 2005.

¹² Schedule 2 legislation can be viewed here:

<https://www.legislation.gov.uk/ukpga/2000/37/schedule/2>

Other possible solutions could be provided by providing higher rights on PROW within coastal access land. See Reform 2A options for consideration of extending

higher rights through reforms to public footpaths. There are also existing PROW legislative mechanisms, such as bridleway creations under sections 25 and 26 the Highways Act 1980. Use of such powers has generally be very limited year on year.

Stakeholder Feedback About Higher Rights for Coastal Access

Views expressed acknowledged that some stretches of coast are currently available or suitable for higher rights users. However, there were many concerns raised about the implications resulting from higher rights at the coast in terms of health and safety for different classes of recreational users, the impacts on and suitability of coastal land in some locations, available linking higher rights access to, from and along the coast and the practicality of managing shared used within, at times, narrow sections of coastal land or coastal route.

CRoW exclusions and restrictions powers would need to also apply to higher rights so as to manage such issues. The extent exclusions and restrictions would be required has not been assessed for any of the options and would depend on the exact approach taken but are likely to be significantly more extensive in the case of higher rights.

Selectively applying higher rights at the coast was viewed by some stakeholders as a more realistic approach for 1B reform. It was also suggested that applying higher rights at the coast could be considered after implementation of coastal access for pedestrian access.

While there are general research studies about recreational use of the outdoors by higher rights (mostly cycling and horse riding) no specific evidence has come to light assessing multi-use access in coastal locations and/or legislation measures for providing such rights to be able to weigh alongside the various concerns raised.

All 1B Option assessment of extent of existing access to coast of Wales:

Countryside Council for Wales' (CCW) 2008 report, 'Statutory Access to the Coast: Advice to Welsh Assembly Government', reported that there is 805 miles of 'open coast'. and that there is no right of access to the foreshore but that:

- the Crown Estate allows public access to all 70% of the foreshore that it owns
- there is customary/de facto access to 'virtually all' of the remaining 30% of the foreshore
- 6% of the coast has access on beach only

For open coast above the foreshore (mean highwater mark) the CCW report found that:

- 61% of the 'coastal edge' has secure access (of which 34% was public rights of way (PROW) i.e. linear only access; 8% was National Trust)
- 22% of the coast is secure 'area' type access (e.g. 10% is existing CRoW access land)
- 5% has permissive access only
- 5% is 'inaccessible' due to development such as docks, industrial sites, railway lines and military areas
- 18% of the coast that was 'inaccessible' was rural unimproved/farmland/other land types

Criteria:	Criteria Description & Measures	Option 1B(i):MACA approach	Option 1B(ii): Extend CRoW to include coastal land using section 3	Option 1B(iii): Apply higher rights to preferred 1B(i) or 1B(ii) option
Extent of access	<p>Amount of 'by right' access affected. Consider:</p> <ul style="list-style-type: none"> - Totals [e.g. kms/ha; %] - % changes - Distribution: where and how distributed in Wales - Measures include absolute and/or relative amounts e.g. as change from current position; relative to other options 	<p>Access would be applied right around Wales' coast.</p> <p>[See also all 1B assessment information above]</p> <p>Coastal margin will include urban and other excepted land (e.g. docks, buildings, military firing ranges, highways, railways) to which access rights will not apply. Indicative mapping of the distribution of no-access/access was provided in CCW 2008 advice to Welsh Government.</p> <p>The Wales Coast Path (WCP) provides 1400kms (870 miles) of continuous 'coastal routes' mostly on existing PROW; of which around 185kms is not at or close to the coast. An estimated 110 kms could be realigned closer to the coastal edge with this option – around 75kms would likely be excepted land (such as military firing ranges).</p> <p>Natural England estimated an average of approximately 0.34 sq. miles of [Marine and Coastal Access Act (MACA)] coastal margin per mile of the coastal route i.e. England Coast Path (ECP). If this ratio is applied to Wales, it would result in approximately 300 sq. miles of coastal margin.</p> <p>Under the English scheme only 4.4% of MACA coastal margin is inland of the ECP.</p> <p><i>(England figures supplied by Natural England)</i></p> <p>The option will include providing by right access to existing de facto access (coastal route with 'spreading room') – see estimates above. It is estimated that reformed legislation could bring an estimated 110kms of the existing WCP to a more coastal alignment.</p> <p>Higher rights See 1B(iii)</p>	<p>[See also all 1B assessment information above]</p> <p>Access would be applied right around Wales' coast.</p> <p>Because of similar definitions of coastal land, the extent (amount and distribution) of coastal land provided with rights of access will be very similar to Option 1B(i).</p> <p>Information about the WCP at the coast is included in all 1B(i) assessment.</p> <p>See the all 1B assessment for CCW's 2006 estimates of the amount and types of current access.</p> <p>The WCP programme has created 80.6 kms of new coastal PROW since 2007.</p> <p>Final totals of access areas and coastal route would depend on definition of coastal land and application of excepted land, exclusions and restrictions and byelaws.</p> <p>The definition of coastal access land will result in sections of coast, such as urban areas and improved agricultural land not being mapped as CRoW access land. Continuity of access (onward journeys) without coastal access land would be subject to provision of a coastal route within the option (or rely on the existing WCP and other public access).</p> <p>A proportion of potential access land already has de-facto [customary] access on foot so increases from a user's point of view will be minimal in some places, although such access would then be by right. No new estimate has been made of the amount of de facto access (see all 1B assessment for 2008 reported estimates of amount and types of access).</p> <p>As with existing CRoW land, some coastal access land would not have practical or desirable access due to vegetation, terrain and other factors (e.g. mud flats).</p> <p>Higher rights See 1B(iii)</p>	<p>Information in 'all 1B' and 1B(i) and 1B(ii) assessments would apply to this assessment according to the approach decided upon.</p> <p>Higher rights The extent of new rights for higher rights will be similar to those estimated in option the all 1B assessment and for 1B(i). The extent would depend on the approach taken. For example, application of higher rights to some or all areas of coastal access or applied to some or all of a linear coastal route. The extent would also be affected by application of excepted land, exclusions and restrictions and byelaws.</p> <p>As noted for on foot access in Options 1B(i) and 1B(ii), coastal access land for higher rights there would be some areas that will not be practical or desirable for access due to vegetation, terrain and other factors (e.g. mud flats).</p>
Quality of access	<p>Accessibility to users in terms of:</p> <ul style="list-style-type: none"> - Physical condition - Usability (practicality of 	<p>For on foot access A large proportion of Welsh population can readily access the coast in less than a two-hour journey.</p>	<p>For on foot access Given the existence of the WCP, and the fact that large parts of potential access land already has public access (statutory, permissive or de facto), the</p>	<p>For on foot access Given the existence of the WCP, and the fact that a high majority of potential access land already has public access (statutory, permissive or de facto), the</p>

	<p>access provided by rights reforms)</p> <ul style="list-style-type: none"> - Availability to different users - Proximity to population (note the potential equity issue) - Presence of barriers to higher rights use and people with mobility problems - Availability in terms of info including on site presence e.g. signage for the PROW or off-site - Linkage to other public access of similar rights 	<p>Rights of access would be provided to most areas of coastal land. A proportion would be excepted land or subject to exclusions and restrictions (not calculated).</p> <p>A proportion of coastal land (see extent assessment) has existing customary/de facto access (including foreshore/ beaches).</p> <p>All of coast would be accessible via a defined coastal route. Of the 1240 km WCP route, around 110 kms is <u>not</u> at or close to the coastal edge (i.e. mean high water mark).</p> <p>Given the existence of the WCP and PROW, a high proportion of the coastal land provided will be readily reached from and connected by existing PROW and public highways (although the extent of PROW within coastal land and its connectivity has not been estimated).</p> <p>The WCP has been developed and continues to be improved using a least restrictive access approach. Further assessment would be needed for further detail.</p> <p>The practical accessibility of land likely to be defined as coastal margin has not been assessed. Due to the nature of the terrain, a proportion (not estimated) will be practically inaccessible to most people - e.g. coastal cliffs, mud flats, sections of the foreshore.</p> <p>Coastal land is adjacent to or readily accessible to most coastal communities' subject to practical usability, distribution of excepted land and applied exclusions and restrictions.</p> <p>The WCP provides quality infrastructure and communications for walkers, mostly at or close to the coastal edge. Much of current WCP could provide the line of the coastal route, including providing links between areas of coastal margin.</p> <p>WCP runs through all of Wales' coastal communities bringing ease of access.</p> <p>Higher rights See option 1B(iii)</p>	<p>infrastructure and communications quality is already generally high.</p> <p>For higher rights See 1B(iii) right for details on higher rights.</p>	<p>infrastructure and communications quality for on foot access is already generally high.</p> <p>For higher rights Around 97kms of WCP has cycling rights. A large majority of potential access has not been historically managed for cyclists, horses or least restrictive access users. Therefore, a programme of improvements would be needed for higher rights where applied.</p> <p>The connectivity of existing higher rights to the coast has not been assessed. Public footpaths and existing CRoW access land would be affected by Reform 1A and/or 2A.</p> <p>Depending on vegetation cover, terrain and other factors, a proportion of access land will not, in practice, be physically usable or desirable.</p> <p>Quality of resulting access will also be subject to how higher rights are applied – see reforms also 1A and 2A for further considerations.</p>
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<p>Permanency</p>	<p>'By right' access in perpetuity, or permissive? Situation for different rights users?</p> <ul style="list-style-type: none"> - Absolute position and relative to other options [see extent and quality] - Qualified to significant degree 	<p>For on foot access Depending on the detail of the legislation, rights will be permanent, as current CRoW land is, but subject to exclusions and restrictions and decadal or other review. As such, provisions for roll back would increase certainty of onward access.</p>	<p>For on foot access Depending on the detail of the legislation, rights will be permanent, as current CRoW land is, but subject to exclusions and restrictions and decadal or other review.</p>	<p>Access Rights Depending on the detail of the legislation, rights will be permanent, as current CRoW land is, but subject to exclusions and restrictions and decadal or other review. As such, provisions for roll back would increase certainty of onward access.</p>
<p>Clarity & Certainty</p>	<p>Clarity of rights:</p> <ul style="list-style-type: none"> - Simple or complex to understand - Whether the option will be subject to change (temporary or permanent) - Communicability of relevant access information 	<p>For on foot access With high quality comms, this is the clearest option because it can be mapped, is consistent with England and will be applied across the coast.</p> <p>As with current CRoW access land, this option gives no indication of suitability, practicality or desirability of access.</p> <p>Clarity of the coastal route will indicate the seaward extent of coastal access margin. As such, the inland boundary will be defined in relation to agreed physical features such as walls and fences based on coastal land types.</p> <p>Some areas would be subject to exclusions and restrictions. Onward journeys would usually be provided for including alternative routes. Relevant information would be advertised onsite and online.</p> <p>As for MACA in England, and as proposed for in this option, OS maps and online information would show the coastal route and coastal margin.</p> <p>For Higher Rights See option 1B(iii)</p>	<p>For on foot access To ensure clarity of maps.</p> <p>As with current CRoW, this gives no indication of suitability, practicality or desirability of access – in most circumstances these are matters for users to determine.</p> <p>Some areas would be subject to exclusions and restrictions. Application of current CRoW exclusions and restrictions regime unamended could lead to some sections of coast being entirely closed for short periods of time.</p> <p>Clarity will require online and onsite information which is provided for in the option.</p> <p>For Higher Rights See option 1B(iii)</p>	<p>For on foot access To ensure clarity of maps.</p> <p>As with current CRoW this gives no indication of suitability, practicality or desirability of access.</p> <p>Some areas would be subject to exclusions and restrictions. Application of current CRoW exclusions and restrictions regime unamended could lead to some sections of coast being entirely closed for short periods of time.</p> <p>Clarity will require online and onsite information which is provided for in the option.</p> <p>For Higher Rights As for 'Foot' section above, there will likely be more complex excepted land, and exclusions and restrictions regimes will likely lead to less clarity and certainty.</p> <p>Selective application of rights would be the least clear approach as different rights will apply in different areas. Messaging could be that, unless indicated otherwise, higher rights do not apply.</p> <p>Information would be provided for according to the approach applied.</p>
<p>Cost</p>	<p>Estimated costs of a proposal for different sectors: actual, indicative or comparative estimates. Consider administration, implementation ongoing costs.in terms of:</p> <ul style="list-style-type: none"> - Financial - Resources - Relative to current position - Relative to other proposals 	<p>Implementation This will depend largely on the process selected. However, the legal approach taken in England, with full consultation and infrastructure improvements, has involved high implementation costs. (NE advise that the total implementation budget from DEFRA is £25million for a route length approx. 3.2 times that of the WCP)</p> <p>Ongoing costs Current WCP budget is £900,000 per annum. The addition of spreading room may not increase costs significantly because, as with current CRoW land, it is</p>	<p>Implementation No estimate has been made. Further work would be needed to estimate costs including development costs, mapping, full consultation and appeal stages. These are time consuming and quite costly processes. However, WG could legislate for a more streamlined process.</p> <p>Ongoing costs Current WCP budget is £900,000 per annum. The addition of spreading room may not increase costs significantly because, if, as with current CRoW land, it is likely to be available on a 'take it or leave it' basis with little or no</p>	<p>Implementation No estimate has been made. Further work would be needed to estimate costs including development costs, any required mapping, full consultation and appeal stages. These are time consuming and quite costly processes. However, WG could legislate for a more streamlined process.</p> <p>A selection process for areas and/or a coastal route with higher rights will also require further work to estimate costs.</p> <p>Ongoing costs</p>

		likely to be available on a 'take it or leave it' basis with little or no management.	management to facilitate access additional to the WCP.	Current WCP budget is £900,000 per annum. The designation of access land may not increase costs significantly because existing CRoW land is available on a 'take it or leave it' basis with little or no management or promotion. However, if higher rights access is to be effectively provided on the ground, there will potentially be significant infrastructure and promotion costs to facilitate implementation, understanding and management of the rights. No estimate has been made on the coast to apply a suitable standard for higher rights at the coast e.g. applied to a coastal route such as the WCP.
Monitoring & Enforcement	Enforcing rights and responsibilities, in terms of: <ul style="list-style-type: none"> - Ability to enforce demand/need for enforcement actions; - likely impact on compliance with rights and responsibilities - Ability to monitor option and implementation 	Legislation could provide for monitoring and enforcement of rights and responsibilities, on both users and landowners. However, effective powers and resources would be needed to police them. A more realistic scenario is to produce and educate on a code of conduct.	A selective approach to higher rights provision is likely to require the most complex monitoring and enforcement to ensure people are not accessing areas which qualify by definition but have not been selected. Legislation could provide for monitoring and enforcement of rights and responsibilities, on both users and landowners. However, effective powers and resources would be needed to police them. A more realistic scenario is to produce and educate on a code of conduct.	Legislation could provide for monitoring and enforcement of rights and responsibilities, on both users and landowners. However, effective powers and resources would be needed to police them. A more realistic scenario is to produce and educate via a code of conduct (enforceable or otherwise).
Equity of Access	Positive or negative effect on equity of access. To consider: <ul style="list-style-type: none"> - Overall population - People with protected characteristics - those with mobility problems; social inequalities - Differential impacts on land holders - Different impacts on classes of user - Scale/extent of impacts on the preceding 	Overall population Generally applied across Wales by right - benefits walkers only. Protected characteristics Legally available to all but, in places, physical alterations and targeted communications will be needed to provide real benefit. Landowners No different on land managers – applied to all described land.	Walkers Generally applied across Wales by right – benefits walkers only. Protected characteristics Legally available to all but, in places, physical alterations and targeted communications will be needed to provide real benefit. Landowners Potential discrimination on landowners who have higher rights imposed on them through selection. Likely compensation claims will need to be considered as a result.	Overall Population Generally applied across Wales by right – benefits walkers only. These benefits will be greater as exercisable by walkers and higher rights users. However, subject to the definition of coastal access land and supporting provisions. some areas may have no increase in access. A selective approach to application of higher rights will reduce the benefits. Protected characteristics Legally available to all but, in places, physical alterations and targeted communications will be needed to provide real benefit. Landowners No differential on land managers – applied to all described land.
Greater efficiency & transparency	Better and/or reduced process requirements for stakeholders, reduced time taken, including for	New form of CRoW – to draw on and learn from experience of England's MACA Act.	Draw on and learn from experience of CRoW Act - to use existing provisions, such as provision of online mapping	Draw on and learn from experience of CRoW Act – to use existing provisions, such as provision of online mapping.

	administration processes (see also costs), improved access to processes by stakeholders	Once in place, this option is likely to require the same average administration per mile/km as the existing CRoW land and the existing National Trails. Depending on the detail of the legislation, landowners will have to take account of any liability to users and apply for exclusions and restrictions if required. Relevant authorities (NRW and National Park Authorities) will have to maintain exclusions and restrictions systems and conduct reviews. As this option only applies to walkers in defined areas, it is likely to be the simplest to administer.	Once in place, this option is likely to require the same administration as existing CRoW land. Depending on the detail of the legislation, landowners will have to take account of any liability to users and apply for exclusions and restrictions if required. Relevant authorities (NRW and National Park Authorities) will have to maintain exclusion and restriction systems and conduct reviews.	Once in place, a higher rights-inclusive option is likely to require some additional administration compared to existing CRoW land. Depending on the detail of the legislation, landowners will have to take account of any liability to users and apply for exclusions and restrictions if required. As a result, a spatially selective approach to higher rights would imply a requirement to maintain for these users and is likely to place an increased burden on countryside managers. Any process and criteria for selection will need to be clear and consistently applied. Landowners of land selected for higher rights will have little choice but to engage with the process. Relevant authorities (NRW and National Park Authorities) will have to maintain exclusion and restriction systems and conduct reviews. Access authorities (AA) will need to manage access for all rights that apply.
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Criteria:	Criteria Description & Measures	Option 1B(i):MACA approach Option 1B(ii): Extend CRoW to include coastal land using section 3 Option 1B(iii): Apply higher rights to preferred 1B(i) or 1B(ii) option
Ecosystems and ecosystems resilience	Consider positive, negative or neutral impacts. Similarly, factors to consider if evidence allows regarding impacts on species and habitats: <ul style="list-style-type: none"> - Extent: changes to area/length rights would apply to and impacts will occur (including extent protected sites and species that would be impacted) - Change to levels and type or character of impacts - Change to distribution of impacts - Resilience to impacts of habitats/species - Provision adequate to prevent or mitigate impacts 	<p>NRW colleagues, and others, have raised concerns that increased access, especially for higher rights users could potentially result in significant negative impacts on ecosystems and species. As part of any implementation process it will be important to undertake environmental assessments and legislation, as CRoW does, allowing for provisions to except or exclude access on the grounds of conservation.</p> <p>Although not directly comparable, the MACA in England on the 13 stretches of the coastal access that are 'open' (where access rights are in force) Natural England has made a total of 44 statutory exclusions or restrictions of access (E&Rs) under sections 24-26 of the CRoW Act 2000. 18 relate to nature conservation; a further 8 are for salt marsh and mud flats. A fuller breakdown is given in the table below:</p> <p>CRoW section 24 E&R for land management = 12 CRoW section 25 E&R for public safety = 3 Combined sections 24 and 25 (land management and public safety) = 3 CRoW section 25A E&R related to salt marsh and mud flats = 8 CRoW section 26 E&R for nature conservation = 18</p> <p>For 1B(iii) including higher rights would be expected to increase demand for exclusions and restrictions to prevent or mitigate impacts to habitats and species, Scheduled Ancient Monuments (SAMs) etc.</p>
Sustainable land and water management	Consider positive, neutral or negative impact on land or water management: <ul style="list-style-type: none"> - Disturbance to livestock and livestock management - Agricultural and other land management impacted - Significant biosecurity implications - Increased use of land potentially <p><i>NB: Considerations for ecosystems to be included in preceding consideration above</i></p>	See row above

Health & wellbeing	<p>Consider positive, neutral or negative impact on physical and mental wellbeing. Consider:</p> <ul style="list-style-type: none"> - Changes to use and benefits derived - Impact on different population groups e.g. relatively disadvantaged 	<p>Positive:</p> <ul style="list-style-type: none"> - Dependent on new rights resulting in increased use (NB: further evidence required) - Potential for increased use (frequency and volume) with physical and mental health benefits - Latent demand estimated (NB: further evidence required) <p>Negative:</p> <ul style="list-style-type: none"> - Potential negative impacts on land managers from increased use resulting land management issues associated with rec use (NB: further evidence required)
Community cohesion	<p>Consider positive, neutral or negative impact on community cohesion. To consider:</p> <ul style="list-style-type: none"> - Changes to local use and accessibility within area - Changes to local wellbeing and economic benefits - Likely impact on community interests 	<p>Positive:</p> <ul style="list-style-type: none"> - Widely available access for - Latent demand estimated (NB: further evidence required) <p>Negative:</p> <ul style="list-style-type: none"> - Interaction of users with actual and perceived increase in conflict - Increase in actual and perceived conflicts between local users and visitors and between land managers and users (NB: further evidence required)
Successful and responsible business	<p>Consider positive, neutral or negative impact on responsible business, Consider:</p> <ul style="list-style-type: none"> - Impact on economic opportunities - Impact of changes on economic activity on different sectors - Distribution [see extent] <p><i>NB: evidence of actual costs or overall impact [+ve, -ve etc] may be difficult to assess at this stage</i></p>	<p>Positive:</p> <ul style="list-style-type: none"> - Potential for increased use (frequency and volume) with increased visitor spend - Potential for increased services providing for business related to cyclists and horse riders as visitors - Latent demand estimated (NB: further evidence required) - Realisable demand hard to determine (NB: further evidence required) - Economic benefits distributed (NB: further evidence required) <p>Negative:</p> <ul style="list-style-type: none"> - Potential increase costs to land managers [Regulatory Impact Assessment (RIA) to determine] - Increased costs for service provision e.g. parking (NB: further evidence required)

Table 3 1B(i): Considerations for revision or further development of the option proposal and key elements

Key Element Ref No.	1B(i) Required element for outline option proposal (Note these are as identified by the ARAG Expert Groups)	Considerations / potential changes
001	Use CRoW to define a coastal margin for spreading room associated with a WCP coastal route	<ul style="list-style-type: none"> • Required. KE better worded as ‘Amend CRoW to introduce powers for the Senedd to define a coastal margin...’ • Powers provided in MACA section 3A to amend CRoW by order led to ‘The Access to the Countryside (Coastal Margin) (England) Order 2010’ which set out the definitions for coastal margin •
002	Defined coastal access scheme for implementing provisions, including mapping of coastal margin and defining ‘coastal route’	<ul style="list-style-type: none"> • Amend key element to read that NRW should have duty to produce a coastal access scheme • MACA section 298 ‘coastal access scheme’ (CAS) placed a duty on Natural England to produce a scheme for approval by the Secretary of State (see Coastal Access - Natural England’s Approved Scheme, 2013) • As for MACA (s298(7)) before preparing or revising a scheme NRW should consult with relevant stakeholder interests
003	A coastal route defined as a long-distance walking route (LDR) under 1949 Act-type LDR provisions [LDR status for WCP]. Allow for WCP to be incorporated as ‘coastal route’	<ul style="list-style-type: none"> • MACA section 302 ‘Long-distance routes’ inserted (applicable in England only) into section 55A’s ‘Proposals relating to the English coastal route’ into the 1949 Act. This requires Natural England to prepare a report proposing the designation of the England Coast Path as a long-distance route as set out in the 1949 Act, as amended
003/alt	Defined ‘coastal route’ rights for walking, cycling and horse-riding [under 1949 Act-type LDR provisions]	<ul style="list-style-type: none"> • Decide if key element needs to be retained and if so, the mechanism that is needed to facilitate this • Access rights cannot be created under the LDR provisions of the 1949 Act. So,

		<p>creation of rights would need to come through other legislation</p> <ul style="list-style-type: none"> • In the MACA approach, CRoW rights apply to the ‘coastal margin’ – the coastal route included in the definition of coastal margin with the route defined by LDR provisions • Amendments to CRoW (via Schedule 2 relaxation) could provide higher rights; alternatively, dedication under CRoW or as PROW
004	Reduced liability to users of rights for landowners and land managers	<ul style="list-style-type: none"> • To retain key element • MACA’s section 306 ‘Occupier’s liability’, which applies in England only, is achieved per the Occupier’s Liability Act 1984’ section 6AA reduces liability for physical features (whether of the landscape or otherwise) • Preferable to have consistency with CRoW open access
005	Provision for roll back of coastal route specified	<ul style="list-style-type: none"> • This is provided for by MACA’s section 302 ‘Long-distance routes’ inserting into the 1949 Act s55B ‘Route subject to erosion’
006	Provision for management of coastal margin and coastal route	<ul style="list-style-type: none"> • To retain key element • Statutory provisions for managing coastal access within MACA, notably Schedule 20, and apply to [CRoW] ‘access authorities’ and the ‘appropriate countryside body’ [NRW if translated to Wales] including provision of funding. • MACA provisions (see Schedule 20) would supplement existing powers in CRoW for managing access
007	Duty for ‘access authorities’ to ensure least restrictive access wherever possible. Associated powers for improvement and management of accessible infrastructure to and within coastal margin and for coastal route	<ul style="list-style-type: none"> • To retain key element • This duty could be included in legislation and could be extended to others with access responsibilities, such as NRW • CRoW sections 34-38 should be reviewed for adequacy to provide for accessibility improvements to and within coastal access land and amended if needed

		<ul style="list-style-type: none"> • A new least restrictive access duty would be additional to Equalities Act requirements and has resource implications
008	Crown land to be included in coastal margin and for coastal route	<ul style="list-style-type: none"> • Suggest this key element is omitted because Crown land is not treated differently to any other land for CRoW legislative purposes, so no specific key element reference is necessary
009	Procedures for coastal land mapping processes	<ul style="list-style-type: none"> • MACA uses the term 'coastal margin' for the land at the coast that CRoW access rights will apply to • Necessary (see CRoW section 3A introduced by MACA¹³) but note that the coastal access scheme provision provides the means to set out detailed processes (see key element 002) • CRoW sections 4-11 'Maps', and 1949 Act section 51 'General provisions as to long-distance routes', both suitably amended as required, can adequately provide for mapping of the coastal route, with coastal margin defined as seaward of the route • Statutory CAS (see key element 002) would set out detailed processes • Note: the coastal route is included within 'coastal margin' definition under CRoW; the coastal route line is identified under 1949 Act; line of coastal route is part of defining spreading room which together make up the coastal margin
010	Exclusions and restrictions regime – modified to ensure access to WCP is retained apart from exceptional circumstances	<ul style="list-style-type: none"> • Unnecessary requirement for most of WCP because it runs on PROW. Where WCP/coastal route is PROW it would not be governed by CRoW exclusions and restrictions • Therefore, this key element must be clarified, and restrictions need to be amended with regards to MACA 'coastal route' i.e. not WCP established on PROW. • In England only, as part of MACA CRoW section 22 'Exclusion or restriction at discretion of owners and others' has been amended to state that

		<p>'nothing in this section applies in relation to land which is coastal margin'. This has the effect of removing the right of owners and others to notify to exclude or restrict access [also referred to as '28-day discretionary exclusions and restrictions']. Exclusions and restrictions by application would be available to occupiers</p>
011	Redefining of excepted land	<ul style="list-style-type: none"> • This key element is a necessary requirement, notably for coastal route • MACA 2009 amended excepted land. CRoW Schedule 1 'Excepted Land for Purposes of Part I' should be reviewed and amended as required by legislation
012	Recreational code – modification of Countryside Code	<ul style="list-style-type: none"> • Adopting key element 012 or 012/alt is subject to selected approach to recreation codes across reforms. Stakeholders tend to prefer key element 012/alt approach i.e. more enforcement powers • Under CRoW section 20 'Codes of Conduct and other information' NRW has existing statutory duty to produce and review an advisory code for users and persons interested in access land. Along with NRW's duty under section 86 duty of the NPAC Act '49 to produce a recreational access code this requirement is met through production of the Countryside Code • As for England, the Countryside Code can be revised to include specific reference to coastal access. Feasible approach for all options - with limitations of existing enforcement powers
012/alt	Statutory code setting out responsibilities and rights	<ul style="list-style-type: none"> • Not essential to implementation of option but preference of many stakeholders • A new statutory code (with sanctions) could include provision for coastal access. Matter is being considered as part of cross-cutting themes. Approach for coastal access should be subject to

		how reform for responsible recreation behaviours overall is taken forward
013	Rights apply only to those on foot	<ul style="list-style-type: none"> • This would be in line with current CRoW access land. However, it could lead to divergence from other CRoW access land depending on the approach taken with Reform 1A
013/alt	Or as per 1A reform	<ul style="list-style-type: none"> • See Reform 1A • Consider revising Reform 1B options so that higher rights on coastal land are considered within Option 1B(iii) only –also see comments on this point in 1B(ii) Table 4 [key element 012], and 1B(iii) Table 5 [key element 001], below

¹³ <https://www.legislation.gov.uk/ukpga/2000/37/section/3A>

Table 4 1B(ii): Considerations for revision or further development of the option proposal and key elements

Key Element Ref No.	1B(ii) Required element for outline option proposal	Considerations / potential changes
001	Use section 3 of CRoW Act to allow defined coastal land to be mapped as access land for open air recreation on foot	<ul style="list-style-type: none"> • Key element required for this option. • CRoW section 3 gives Senedd Cymru a power to extend open access to include 'coastal land' by order and any necessary consequential amendments
001/alt	Change CRoW Chapter 3 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	<ul style="list-style-type: none"> • Remove key element 001/Alt • Note intent in key element was not clearly set out or understood i.e. defining of coastal access land seaward of a coastal route. Omit because the approach is already considered within 1B(i) MACA-type approach
002	Develop definitions of coastal land to which CRoW rights (on foot) would apply. Include foreshore, coastal cliff, dunes, flats, beaches, coastal heath	<ul style="list-style-type: none"> • To retain key element • The named coastal land types in this key element are already included in wording of CRoW section 3. However, there are section 3 powers to include coastal land of any description • Section 3 coastal access land types should be reviewed and detail requirements defined within new regulations [see also 003]
003	Mapping regulations amending to reflect change – including defining land parcels	<ul style="list-style-type: none"> • To retain key element - although it does not make it clear what changes are proposed or required • Mapping regulations in CRoW would need to be reviewed and amended as appropriate to enable coastal land to be mapped as CRoW open access
004	Procedures for mapping processes and consultation as per CRoW – including defining of inland boundary	<ul style="list-style-type: none"> • To amend key element – see below • CRoW sections 4-11 'Maps' (and associated regulations) reviewed

Key Element Ref No.	1B(ii) Required element for outline option proposal	Considerations / potential changes
		<p>and amended as needed will adequately provide for this</p> <ul style="list-style-type: none"> •
005	Reduce liability for landowners/managers as for CRoW.	<ul style="list-style-type: none"> • Preference for key element 005/alt from most stakeholders – omit this key element • See 005/alt text below
005/alt	Reduce liability for landowners/managers in line with England's MACA coastal margin	<ul style="list-style-type: none"> • Overall preference of stakeholders was for 005/alt: MACA section 306 approach to liability • MACA section 306 'Occupier's Liability', which applies in England only, achieves this by inserting into the Occupier's Liability Act 1984 s6AA which reduces liability for physical features (whether of the landscape or otherwise) • Consistency with CRoW open access land is desirable
006	Exclusions and restrictions regime as for CRoW	<ul style="list-style-type: none"> • Decide between 006 and 006/alt • An exclusion and restrictions mechanism is essential • CRoW sections 21-33 'Exclusion or Restriction of Access' can provide a mechanism for closures • Implications of section 22 (closures at discretion of landowner) is potentially to close sections of coastal access land including for onward journeys – therefore consider with 006/alt
006/Alt	Reviewed and modified to include coastal specific requirements e.g. reasons for closures specific to coastal land; exclusions and restrictions to provide for onward journeys; remove provisions for 28 days of exclusions and restrictions by notification	<ul style="list-style-type: none"> • For MACA in England, CRoW section 22 'Exclusion or restriction at discretion of owners and others' (discretionary exclusions and restrictions) has been amended to state that 'nothing in this section applies in relation to land which is coastal margin'. This has the effect of removing the right of owners

Key Element Ref No.	1B(ii) Required element for outline option proposal	Considerations / potential changes
		and others to notify to exclude or restrict access
007	Review and redefine CRoW excepted land to ensure applicability to coastal context	<ul style="list-style-type: none"> • CRoW Schedule 1 'Excepted Land for Purposes of Part I' can be reviewed and amended as required • MACA included amendments to CRoW excepted land for coastal access in England and can inform a review (see also comments in Changes Table 1B(i))
008	Extend powers in CRoW to allow for management of access within coastal access land including boundary crossings - for recreational and land management purposes and applying least restrictive access approach	<ul style="list-style-type: none"> • CRoW sections 34-39 'Means of access' already makes provision for the management of access to CRoW land, including boundary crossings. However, advice is unclear whether there is currently a power to provide crossings across internal boundaries (such as walls and fences); and there is no explicit requirement to apply a least restrictive access approach. Legislation is therefore needed, especially to enable onward journeys
009	Introduce a statutory access code covering rights and responsibilities, to include specific provisions for coastal access	<ul style="list-style-type: none"> • Provision is under consideration as part of cross-cutting theme. Could be considered and applied to 1B Coastal Access • Under CRoW section 20 'Codes of conduct and other information' - NRW has existing statutory duty to produce and review an advisory code for users and persons interested in access land. Along with NRW's duty under section 86 duty of the NPAC Act '49 to produce a recreational access code this requirement is met through production of the Countryside Code.

Key Element Ref No.	1B(ii) Required element for outline option proposal	Considerations / potential changes
		<ul style="list-style-type: none"> As done for England, the Countryside Code can be revised to include specific reference to coastal access as alternative.
009/Alt	Widen duty to promote statutory code promotion to other public bodies, as appropriate	<ul style="list-style-type: none"> Consider as part of statutory code development with reference to 1B coastal access. Duty to promote Countryside Code could also be extended to other organisations.
010	Rights apply only to those on foot [CRoW as now]	<ul style="list-style-type: none"> Key element 010 clarifies intention for 1B(ii) rights to be on foot only (see also 012 comment below) Could lead to divergence in rights if Reform 1A introduced higher rights to other types of CRoW access land Decide between 010 and 010/alt
010/alt	Rights apply as per 1A reform	<ul style="list-style-type: none"> See 010 and 1A reform
011	CRoW coastal land shown on NRW's website as part of NRW's CRoW mapping and on OS mapping	<ul style="list-style-type: none"> To retain key element NRW is required to show CRoW access land on its website. CRoW coastal access would therefore have to be included CRoW mapping is provided to OS and mapping data to the Welsh Government's Lle portal
011/alt	Include CRoW coastal access land in provisions in Reform 1A as appropriate	<ul style="list-style-type: none"> Omit as it duplicates 010/alt
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	<ul style="list-style-type: none"> Key element does not suggest how this would be achieved through legislation Consider simplifying approach to Reform 1B options by considering higher rights for coastal access solely within Option 1B(iii) (see Table 4 key element 001 comment)

Key Element Ref No.	1B(ii) Required element for outline option proposal	Considerations / potential changes
		<ul style="list-style-type: none"> • See Reform 1A(iii) for consideration of a suitability assessment approach on access land. However, this will not, in itself, provide for a continuous coastal route around Wales because not all of the coast will have CRoW access rights • MACA coastal route provisions could also be considered in relation to this matter

Table 5 1B(iii): Considerations for revision or further development of the option proposal and key elements

Option 1B(iii) table of Considerations for/Potential Changes to Option 1B(iii) has been omitted. Reform Option 1B(iii) only will consider the provision of higher rights within coastal access through either a Reform 1A, 1B(i) or 1B(ii) mechanism.

The 1B(iii) option and detailed key elements table will therefore be completely revised in the light of those considerations and presented in future phases of the 1B Reform work.

Next Steps Summary

This report will be presented to Ministers for formal review in November 2020. Once agreed, the changes suggested to the Key Elements tables (above) will be actioned and a final set of proposed Reform Options will be produced.

In January 2021, the last Expert Group sessions will take place, these will be the Option Selection meetings. The task in this meeting is for the members of the Expert Groups to discuss, and where possible, reach consensus on the preferred options for each reform area. After which, the final report will be written to be presented to the Minister at the end of March 2021.

Annex 1: 'Call for Evidence' Responding Organisations

Representatives from the following organisations responded to the ARAG 'call of evidence' request sent out in the Summer of 2020:

Arfon and Dwyfor Local Access Forum, Gwynedd
Brecon Beacon National Park Local Access Forum
Brecon Beacon National Park (*Expert Group representative*)
British Horse Society (BHS) (*Expert Group representative*)
The British Mountaineering Council (BMC) (*Expert Group representative*)
Cadw
Canoe Wales
Carmarthenshire County Council (*Expert Group representative*)
Ceredigion Local Authority (*Expert Group representative*)
Country Land and Business Association (CLA) (*Expert Group representative(s)*)
Cycling UK (*Expert Group representative(s)*)
Flintshire and Wrexham Joint Local Access Forum
Institute of Public Rights of Way & Access Management
Ministry of Defence (MOD) (*Expert Group representative*)
National Representative, Welsh Local Access Forums
Open Spaces Society (OSS) (*Expert Group representatives*)
Pembrokeshire Coastal National Park Authority (*Expert Group representative*)
Powys Local Access Forum
Rhondda Cynon Taf Local Access Forum
South Wales Outdoor Activity Providers Group (SWOAPG)
Swansea City and County (*Expert Group representative*)
Wales Adventure Tourism Organisation (National Access Forum Member)
Vale of Glamorgan County Borough Council (*Expert Group representative*)

Natural Resources Wales Internal Responses

- Evidence, Policy and Permitting (EPP) Team
- Knowledge and Evidence, EPP
- Land Management Team
- Marine and Coastal Ecosystems Team
- Marine and Coastal Policy and Planning Team
- North West Wales Operations
- North East Wales Operations
- North West Wales Sites Team
- Outdoor Access and Recreation Team
- South Wales Central Operations Team
- Sustainable Management of Natural Resources (SMNR) Team
- Sustainable Places – Land and Sea Management Team
- Well-being and Integration Team