

House of Commons
Environment, Food and Rural
Affairs Committee

**COUNTRYSIDE AND
RIGHTS OF WAY
ACT 2000**

Fifth Report of Session 2002–03

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*Report, together with
the Proceedings of the Committee, and the
Minutes of Evidence and Appendices*

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' and the question number. References to written evidence are indicated by 'Ev' and the page number, usually followed by the paragraph number.

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FIFTH REPORT

The Environment, Food and Rural Affairs Committee has agreed to the following Report:

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

Summary

The Countryside and Rights of Way Act 2000 which includes provisions to introduce the regime of more open-access to the countryside—the ‘right to roam’—is viewed as landmark legislation by interest groups and those concerned with the wider rural economy. The legislation is complex and there is a need to continue to maintain a balance between the needs of those who work on the land and those who seek access to the land for recreation purposes.

Our main concerns relate to delays to the mapping process; the arrangements for restricting access; and the resources available to implement the Act. We urge the Department to clarify its proposals for how restrictions to open-access land should be managed. We also ask the Department to provide details of the resources which will be made available to land managers and others for putting in place the necessary infrastructure, such as signs and sources of information about open-access areas.

We are concerned that the additional money allocated to local authorities to implement the Act may not be used for the purpose for which it was intended. We urge that measures are put in place to hold local authorities to account in relation to their new responsibilities under the Act. Clarification of the likely costs of implementing the Act and confirmation of the funding available to support it would go some way to alleviating the concerns of many of those with an interest in the Act’s successful implementation. We remain concerned that without this an important opportunity will be missed and the credibility of the legislation may be undermined.

Introduction

1. The Countryside and Rights of Way Act 2000 (‘the Act’) received Royal Assent on 30 November 2000. It includes, among other measures, provisions for a new statutory right of access to the countryside. The Act will be implemented in stages. In our Report on Defra’s Departmental Report 2002 we recommended that “Defra set as one of its new Public Service Agreement targets a deadline by which the process of implementing [the Act] will be completed”.¹ The Government agreed with this recommendation; Defra’s Public Service Agreement for 2003–06 includes a target of opening up access to all registered common land, mountain, moor, heath and down by the end of 2005.²

2. We are committed to examining Defra’s progress in implementing legislation. The Government has stated that the process of implementing the Act is a complex one and the Countryside Agency has identified the implementation of the new right of access as a high

¹ Environment, Food and Rural Affairs Committee, Sixth Report of Session 2001–02, *The Departmental Annual Report 2002*, HC 969, para 30

² Environment, Food and Rural Affairs Committee, Ninth Special Report of Session 2001–02, *The Departmental Annual Report 2002: the Government’s Reply to the Committee’s Sixth Report of Session 2001–02*, HC 1223, p. 10

risk project.³ In January 2003, we therefore decided to appoint a Sub-committee to examine the progress made by the Department in implementing the Act.⁴ The terms of reference of our inquiry were simply “to consider progress made in the implementation of the Countryside and Rights of Way Act 2000.”

Conduct of our Inquiry

3. We decided to carry out a short inquiry to highlight some of the issues that have arisen to date, and to make relevant recommendations at a time when Defra continues to develop its work on implementation of the Act. We held one oral evidence session during which we took evidence from the Minister for Rural Affairs and the Deputy Director of the Countryside Agency as well as from the Ramblers’ Association and the Country Land and Business Association. In addition we received written memoranda from 11 different organisations. We are most grateful to all those who have helped us with our inquiry.

4. The evidence submitted to the inquiry focussed almost entirely on the parts of the Act which cover open-access and the rights of way network; we did not examine the implementation of the provisions on Sites of Special Scientific Interest or Areas of Outstanding Natural Beauty.

Background

5. The Act:

- creates a new right of access to open country and registered common land;
- introduces measures designed to reform and improve rights of way;
- gives greater protection to sites of special scientific interest (SSSIs), and strengthens wildlife protection;
- provides new powers to set up Conservation Boards for the better management of areas of outstanding natural beauty (AONBs), and requires certain bodies to have regard for AONBs when doing anything which would affect the land in those areas;
- lists habitats and species of principal importance for the conservation of biological diversity in England; and
- provides new powers to regulate access to premises by motor vehicles across areas such as common land and village greens.

The Act applies to England and Wales though different bodies are responsible for its implementation in each country: the Countryside Agency in England and the Countryside Council for Wales in Wales. The following summarises the Act’s main provisions relating to open-access land and rights of way in the context of their application in England.

New Rights of Access

6. The Act is most commonly associated with Part I which introduces the new rights of access and provides for what is often referred to as the ‘right to roam’. Much of the evidence submitted to the Sub-committee concentrated on progress towards the implementation of this part of the Act. Before the new right comes into effect, the Countryside Agency is required, under the Act, to produce maps of the country showing which land is designated as ‘open-access’. The Act also provides for landowners and managers to restrict the new rights of access in certain circumstances. The Agency will set up a system to facilitate these restrictions before the new right of access is introduced. The Countryside Agency has set up a non-statutory national forum to advise on implementation of the Act and on issues such as mapping and restrictions. Highway authorities and National Park authorities are required to set up statutory local access forums by August

³ *Note of Matters Arising from the 32nd Meeting of the Countryside Agency*, 12 December 2002

⁴ Environment, Food and Rural Affairs Committee press notice 14 2002–03, 24 January 2003

2003. Other issues, such as the available funding for the various bodies and individuals affected by the new rights of access, have not yet been fully resolved.

Mapping

7. Sections 4 and 5 of the Act require the Countryside Agency to draw up and consult on maps of open country and registered common land. The Agency has divided England into eight regions and is at various stages of the mapping process in each region. (See box below).

Stages in the Mapping Process

Stage 1: The Countryside Agency will produce a draft map of each region showing the areas to which there will be a statutory right of access under the Act; that is, mountain, moor, heath, down and registered common land. There will be a three-month consultation on the draft during which any member of the public can submit comments.

Stage 2: Having considered all the comments, the Countryside Agency will produce a provisional map. This is expected to be produced 6-8 months after the end of the consultation on the draft map, depending on the number of submissions received. Those with a legal interest in any land within the map's area can appeal to the Secretary of State after publication of the provisional map.

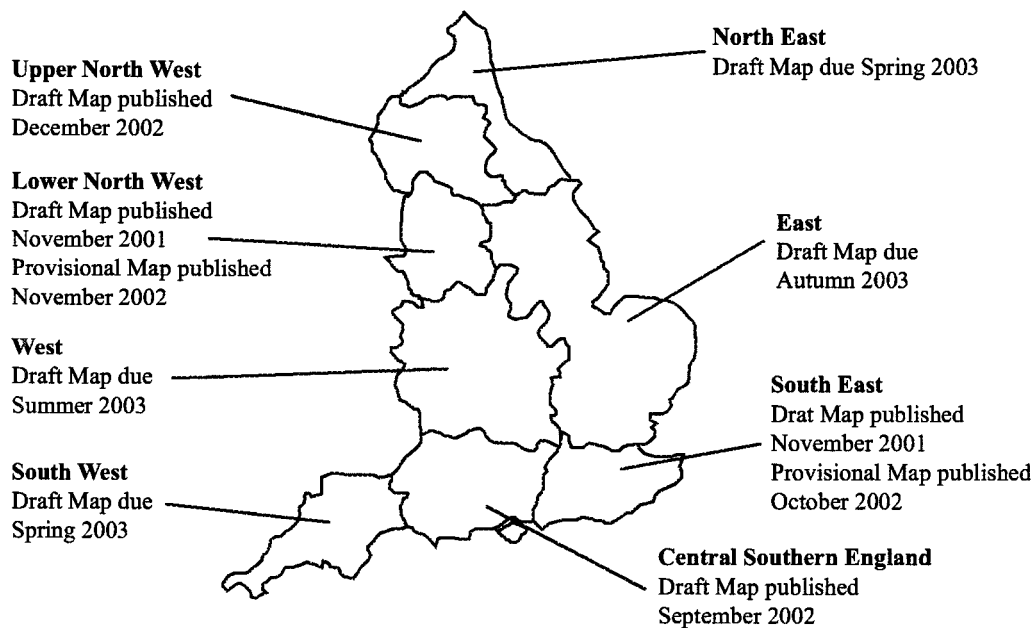
Stage 3: A conclusive map will be issued. The conclusive maps are expected to be published 6-12 months after the provisional maps, depending on appeals.

Stage 4: Following publication of the conclusive map, access rights will take effect from a date to be announced by the Secretary of State.

Stage 5: The maps will be subject to a review within ten years and no less than every ten years after that.

Progress in each of the eight regions is shown in Figure 1 below.

Figure 1: Progress in mapping (in England) under the CROW Act



Source: The Countryside Agency

Defra's PSA target is to complete the mapping exercise and open up public access by the end of 2005. In November 2002, Alun Michael, Rural Affairs Minister, announced that the access rights will be rolled out on a region by region basis and that the first regions, South East and Central Southern England, will be open from summer 2004.⁵ The remaining regions will be opened up by the end of 2005.

8. The Countryside Agency has appointed a lead contractor, Binnie, Black and Veatch (BBV) for the mapping exercise. BBV has sub-contracted work to: GeoData Institute (University of Southampton, providing habitat expertise and data collection, and mapping registered common land); Quentin Bell Organisation Limited (advising on media, publicity and other issues); and City and West End Solutions Limited (printing of maps).⁶ The contractor is producing draft maps using existing datasets supplemented by aerial photography and site visits.

Restrictions

9. Section 22 of the Act allows an 'entitled person' (e.g. the owner or farm tenant) to impose statutory restrictions on people's use of the new rights for up to 28 days in each calendar year. These can be for any reason, and do not require approval; but they must be notified in advance to the 'relevant authority', such as the relevant National Park Authority, the Forestry Commissioners or the Countryside Agency. Restrictions under Section 22 may be used to limit the new access rights on any part of an area of access land, for all or part of the day, in a range of ways, for example:

⁵ HC Deb, 28 November 2002, c 48WS

⁶ HC Deb, 14 January 2002, c 113W

- by excluding dogs;
- by keeping people to specified routes;
- by requiring people to enter and exit at specified points only;
- by imposing other specific conditions on use of the land; or
- by excluding access completely.⁷

10. Using any of these options counts as a full day's discretionary restriction on the part of the access land affected, even if the restriction only lasts for part of the day. The 28 day maximum must not be exceeded on any part of the land. However, there is also scope to apply to the relevant authority for 'additional restrictions' on certain grounds set out in the Act: for purposes related to the management of the land, fire prevention and avoiding danger to the public. The relevant authority will decide whether to accept requests for additional restrictions, and there will be a system for appealing against decisions.

11. Defra and the Countryside Agency have consulted on proposals for regulations and guidance on the exclusion or restriction of access. The Government planned to lay the relevant regulations in February 2003.⁸ The Countryside Agency will produce statutory guidance on the restrictions system for the other relevant authorities and expects to put the system in place in the first two regions on 2 December 2003.

Rights of Way

12. Part II of the Act contains provisions designed to reform and improve rights of way. The Government decided to legislate on rights of way in response to concerns that changes in country lifestyles over the last century had resulted in many footpaths falling into disuse and a loss of the knowledge of where rights of way exist. The provisions in the Act relating to rights of way include:

- a requirement on local highway authorities, except the London Boroughs, to carry out a review of rights of way and publish an improvement plan by 20 November 2007;
- a provision for Roads Used as Public Paths (RUPPs) to be reclassified as a new category of way known as a Restricted Byway having a right of passage for non-motorised users;
- a new right for land managers of agricultural and other types of land to apply to a council for certain types of orders diverting or extinguishing footpaths and bridleways, and a right of appeal against a council's refusal; and
- a provision to allow local authorities to divert or close rights of way for the purpose of crime prevention in certain urban areas, and for protecting the safety of children and staff in school grounds.

13. Sections 53 to 56 of the Act prescribe a cut-off date of 1 January 2026 by which all footpaths and bridleways created before 1949 must be recorded on definitive maps. The provisions also provide for the extinguishment of certain rights of way which have not been claimed by the 2026 deadline. The Government may extend the deadline by regulations under section 56.

⁷ Countryside Agency, *Proposals for guidance from the Countryside Agency on local access management, exclusions and restrictions*, 2001, para. 4.3

⁸ *Note of Matters Arising from the 32nd Meeting of the Countryside Agency*, 12 December 2002

Other provisions

Access Forums

14. Under section 94 of the Act and regulations under this section, highway authorities and National Park authorities are required to set up local access forums by 7 August 2003. Regulations under the Act require highway authorities and National Park authorities to appoint members to the forum and ensure a balance is maintained on the forum between those representing various interest groups.⁹ The Countryside Agency will be required to have regard to the views of forums in relation to Parts I and II of the Act, specifically the draft maps, long-term restrictions, the appointment of wardens, proposals for bylaws and wider access issues contained in rights of way improvement plans.

15. The Countryside Agency has also set up a non-statutory National Access Forum to advise it on the development of policy and procedures on access to open countryside and rights of way. A range of interest groups is represented on the Forum including the Ramblers' Association, the Country Land and Business Association, the Local Government Association, the National Trust and the National Farmers' Union. A member of the Countryside Agency board is also on the Forum along with two independent members. The Forum is chaired by the Deputy Chair of the Countryside Agency, Pam Warhurst.

Role of Local Highway Authorities

16. Local highway authorities will have several new duties and powers under the Act. The new duties mainly relate to the provisions in Part II of the Act on the rights of way network and include requirements:

- to establish local access forums by August 2003;
- to publicise the effects of redesignation of roads used as public paths (RUPPs);
- to keep for public inspection: registers of applications for definitive map modification orders; declarations as to the existence of highways made under section 31(6) of the Highways Act 1980; and a register of applications for diversion and extinguishment orders made by landowners;
- to prepare a rights of way improvement plan within five years;
- to deal with notices served on them relating to removal of obstructions;
- to have regard to needs of people with mobility problems when authorising the erection of stiles or gates;
- to publish reports on delivery of rights of way functions; and
- to make decisions on landowner applications for diversion and extinguishment orders within four months.

The Government estimates that the overall costs of these additional duties “involve an additional sum of between £12 and £19 million a year for local authorities ... and the additional cash in the local authority settlement is within that bracket”.¹⁰ The additional funds are distributed to local authorities from central government through the Revenue Support Grant (RSG). The allocation to each local authority is determined by the standard spending assessment (SSA) which is composed of seven major service “blocks”; the funding for the new duties under the Act forms part of the Environmental Protection and Cultural Services Block. As the RSG is not hypothecated, the additional £12-19 million for the new duties under the Act is not ringfenced for that purpose.

The RSG has not been increased to take into account the additional discretionary powers local authorities have under the Act. These mainly relate to land designated as open-access under Part I of the Act and include powers:

⁹ Local Access Forums (England) Regulations 2002 (S.I., 2002, No. 1836)

¹⁰ Appendix 3, para 5

- to make and enforce bylaws relating to access land;
- to appoint wardens for access land;
- to erect notices indicating boundaries of access land and excepted land;
- to enter into agreements to provide means of access to access land;
- to provide access in absence of agreement with land owner;
- to remove obstructions to access land;
- to make combined legal event and definitive map modification orders, and to prepare consolidated definitive maps;
- to order the removal of overhanging branches from bridleways; and
- to create, stop up and divert rights of way for crime prevention etc.

Our perspective on progress to date

17. **We strongly support the objectives of the Countryside and Rights of Way Act.** We welcome the Government's efforts to balance the sometimes competing demands of different interest groups in relation to access to the countryside. Indeed, we were struck by the many common causes between those bodies often on different sides of the debate and applaud the efforts of these groups to work together both at a local and national level to ensure the successful implementation of the legislation. We also recognise the work that has been done to date and the progress that has been made towards implementing a very complex piece of legislation.

18. It would therefore be especially disappointing if progress were not continued and the proposed timetable for implementation were allowed to slip. Similarly, we believe it is important that certain areas of concern are addressed speedily, particularly those relating to the resources available to implement the Act. It would be a matter of great regret if carefully developed legislation were to lose credibility because of the failure of the relevant bodies to implement it sensibly and with sufficient resources to ensure its success. We consider that the issues set out below lie at the heart of the effective implementation of the Act.

Delays to the mapping process

19. The Ramblers' Association told us that most publication dates for future draft and provisional maps have been delayed by approximately two months following problems in the first two regions, South East and Lower North West.¹¹ The first provisional map in the South East region was withdrawn because decisions taken on submissions to the draft map consultation had not been reflected. The consultation on the draft map stage in the Lower North West was particularly problematic. The Countryside Agency told us that this was due to the incorrect interpretation of the available data in the Macclesfield area which led to nearly three times as many submissions compared with the same stage in the South East.¹²

20. The Government acknowledged that there were problems with the early maps and admitted to us that it had underestimated the size of the mapping operation.¹³ The Countryside Agency said that the first two regions were chosen because they were "challenging" and the experience has enabled them to develop the methodology for the subsequent areas.¹⁴ In particular, the Countryside Agency told us that it now has up-to-date aerial photography for the whole country and this will be used to supplement existing datasets when developing maps.¹⁵ It has also increased the amount of field work and site visits to supplement the available data. The Minister told us that the Department "remains

¹¹ Ev 2

¹² Q 37

¹³ Q 36

¹⁴ Q 34

¹⁵ Q 48

on course to meet the Public Service Agreement target” to complete the mapping process by the end of 2005.¹⁶

21. The Ramblers’ Association remains concerned about the application of the mapping methodology. It told us that there are cases where it considers the methodology to have been inconsistently applied. Examples include land parcels that have not been mapped but appear identical to adjacent or surrounding land parcels that have been.

22. Existing datasets are, in some cases, clearly unreliable as the sole source for the purpose of mapping open-access land. It appears that in carrying out its equivalent duties in Wales, the Countryside Council for Wales insisted on more site visits and did not rely as heavily on existing data. It is clear that site visits and aerial photography would improve the quality of draft and provisional maps and reduce the need for a lengthy and complicated appeals process. **We note the Government’s acknowledgement that it underestimated the size of the mapping project. We welcome its commitment to improve practice in mapping the other regions, and the new procedures adopted by the Countryside Agency. We trust that these will prove an adequate response to the earlier problems, and that the original target for completion of the exercise will be met.**

Restrictions

23. The arrangements for restricting access to land designated as open-access are integral to the successful implementation of the Act and the credibility with which it is viewed by both land managers and those who wish to access the land. Until the Department finalises these arrangements there will be a period of uncertainty for both parties and especially land managers in the first two regions where the Government proposes to introduce the new rights of access by the summer of 2004. **We urge the Department to finalise its proposals relating to restrictions as soon as possible. We also recommend that the Countryside Agency monitor carefully the success of these arrangements in the first two regions and make adjustments based on this experience before the new rights are introduced in the rest of the country.**

Local Access Forums

24. Local Access Forums have an important role to play in the successful implementation of the Act. We believe it is essential therefore that recruitment to the forums is carried out in a fair and transparent way, and that the forums gain the necessary support of all the parties with an interest in the Act. The forums are set up by the local highway authority or National Park authority, the “appointing authority”, and statutory guidance issued by Defra sets out the role of access forums and the working arrangements to be followed.¹⁷ The Ramblers’ Association told us that, in some areas, the relevant authority’s representatives on the forum have also been involved in the recruitment of other forum members representing different interests. We are concerned that such practices may give the appearance that the forums are weighted in favour of the particular highway authority or National Park authority. **We recommend that the Department amend the statutory guidance on local access forums to include procedures covering the interviewing and selection of forum members.**

¹⁶ Q 33

¹⁷ Defra, *Statutory guidance to local access forums*, 14 November 2002

Liabilities

25. We remain concerned about the issues raised by the Country Land and Business Association in relation to the potential liability of land managers for disused mines and quarries, and dangerous animals. The Association told us that the Government had agreed to introduce regulations under Section 42 of the Act which would remove the statutory obligation from landowners to provide and maintain a barrier or plug to a disused mine or quarry.¹⁸ The Association are also concerned about the potential liability of land managers for dangerous animals or animals which are dangerous at particular times, such as cows with calves. **We recommend that the Department confirm when they intend to lay regulations on landowner liabilities. In general terms, we do not believe that land managers should face any new liabilities as a result of the Act.**

Access across common land

26. The provisions in Section 68 of the Act, and regulations made under it, were introduced to assist people who had, for many years, driven across common or other land to get to their premises, but who had found that they had no legal right to do so. In some cases, the owners of the land were attempting to prevent such access or were seeking to obtain large sums of money in return for granting an easement over the land. The new legislation permits owners of properties to apply for a right of access for vehicles across common land. The regulations set out, among other measures, the criteria to be met in order to apply, the limit on compensation to be paid by the property owner to the owner of the land, and the conditions to which the statutory easement created will be subject. The Government has stated that its aim is “to strike a fair balance between the owners of common land and those who for many years have driven across the land to get to their homes”.¹⁹ This is a complex area of law and we have been told that since the introduction of the new measures, disputes have continued to arise. **We urge the Government to monitor the effect of the new provisions relating to vehicular access across common land and ensure that the appropriate balance has been struck between those who own common land and those who need a right of access across it to reach their properties.**

Resources

27. Nearly all the issues raised during our inquiry come back to the issue of resources: both the amount of funding available and the method by which it is to be disbursed. We do not believe that the costs associated with implementing the Act are onerous but if insufficient priority is given to this issue, there is a danger that the credibility of the legislation will be undermined.

28. Local highway authorities have had duties to protect rights of way for many years and receive funding from central Government to fulfill these duties. However, there is evidence that local highway authorities are not spending enough to meet these existing rights of way duties. For example, the Ramblers’ Association cited information from the Best Value Performance Indicators for 2001–02 which show that only 69% of England’s rights of way are in the condition required by law. The Countryside Agency’s Rights of Way Condition Survey 2000 found that walkers can expect to come across a serious problem every 2 km. **We are concerned that Defra is not able to identify funding for individual councils for rights of way duties. At the very least Defra should issue new guidance about best practice and the need to invest in the rights of way network. We recommend that Defra monitor the performance of local highway authorities against their rights of way improvement plans and, if necessary, use the powers under Section 71 of the Act to make regulations requiring authorities to publish reports on the performance of their functions relating to rights of way.**

¹⁸ Ev 19

¹⁹ HC Deb, 16 May 2002, c 831W

29. Given the performance of many local authorities in relation to their existing duties on rights of way we are concerned that the additional money allocated to local authorities will not be used for the purpose for which it was intended. We are especially concerned about the lack of transparency in the funding process and the difficulty of holding individual local authorities to account in relation to their new responsibilities. The Department told us that the extra money available through the grant settlement was “somewhere between £12 million and £19 million” and that identifying the amounts available to individual local authorities “would not be straightforward”.²⁰ We note that in Wales, each local authority was informed of its individual allocation from the £2.4 million for 2001/02 allocated to the 21 unitary authorities.

30. Although the local government settlement is complex, we believe that it should be possible for the Government to identify the additional allocation made to each English local authority to meet its responsibilities under the Act. Evidence from the Institute of Public Rights of Way Officers confirms the fears of many interest groups that when local government officers “sought in internal discussion to have the promised additional funds added to their budgets they often failed because no amount had been specified”.²¹ The Chief Executive of the Ramblers’ Association summed up the problem:

“Unless the countryside and rights of way money is used to implement the Countryside and Rights of Way Act, we are going to have a problem. Certainly the track record of local authorities, in terms of using money for public rights of way on public rights of way, is pretty abysmal. That is the problem, because therein lies all the money for the infrastructure.”²²

31. We recommend that the Government publish details of the increased allocation made to each local authority to meet its duties under the Act. If it is genuinely impossible to break down the local government settlement to provide this information the Department should consider an alternative form of funding which would be sufficiently transparent to hold individual local authorities to account. For example, the Ramblers’ Association has proposed that the Countryside Agency should retain a fund to which local authorities could apply. **The Department should also consider publishing a league table of local authorities showing which authorities are meeting their new obligations under the Act and which are not. If local authorities failed to perform or meet their responsibilities there would be a compelling case for funds to be held centrally by the Countryside Agency who would then be responsible for allocation and monitoring.**

32. There are other resource issues, particularly related to open-access land. Local highway authorities have new powers under the Act, for example, to appoint wardens for access land, and to erect notices indicating boundaries of access land and excepted land. **It is not clear that any additional funds have been made available to local highway authorities to exercise their new powers under the Act in relation to newly-created open-access land. We urge the Department to clarify how it expects the additional costs of using these new powers to be met.**

33. The Country Land and Business Association has queried the Department’s emphasis on voluntary management of access by land managers. For example, land managers will need to put up signs showing temporary closures and restrictions. The Association has proposed that a grant scheme should be established for land managers and that the Countryside Agency should provide official signs free of charge. The Countryside Agency told us that there were a “a range of resources” available and that it was carrying out an

²⁰ Qq 66, 68

²¹ Appendix 5, para 9

²² Q 17

audit of these resources. It then proposes to “advise Defra about where [the Agency sees] the black holes”.²³

34. The Ramblers’ Association told us that all parties on the National Countryside Access Forum have advocated the creation of a national access database which would maintain up-to-date information about the land. The Countryside Agency describes the project on its Internet site:

“The Countryside Agency is currently funding and co-ordinating a feasibility study to identify key issues and prepare for the bigger system construction phase, which is planned to take place over the next two years. DEFRA is seeking Treasury funds to support this next phase and we will know of the outcome in April 2002.”²⁴

The Ramblers’ Association told us that their understanding was there is no Government funding available for this resource.²⁵

35. We are concerned that the Countryside Agency and the Department do not yet appear to have reached agreement on how the facilitation of the new rights of access should be funded. Public rights of way are indicated by easily-recognisable signs. We recommend that the Countryside Agency produce a range of similar signs in a uniform style which would indicate the boundaries of newly-created open-access land. These should be provided free of charge directly to land managers. We also recommend that the Government confirm that it still intends to set up the National Countryside Access Database; how this will be funded; and when it will be completed.

Report on implementation

36. The legislation is complex and grants new powers and duties to the Department, the Countryside Agency, the Forestry Commission, the National Parks and local highway authorities. The implementation of the Act is therefore a large piece of work involving the co-ordination of a number of different public bodies. In order to aid public scrutiny we **recommend that the Department publish an annual report which sets out progress to date on the implementation of the Act and a timetable for work still to be carried out.**

Conclusion

37. We believe that, properly funded, the Act can be implemented in a way that balances the needs of different interest groups and creates wider benefits for rural economies. We are encouraged by some of the work Defra and the Countryside Agency have carried out to date and particularly their attempts to learn from the earlier experiences. We also welcome the commitment shown by the various interest groups to work together at a national and local level.

38. Nevertheless, the timetable for implementation remains tight. The credibility of the legislation is dependent to a large extent on issues such as access restrictions and funding which remain unresolved. We urge Defra to act swiftly to finalise the details of the new open-access arrangements and provide sufficient funding for implementation. The system for such funding should be transparent and the recipients of it should be accountable for how it is spent. We consider that these measures would reassure many of the interest groups and ensure that the new rights introduced by the Act are implemented in a way which recognises the complex demands that the legislation creates and ensures that the opportunities it offers are fully realised.

²³ Q 58

²⁴ www.countryside.gov.uk/access/manageaccess/ncad/default.htm

²⁵ Q 21

List of Conclusions and Recommendations

1. **We strongly support the objectives of the Countryside and Rights of Way Act (paragraph 17).**
2. **We note the Government's acknowledgement that it underestimated the size of the mapping project. We welcome its commitment to improve practice in mapping the other regions, and the new procedures adopted by the Countryside Agency. We trust that these will prove an adequate response to the earlier problems, and that the original target for completion of the exercise will be met (paragraph 22).**
3. **We urge the Department to finalise its proposals relating to restrictions as soon as possible. We also recommend that the Countryside Agency monitor carefully the success of these arrangements in the first two regions and make adjustments based on this experience before the new rights are introduced in the rest of the country (paragraph 23).**
4. **We recommend that the Department amend the statutory guidance on local access forums to include procedures covering the interviewing and selection of forum members (paragraph 24).**
5. **We recommend that the Department confirm when they intend to lay regulations on landowner liabilities. In general terms, we do not believe that land managers should face any new liabilities as a result of the Act (paragraph 25).**
6. **We urge the Government to monitor the effect of the new provisions relating to vehicular access across common land and ensure that the appropriate balance has been struck between those who own common land and those who need a right of access across it to reach their properties (paragraph 26).**
7. **We are concerned that Defra is not able to identify funding for individual councils for rights of way duties. At the very least Defra should issue new guidance about best practice and the need to invest in the rights of way network. We recommend that Defra monitor the performance of local highway authorities against their rights of way improvement plans and, if necessary, use the powers under Section 71 of the Act to make regulations requiring authorities to publish reports on the performance of their functions relating to rights of way (paragraph 28).**
8. **We recommend that the Government publish details of the increased allocation made to each local authority to meet its duties under the Act. If it is genuinely impossible to break down the local government settlement to provide this information the Department should consider an alternative form of funding which would be sufficiently transparent to hold individual local authorities to account (paragraph 31).**
9. **The Department should also consider publishing a league table of local authorities showing which authorities are meeting their new obligations under the Act and which are not. If local authorities failed to perform or meet their responsibilities there would be a compelling case for funds to be held centrally by the Countryside Agency who would then be responsible for allocation and monitoring (paragraph 31).**
10. **It is not clear that any additional funds have been made available to local highway authorities to exercise their new powers under the Act in relation to**

- newly-created open-access land. We urge the Department to clarify how it expects the additional costs of using these new powers to be met (paragraph 32).**
- 11. We are concerned that the Countryside Agency and the Department do not yet appear to have reached agreement on how the facilitation of the new rights of access should be funded. Public rights of way are indicated by easily-recognisable signs. We recommend that the Countryside Agency produce a range of similar signs in a uniform style which would indicate the boundaries of newly-created open-access land. These should be provided free of charge directly to land managers. We also recommend that the Government confirm that it still intends to set up the National Countryside Access Database; how this will be funded; and when it will be completed (paragraph 35).**
 - 12. We recommend that the Department publish an annual report which sets out progress to date on the implementation of the Act and a timetable for work still to be carried out (paragraph 36).**

PROCEEDINGS OF THE COMMITTEE RELATING TO THE COMMITTEE

WEDNESDAY 12 MARCH 2003

Members present:

Mr David Curry, in the Chair

Mr David Borrow	Mr Austin Mitchell
Mr Colin Breed	Diana Organ
Mr Michael Jack	Mrs Gillian Shephard
Mr Mark Lazarowicz	Paddy Tipping
Mr David Lepper	David Taylor

The Committee deliberated.

* * *

Draft Report [*Countryside and Rights of Way Act 2000*], proposed by Mr Tipping, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 38 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several Papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before taken before the Committee be reported to the House.—(*The Chairman*).

The Committee further deliberated.

* * *

[Adjourned till Wednesday 19 March at half past Two o'clock.]

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MINUTES OF EVIDENCE

TAKEN BEFORE COUNTRYSIDE AND RIGHTS OF WAY ACT SUB-COMMITTEE OF THE ENVIRONMENT, FOOD AND RURAL AFFAIRS COMMITTEE

MONDAY 3 FEBRUARY 2003

Members present:

Paddy Tipping, in the Chair

Mr David Borrow
Mr David Drew

Patrick Hall
Mr Bill Wiggin

Memorandum submitted by the Ramblers' Association (R1)

BACKGROUND

The legislation

Part I of the Countryside and Rights of Way Act 2000 (CROW) introduces a new statutory right of access for open-air recreation to mountain, moor, heath, down and registered common land, once maps of these areas have been drawn up by the Countryside Agency (CA) and Countryside Council for Wales (CCW). The right could also be extended to coastal land in the future.

Certain land is specifically excluded, including buildings, gardens, cultivated land, land consisting of improved or semi-improved grassland, golf courses, racecourses and railways.

Certain activities and behaviour will not be permitted such as horse-riding, and using vehicles, including bicycles and boats. People on access land must not light fires, damage plants, animals or property, feed livestock or bathe in water. Those who break these rules will lose their right of access for 72 hours and will be treated as trespassers.

Landowners may exclude or restrict access for any reason for up to 28 days a year without seeking permission, although closures at weekends are to be limited. They will also be able to seek further exclusions or restrictions for land management reasons. The CA and CCW will be able to authorise closures on grounds of nature and heritage conservation, fire prevention and to avoid danger to the public. A new country code will be produced which will inform landowners of their responsibilities and will also ensure that the public are properly informed about their new rights and how to enjoy them responsibly.

The mapping process

Under CROW, the land which will become available to walkers must be clearly identified before the new rights can be exercised. In England, the CA must produce maps showing all open country and registered common land. They have appointed a contractor—Binnie, Black and Veatch (BBV)—to do this.

The CA must include all land which they consider to be wholly or predominantly mountain, moor, heath or down on the maps. They may move the boundary to make it more obvious to landowners and users on the ground and may exclude areas under five hectares if they consider that they serve no useful purpose.

They must also include all registered common land on the map, that is, land registered under the Commons Registration Act 1965.

Until the maps have been produced and the Secretary of State has issued a commencement order, there will be no new access.

There are five stages to the process:

- *Draft maps.* Once these are produced there will be a three-month period during which anyone can put forward their views. This is the most important stage for walkers and other users to have their say.
- *Provisional maps.* Once these are produced there will be a right of appeal for landowners only if they consider that an area of land shown is not mountain, moor heath, down or common land and should not be shown.
- *Conclusive maps.* This is the map which will define where the new right of access exists.
- *Commencement.* The Secretary of State will decide when the new right of access will begin.
- *Review.* The maps will be reviewed within 10 years and no less than every 10 years after that.

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[Continued

Mapping in England

Mapping is proceeding on a region-by-region basis. The timetable has been revised several times, but the current one is as follows:

<i>Region</i>	<i>Draft map</i>	<i>Provisional map</i>
1. South East	Published Nov 2001	Published Oct 2002
2. Lower North West	Published Nov 2001	Published Nov 2002
3. South	Published Sept 2002	
4. Upper North West	Published 10 Dec 2002	
5. North East	Due March 2003	
6. South West	Due Spring 2003	
7. West	Due Summer 2003	
8. East	Due Autumn 2003	

Remaining provisional maps are expected to be published six to eight months after the end of the consultation on draft maps, depending on the number of submissions received. Conclusive maps are expected to be published six to 12 months after the provisional maps depending on appeals. The final target for the completion of all mapping and the introduction of access rights is 2005 (this is the government's Public Service Agreement target).

PROGRESS SO FAR

The first two regions

Draft maps for the first two regions were published in November 2001 and, at that point, a three-month public consultation began, ending in February 2002. The second stage of the process, the provisional maps, were to have been published in June 2002.

However, on 17 April 2002 the CA announced that the publication dates for these first two maps were to be delayed from June until July 2002 (South East) and from June until September 2002 (Lower North West). In the same press release, the Agency announced that almost all other publication dates for draft and provisional maps were also to be put back by approximately two months.

The provisional map for the South East was finally published on 29 July 2002, and the three-month period during which those with a legal interest in the land can appeal against its inclusion began. (The Planning Inspectorate will hear appeals.)

However, on 22 August 2002, in another press release, the CA announced that, due to errors having been found on the first provisional map it would have to be withdrawn. These errors were principally the cause of decisions having been taken on submissions made during the draft map consultation but then not reflected on the provisional map.

In this announcement, the CA again announced delays to the mapping programme. The provisional map for the Lower North West would not be published on 30 September 2002. In addition, the CA chose to move from a timetable that gave the exact dates on which draft and provisional maps would be published to one that merely gives the season during which the draft map will be published, with a promise that the provisional maps will follow six to eight months afterwards.

The reissued provisional map for the South East was published on 7 October 2002, and the three-month period during which appeals can be submitted began again. The provisional map for the Lower North West was published on 18 November 2002.

Mapping from existing datasets

BBV is producing draft maps using existing datasets (for example, habitat surveys and MAFF information such as the moorland line). This information is supplemented in some areas by aerial photography and site visits. In many areas the data available appears to have been out of date and inadequate for this purpose, leading to delays in production of maps and inaccuracies in published draft maps. The inadequate quality of the available data was nowhere more obvious than in the Macclesfield area. The resulting poor quality of the mapping in this part of Cheshire (and in other parts of Region 2) was an undoubted factor in the unexpectedly large number of comments received during the draft map consultation for the region, and therefore for the delay in the mapping programme. The inaccuracy of the data used meant that the draft map showed as access land areas that are specifically precluded under the legislation—fields with crops, gardens etc. which gave opponents of the legislation a stick with which to beat the CA as well as leading to a huge number of comments in response to the consultation.

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[Continued

In the announcement on 17 April 2002 the CA admitted that they did not have good enough data for parts of Region 3, and in particular for Wiltshire, to be able to issue the draft map for Region 3 on time. More aerial photography needed to be bought in, and more fieldwork had to be done, to ensure that the maps reflected what the CA should have been mapping. (Despite the delays, anecdotal evidence from Ramblers' Association members on the ground in Wiltshire suggests that they may not have been altogether successful.)

Emergency regulations

One of the consequences of the withdrawal of the provisional map for Region 1 on 22 August last year was that DEFRA were forced to do an emergency consultation on regulations to allow for the correcting of errors in provisional and conclusive maps should they occur in future. This meant diverting effort in the department from other important sets of regulations required under Part I of CROW, and has put the regulatory timetable back further.

The methodology

Another result of the announcement of 17 April 2002 was a retrospective change in the mapping methodology in reference to the discretion allowed to the CA to omit land that qualifies as open country but is less than five hectares and therefore serves no useful purpose. Originally, land less than five hectares could only be omitted if it met all of the following criteria:

- There was other access land nearby.
- The land did not provide a route to other access land.
- There was no nearby parcel of land which had the potential to be linked with the parcel to form a larger unit.
- The land did not contain any feature of special interest to the public.
- The land was not close to any settlement, visitor attraction, right of way or public road.

Under the amended methodology the Agency were only required to bear these criteria in mind when making a decision. In addition, the methodology was applied retrospectively to Regions 1 and 2, thereby removing land without its removal being subject to public consultation as to it serving a useful purpose.

Binnie Black and Veatch/Atkins

There has been a renegotiation of the contract between the Agency and BBV (and a transfer of risk from the Agency to BBV). Problems appear to have occurred because BBV had not been able to adequately increase the size of their operation as the scale of the mapping project became apparent. This was one of the factors contributing to the mapping delays. The CA has retained the services of consultants Atkins to do a project audit of BBV's work on mapping thus far.

Regional commencement of the new rights of access

In a written ministerial statement on 28 November 2002, Alun Michael announced that the new access rights under Part I of CROW would be introduced in Regions 1 and 3 (the South East and Central Southern regions) in the summer of 2004. However, no announcement of their implementation in Region 2 (the Lower North West) was forthcoming. In a written answer to a question from Paddy Tipping MP on 9 December the minister clarified the original statement and said that he intends to open the new statutory right of access in the lower north-west and upper north-west together during the autumn of 2004, to be followed by the north-east and the south-west in the first six months of 2005, with all access land opened by the end of 2005.

Restrictions system

Before any new rights of access can be implemented the CA must establish and test a restrictions system. They expect this restrictions system to be in place by December 2003, giving just a few months before the new rights commence in the first two regions. The Agency has admitted that the timescales for development and testing of the restrictions system before delivery are tight.

Conclusion

Given the enormous public benefit which will be the result of the successful implementation of this important legislation and the considerable problems that appear to have been encountered, the Ramblers' Association believes that there is much to be gained from a parliamentary audit of the CA's work on this project so far.

29 January 2003

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[Continued

Examination of Witnesses

MR NICK BARRETT, Chief Executive, and MS NICKY WARDEN, Head of the Freedom to Roam Campaign, The Ramblers' Association, examined.

Chairman

1. May I welcome everybody to this short inquiry into the Countryside and Rights of Way Act 2000 Sub-Committee. Many of us were involved in drafting the Act. The Committee wants to take stock on progress of implementation and past legislation and look at where implementation is not so good. For the sake of the record, we welcome Nick Barrett, the Chief Executive of the Ramblers' Association, and Nicky Warden, Head of the Freedom to Roam Campaign. Again for the record, I note that I am the Honorary Vice President of the Ramblers' Association, with no pecuniary interest whatsoever but with some knowledge. Let us start, Nick, by asking you directly why you think the delays have occurred and whether the PSA target of implementation by 2005 is going to be achieved.

(Mr Barrett) I would start by saying that the legislation was very fair, inasmuch as it bent over backwards to take account of everybody's interests and concerns, and therefore it is quite a complex piece of legislation. There have, inevitably, been teething problems thus far. On the credit side, I put it on record that we are very appreciative of the fact that the Countryside Agency have made themselves available and have involved the public and have been willing to learn from the experiences thus far. The cause of the delays predominantly is due to the fact that there has been an over-reliance on inaccurate, out-of-date and unfit-for-purpose data. We are still concerned about delays, I should add, inasmuch as we are expecting the draft map for Region 5 to come out, and it was supposed to come out by the end of January, it still is not out. It is therefore unlikely to come out until March. There is some concern that a lot of the slack time built into the project has now been used up and so we are very concerned about delays. The overriding problem has been data-related but there may have been some unnecessary confusion and dissipation of energy, one might describe it, by the Agency not producing things that might have helped like, for example, the non-statutory overlays, and providing information to people as to why submissions between draft and provisional stages had not been supplied. That used up energy, and therefore used up time. If I might continue for a moment, Chairman, when thinking about the delays, and particularly with an eye to the future, it is really important to get the point across that the mapping exercise is obviously crucial and technically difficult. If we are thinking about the implementation of the Act, it does not end when the maps are drawn up. With an eye to the future, we suspect that the delays in the future might well be caused, unless issues are addressed, by inadequate funding for the major elements of the project that lie outwith the mapping process. I can provide some information on the nature of our concerns, if that would help.

2. There has been slippage already on the target or end date as 2005. Are you confident that that the 2005 date will be achieved?

(Mr Barrett) We certainly hope so but how successful implementation of this legislation is will depend on a number of things. We need the regulations for closures and restrictions produced asap, and those need to be tested and adequately funded because that is a critical element of the implementation. We need to be sure that resources are made available for public information and for non-statutory measures regarding the management of access and, critically, we need to make sure that the money that is made available to implement the Countryside and Rights of Way Act is actually used for implementing that Act. Those are all issues of concern which, if they are not addressed, could affect meeting that PSA target.

3. So there are issues of implementation which we will come to later on, but there are some resourcing issues now and some data issues in the debate?

(Mr Barrett) Yes.

Mr Borrow

4. The Ramblers' Association have been extremely active within this debate in pressing for implementation as early as possible of the Act, believing that it should be introduced on a regional basis, but, as soon as the mapping exercise is finished in a region, then that region should go ahead. Obviously there are others in the debate arguing that we should wait until the mapping exercise is finished in every region and that all the signposting, wardens and everything, all the infrastructure, is in place before we actually start down the track. I wonder if you would like to say a little bit more about why you think you are right in arguing for it to be implemented on a regional basis rather than waiting until everything is finished, and also whether it would be wise to go ahead in any region before all the infrastructure—the signposting and wardens, *et cetera*—is in place?

(Mr Barrett) There are a number of reasons why we have been putting forward arguments for regional commencement. Firstly, we do so in order that the public will realise the benefits of the legislation sooner if that takes place. I am not just talking about walkers here but also about the benefits for the rural economy. I sit on the Rural Affairs Forum for England and on the Tourism Sub-Group, where deliberations are taking place. There has been a lot of talk about rural regeneration and how to let it be known to the public that the countryside welcomes visitors. This legislation, and introducing it regionally, is a tangible contribution to making that wider welcome an established fact and the public will realise the benefits the sooner. Another reason is that you can identify and resolve the problems sooner. There are likely to be some teething problems with this. If those can be dealt with on a regional basis and the solutions found and then applied elsewhere, that is better than saving it all up for some national, big bang, when suddenly you have the problems on a national scale rather

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MR NICK BARRETT AND MS NICKY WARDEN

[Continued

[Mr Borrow Cont]

than on a regional basis. I think there is an element of logic to it. If any complex project—an IT project or something like that—lasts a number of years, it seems logical to bring it on-stream in stages when it is ready. Certainly, from the perspective of the public who might have been involved, say, in the consultations and the mapping in Yorkshire, it does not make sense, surely, to wait some years until Cornwall is sorted out before the benefits of the legislation can actually be realised.

5. What about on the infrastructure side of it where some concern has been expressed that they may be pushing ahead before all the infrastructure is in place?

(*Mr Barrett*) I think the Ramblers' Association, and everybody associated with this legislation, would argue very strongly that, in order for it to make sense on the ground, there needs to be an investment in the infrastructure. I have mentioned the sorts of things that need to happen in terms of public information and money made available for non-statutory measures and so on. Whether that happens regionally or nationally, it must happen for this piece of legislation to work effectively on the ground.

Patrick Hall

6. I had always lived under the impression that in Britain the Ordnance Survey had produced a very high quality of mapping of every square inch of Britain. Maybe I am misunderstanding something. Why is it, do you think, that we seem to have some real problems arising from the quality of original data requiring further research to be carried out in terms of survey work? Is that to do with the lack of sufficient data in the first place through Ordnance Survey or whatever, or is it a concern about the quality of the contractors that have been employed by the Countryside Agency? What are your views on those matters?

(*Mr Barrett*) I do not think we have a view on the quality of the contractors; we are not close enough to the detail of that to have a comment. As I mentioned earlier, there has been an over-reliance on data that is inaccurate and out-of-date, that has been put together from numerous sources, whether that be aerial photography or habitat surveys or whatever. The missing element, or the bit that people only realised a little bit later in the process, was the need to invest more time and resources in site visits to check what was on the ground before producing the draft maps. If that is being corrected, then I suspect that quite a few of the problems that we have seen, say in Macclesfield, will have been addressed.

7. Obviously I have missed something about my schooldays' impression that Ordnance Survey produced some of the best mapping in the world. You did not deal with that point. Is the quality or age of that not sufficient for the purpose that we are talking about here? Is that not the basis of how you look at these things in terms of land use, *et cetera*?

(*Mr Barrett*) The Ordnance Survey data is not going to provide you with all the information that you need to ascertain what is open country or not.

8. But it will tell you where roads, streams, woodlands and all sorts of things are?

(*Ms Warden*) The problem is that the Ordnance Survey data will not tell you whether it is mountain or heath, downs or registered common land, which is what the Agency is currently doing. They can use that for their base, and then we have to add to that data from other sources, such as habitat surveys, MAFF information, *et cetera*, which they have been putting together to build up a picture of where those land types are. The problem is that they have found that they have needed to supplement that with aerial photography and site visits to complement the information they already have.

9. That is interesting, so that no one existing source is sufficient?

(*Ms Warden*) Exactly.

Chairman

10. Just to clarify a point, I think you were saying that there need to be more site visits. I have a perception, and it is not much more than that, that in Wales the Countryside Council for Wales does insist on more site visits rather than the experience in England. Is that right?

(*Mr Barrett*) I believe that is correct, and that might also go some way to explain why things seem to be going more smoothly there as well.

Mr Drew

11. Can we look at the way in which local access forums have been organised? Before I came out, I had a lovely fax through from the NFU inviting me to take part in one of these forums, the one in Gloucestershire. Would it be worth my while?

(*Mr Barrett*) There are different forums. On the national level, we have the National Countryside Access Forum. I think all the different parties there have engaged constructively in the conversations at that forum, recognising that this Act is first and last a balance between the wishes of those who want to enjoy the countryside, safeguarding the interests of landowners, wildlife, *et cetera*. On a national level, things are working well. On a local level, and this is much more anecdotal, there seems to be a tendency for the Local Access Forums to gather together in the first instance; there seems to be a certain amount of antipathy, but then quite speedily there is a significant reduction in the emotional temperature as the parties start talking to each other and learn more about the detail of the legislation and the other perspectives that each enjoys within the legislation. It is absolutely essential that the local authorities set up and take notice of and adequately resource the local access forums. I think there are 50 so far out of about 170 that need to be created. Yes, they have the potential to have an enormously positive input in the implementation of the Act, not just Part I but also Part II, and so it is worth your while.

12. Obviously this piece of legislation, by its very nature, is adversarial in the way in which it was both promoted and also the way in which it passed into law, and yet the nature of both the National Forum

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MR NICK BARRETT AND MS NICKY WARDEN

[Continued

[Mr Drew Cont]

and obviously local access forums is that it has to be consensual. Who are you working with and who will not work with you, both at national and at local level?

(Mr Barrett) At national level, as I mentioned earlier, the dialogue is constructive, but by definition that is the bigger picture and perhaps a bit far removed from the reality on the ground. I will start with our approach to this. We are committed to doing whatever is necessary to see this legislation successfully implemented. It is in nobody's interests if the thing goes off half-cock. We are taking practical steps: for example, we are training our volunteers, who are finding themselves on local access forums, to ensure that they understand the spirit of it and what it is there to do. Who do we not get along with—

13. I will let you come back to that. What are you telling your people on the local access forums to do if they meet obstruction?

(Mr Barrett) If they meet obstruction?

14. I refer to the people who are blatantly going to ignore any access rights. Have you met that yet or is it early days?

(Mr Barrett) We have not met that yet in detail.

(Ms Warden) There is not a right of access yet, and so we have not met it.

15. We know of one fairly notorious case where, even before this legislation came in, a certain gentleman, who is no longer able to vote in elections, made it quite clear that people were not going to walk over his land. What would you advise your people to do if they meet that type of obstruction?

(Mr Barrett) The first recourse in a case like that would be, if the local access forum can speak as one, to deal with somebody who is causing problems, and that is not an impossible aspiration. We surprised everybody during the foot-and-mouth epidemic by releasing a joint press statement with the NFU calling for footpaths to be opened up in areas where there was clearly no risk of the spread of foot and mouth. We know that nationally it is quite possible to sit with other organisations and argue for something that is for the good of everybody. I do not see why that cannot happen at a local level, and certainly, as people begin to talk together, if there are some who are clearly outside the local access forums who are creating problems, the first default position must be that the local access forum, representing a variety of interests, tries to impress upon them the need to behave in a way that accords with the law and common sense.

16. Can I now take you back to a point you were going to answer. Who are you not getting along with?

(Mr Barrett) At the moment, nobody. We were disappointed. We made a representation to the CLA and asked them if they would be interested, bearing in mind our NFU experience, in joint press releases when the draft maps were produced. The benefit of that, from what we could determine, was that when the draft maps come out, there is always a certain amount of confusion for the people who are affected by the draft map, and perhaps they do not understand it is a logged process, which starts

with draft maps, goes to provisional and then conclusive maps, and then there are appeals and so on. Basically, it is easy for people to get the wrong end of the stick. We saw considerable mileage in a joint Ramblers' Association/CLA press release which said: "This is the process. The draft map is simply the beginning of it and in fact, as you get further down that process, it is loaded in favour of the landowner, because ultimately they have the final right of appeal". We thought that kind of press release, issued by two organisations which are not natural bedfellows, would help clarify what was going on. It was a matter of disappointment to us that the CLA were not interested apparently in doing that, but that is a very different kettle of fish to an out-and-out adversarial situation. That has not happened.

17. A final point, going back to the local access forums, how much people time do you think that you and representative of the rambling fraternity are prepared to invest in these meetings? One presumes that these will go on for ever. They will do the initial bits, yes, but within reason, if footpaths are anything to go by, there is a degree of controversy that just breaks open quite regularly in my part of the world. One presumes that this would be the conduit through which some of those disagreement will initially be aired. I was a bit unclear about the degree to which you would just be looking at the new rights of access as against some of the existing ones that are already controversial. Can you clarify in my mind what can go to these access forums?

(Mr Barrett) The access forums will cover not just the freedom-to-roam element but also the rights-of-way element of the Act, and therefore take an overview on access to the countryside *per se*. But the earlier part of your question seemed to ask how this thing is going to work in practice. It is important to point out that the success or failure of a local access forum is not just going to depend on the ability of those people sitting round the table to come to some sort of agreement. Critical to the success of a local access forum is that it is respected by the local authority, which takes account of what it is that the local access forum is advising or saying, and that the local access forum and the local authority, in response to what the local access forum is proposing, puts in adequate resources to manage and implement access. However pally the forum members are, it is not going to work unless adequate resources are put in. Almost every question that you could ask comes back to the question of adequate resourcing. Could I elaborate a little more on that? Unless the countryside and rights of way money is used to implement the Countryside and Rights of Way Act, we are going to have a problem. Certainly the track record of local authorities, in terms of using money for public rights of way on public rights of way, is pretty abysmal. That is the problem, because therein is all the money for the infrastructure to which you have alluded. Rather than just bring the problem going forward, we have come up with some suggestions for a solution as well, inasmuch as we would like to see money for the Countryside and Rights of Way Act controlled by the Countryside Agency and

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MR NICK BARRETT AND MS NICKY WARDEN

[Continued

[Mr Drew Cont]

distributed to local authorities which are willing to invest in the infrastructure that is so essential for the Act to work on the ground. That is something you might like to consider. Scaling down from that, if that is not possible, in Wales, for example, it is public knowledge how much each authority has received to implement the Countryside and Rights of Way Act; that is not known in England. If that figure is known, then at least there is a degree of transparency for all the various parties to get their teeth into when it comes to lobbying for a local authority to do what it should be doing.

18. I share your concern. That is a rider about the lack of resources that local authorities, if their present interest in this area is anything to go by, will put into it. I welcome, as a final rejoinder, the view that you express. The difficulty is that these are incredibly emotive issues. I can quote that probably every month since I have been doing this job for the last six years, I have been involved in at least one, quite serious boundary dispute. One resulted in someone being killed. These are not easy issues. I know those may be the exceptions, but the danger is there is going to be some legal come-back certainly. I suppose one would anticipate that, unless this is done very fairly at the beginning to make it clear that these access forums will have some teeth, there will be all sorts of legal shenanigans going on, which already happens. What is your view on that, or do you think that things will become more hunky-dory in the future?

(*Mr Barrett*) I think it would be foolish to pretend that these are not emotive issues because history tells us otherwise. The sorts of things that you have alluded to today are a powerful argument to ensure that the forums are set up and are adequately resourced, otherwise the scope for conflict and disharmony is very considerable. I see everything that you have just said as an argument for saying that there is now a chance, with this Act, adequately resourced, to take some of the sting out of things which have reverberated around the countryside for centuries, and let us grab that opportunity and make it work.

Chairman

19. So it is going to be hunky-dory?

(*Mr Barrett*) Eventually, of course.

Mr Wiggin

20. There is a fair number of restrictions for keeping people off the land, such as: by excluding dogs; by keeping people to specified routes; by requiring people to enter at specified points only; by imposing other specific conditions on the use of the land; or by excluding access completely. How reasonable are Defra's proposals for these restrictions?

(*Mr Barrett*) We have not actually seen the proposals because they have yet to be produced. We are waiting for them very keenly. Having said that, obviously we have thought about closures and restrictions and we favour the least restrictive option. For example, if an area of mapped land is a consideration around a bird nesting, or whatever,

you do not necessary ban everybody from that area, but maybe you just say "no dogs during the period of the restriction". The least restrictive option is the one that we favour and we would be pushing for. During the foot-and-mouth epidemic, we saw that people, walkers, were very keen to do the right thing and they behaved overwhelmingly with impeccable sensitivity and restraint when the footpaths were blocked of, and so on. I think the starting point is relatively positive in the sense that people do want to do the right thing and will react constructively to restrictions and closures when they are imposed. I think the spirit of it is really important and the credibility, despite what Defra proposes, of restrictions and closures is going to depend enormously on those who have the power to restrict and close land. If that is abused, in the sense that they put on a 28-day restriction and try and keep that on for two to three months, then people are going to lose faith in that as a credible system and, at worst, will, as it were, take the law into their own hands. Whatever you have in terms of the regulations there, the spirit with which they are applied will be critical to the success there. Again, resources, resources: when I talk about resources, we are not talking about millions and millions of pounds. In the great scheme of Government expenditure, to make this Act implementable is not a vast cost. Something that will enormously help the regulations and the restrictions is a national access database. It is interesting to hear on the National Countryside Access Forum that all parties are advocating the creation of a national access database through which it is easy to determine what is in and what is out at any given time.

Chairman

21. Where has that got to now?

(*Mr Barrett*) It has not got anywhere. Now is a good time to put the case. There is apparently no funding for it and yet this is much more than a mapping exercise. What happens when the maps are drawn up is just the beginning really. The provision of information in an intelligible form via something like a national access database would be enormously useful, and everybody advocates that. If the money for that can be found, either by Defra or by Defra applying to the Lottery or whatever, that would make an enormous difference.

Mr Wiggin

22. Before I take you up on some of the things you have said, given the complex issues involved in developing the new arrangement for restricting access, how sensible was it to introduce the new rights early in the first two regions?

(*Mr Barrett*) I refer you back to the answer I gave earlier on whether regional commencement is a good thing. People would get benefits and critically it allows some testing, in fact, to take place on a regional basis and refinements thereof before the problem is nationwide. I think the answer holds good.

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MR NICK BARRETT AND MS NICKY WARDEN

[Continued

[Mr Wiggin Cont]

23. Do you not think there should have been further restrictions, such as for reasons of animal welfare?

(*Mr Barrett*) We are not quite sure what the restrictions will finally emerge as, but the quick answer to that is no.

24. What about biosecurity or health and safety risks?

(*Ms Warden*) There is quite a lot of provision in the Act already for restricting and enclosing on various grounds.

25. What we heard a few minutes ago was that if the restrictions were too draconian, in your opinion people would start to lose faith, lose the spirit of the agreement and actually break them?

(*Mr Barrett*) That is not what I said. I said that if they are abused, in the sense that they are applied for a reason and then the landowner does not lift the restrictions when the need no longer applies—in other words, people are not playing fair with the spirit of it—that would be an abuse. That is what I meant by people then becoming, as it were, dissatisfied with that as a system of controlling access. The danger therefore might be to say, “This does not work”.

(*Ms Warden*) So long as the system is transparent so that everybody can understand how it works and why a restriction or closure is needed, then they will respect that and the system will work.

26. Do you think that there is a danger that this will work better in, say, urban areas, that it needs a degree of rural proofing for the rural areas? Certainly, consultation is moving in that direction, is it not?

(*Mr Barrett*) Precisely, and consultation inspired by Defra, overseen by the Countryside Agency, should be guaranteed rural proofed, I would hope.

27. That would rather go against the idea that you could walk past, say, a site where there was a ground-nesting bird, would it not? You just should not do that. You have just suggested that you just restrict dogs.

(*Mr Barrett*) No, that was an example. We said we favoured the least restrictive option.

Chairman

28. Let us begin to wind this up. As I understand your position, you are pleased that the Act has been passed. There was a big campaign and this is a milestone for you. You are anxious about delays that have occurred but you still think the timetable can be met, but the key issues that come across are those of resources, implementation and infrastructure. Although one can define the land, there is still a set of issues around information, access to that land and management of that land, and that is all going to cost. Your suggestion—and just take us through this again—is that there should be a bag of money, a big bag of money perhaps, held by the Countryside Agency that local authorities would bid for to enable this all to happen?

(*Mr Barrett*) Yes. To elaborate fractionally on that, we know that in the Standards and Spending Assessment, £20 million went towards the implementation of CRoW in this year. We did a survey of local authorities, and we made the results available to the Minister. It was quite clear that money was not getting through. Therefore, the pot of money held by the Countryside Agency, and bid in for by those who are serious about implementing this, seems to be a practical way of going round that particular problem.

29. Our discussion this afternoon was focussed on Part I, the access provisions, but Part II, the rights of way provisions, are quite important, too. Could you just give us an analysis or a quick snapshot of how you think local authorities are doing on rights of way issues? You have told us that CRoW money has gone through the Standards and Spending Assessment to local authorities. You are not clear whether it is being spent. What about the broader picture? How are local authorities doing? How much money are they spending on maintaining and developing the rights of way network?

(*Mr Barrett*) They are not spending enough from our perspective. It is a real concern to us that many local authorities do not have a good track record on rights of way work. Part II of the Act increases the responsibility of local authorities to become concerned with rights of way work, the production of the rights of way improvement plans. We are concerned that currently they are not meeting their statutory obligations with regard to rights of way, and so how and why they are going to meet their non-statutory obligations as per the actual implementation of the Rights of Way Improvements Plans is a matter of some puzzlement to us at the moment. The other element of the Act, which has a very long timescale, is the drawing up of the final version of the definitive map by 2026. There is an awful lot of work to do. We estimate that thousands of rights of way are yet to be discovered and we only have a limited period of time in which to do that. Progress towards getting that project under way has been a little slow as well.

30. Just as a final point, can you tell me how much money local authorities spend on the rights-of-way network and could you give me information on how much each local authority spends on rights of way network?

(*Mr Barrett*) Inasmuch as that information is made available by local authorities, we can certainly provide this Committee with that and any facts related to that. If you would be interested in that, we can do that for you.

31. Will you write to us about that?

(*Mr Barrett*) Yes.

Chairman: You have told us an awful lot. You are going to write to us with some figures at the end. If there is anything that you have not said but you wish you had said, you can append that to the letter. Thank you both for coming.

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[Continued

Examination of Witnesses

RT HON ALUN MICHAEL MP, Minister of State (Rural Affairs), and Ms SUSAN CARTER, Head of the Countryside (Recreation and Landscape) Division, Department for Environment, Food and Rural Affairs, and Ms PAM WARHURST, Deputy Chair, Countryside Agency, and MR ROGER WARD, Head of Access, Countryside Agency, examined.

Chairman

32. Thank you for joining us. I know you are busy at the moment, as always, but we are very pleased that you have been able to give us 40 minutes of your time. It is interesting that you are sandwiched between the Ramblers' Association and the Country Land and Business Association. That is a reflection of the pressures upon you.

(*Alun Michael*) Pam Warhurst is also Chair of the National Access Forum.

33. The reason we have asked you to come today is that the Select Committee has been quite good at exploring legislation and its ideas but we have not been very good at looking at legislation post its passage and asking how we are getting on. How are we getting on?

(*Alun Michael*) I think the legislation is quite challenging. That has come out from some of the discussion you have already had, because that was legislation that sought to be fair and, during its passage through the two Houses, indeed there were amendments made in order to balance concerns on both sides. Given that historically there has been a degree of conflict between land owners and those who want access, it is never going to be absolutely straightforward. I think there are two points to be made. One is that, given it seeks that balance, it is complex legislation and obviously ideally legislation should be very simple so that everyone really knows exactly what it is doing, and balance and fairness are difficult to legislate for and quite difficult to implement. However, I do think there is a much better understanding on both sides of the interests of the other than probably was the case a few years ago, not only from the comments of the Duke of Devonshire but in a variety of other ways. During foot-and-mouth disease, for instance, the impact on the rural economy of the closure of the rights of way brought home to many people just how problematic it was if people could not gain access to the countryside and how devastating it was to the economy. When we set about the programme "Your countryside, you're welcome" and of reopening the countryside and attracting people back to the countryside, the degree of co-operation between the Ramblers' Association, the Country Land and Business Association, the NFU and a whole plethora of organisations that have interests in the countryside was quite encouraging. Obviously, on both sides people will have their primary concerns but the very fact of having an acknowledgement that both sides have concerns that need to be dealt with I think is encouraging. We are on course to meet the public service agreement target, which, as you know, is absolutely crucial for the peace of mind of permanent secretaries and Whitehall generally in completing all the work by the end of 2005 and of opening access earlier wherever it is possible, which I think is the sensible way of dealing with it. Yes, I think we are

on course. I think it would be only sensible to acknowledge that there have been problems in the early maps. In a sense, that is one of the reasons for having a programme and to learn from the earliest ones, to have some leeway within the programme for the earliest ones. The reports I am getting from a variety of sources, including, for instance, talking to walkers and an NFU representative in the Lake District a fortnight ago, are that the problems that occurred in the early stages are not being replicated as, for instance, we move on in the Upper North-West and so on.

34. Do you want to comment on the delays that have occurred and the corrective action that you have been able to take?

(*Ms Warhurst*) As the Minister has said, this is a complex piece of legislation that we at the Agency had to make as effective as possible on the ground. Initially, we chose the two regions because they were challenging. We did not choose the easiest regions in the country to map initially. We knew this was an exercise on a scale that had never been attempted before and therefore it would have been arrogant beyond comprehension for us to have launched into something without having the checks in there to understand when we needed to do things differently in the future. It would be true to say that the vast majority of the work that has gone on in the first two regions was absolutely spot on. It would also be true to say that some real lessons have been learnt about how to do things differently in the future. That has an impact on how we are doing things in Areas 3 and 4 and beyond. It has been identified in some of the consultations that are going on in those areas in the draft maps, and people are a lot happier because of the experience we are able to bring to bear in those regions.

Mr Borrow

35. On the consultation exercise, at the time of the poll tax, I was involved in local government finance and I remember being involved in discussions on the estimate of the number of appeals against the poll tax that were going to be lodged at the time. Obviously, in asking your department and the Countryside Agency to make a judgment on the number of consultations on the back of an exercise was not necessarily very easy. I read an article in the TGWU newsletter estimating that there were 8,000 representations as part of the consultation process. I wondered what the estimate was at the outset of the number of representations that was likely to be made.

(*Alun Michael*) I think the number was over 2,500 comments on the draft map for the South-East and over 6,000 on the draft map for the Lower North-West. The numbers for the Lower North-West are perhaps not surprising, given, as Pam Warhurst said, the first area was one where traditionally there

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[Continued

[Mr Borrow Cont]

have been conflicts. It includes the Kinder Scout area, which is the sort of area where there is a long history on both sides. It does demonstrate a lot of conflict. What has happened is that, in moving on to the second stage, as those lessons have been learnt, there were some areas of interpretation on the steps, which Pam might like to say a little bit about, and that, if you like, has clarified things as far as later stages are concerned. To an extent with things like this, people make the best estimate they can of how many representations there will be but it is pretty difficult to make a realistic estimate.

(*Ms Warhurst*) In those early days, and Roger Ward might be able to give a more detailed answer, we were not in a position to estimate. What we are in a position to do now is based on those two areas of which we have some experience. We have a methodology now whereby we might be able to anticipate what to expect. It is a spectrum; it is a high and a low and somewhere in between those two are the numbers that one could estimate in terms of comments coming back from the general public. In the early days it was little more than an educated guess.

36. What is the situation in terms of the resources required to cope with that?

(*Ms Warhurst*) It would be true to say that we underestimated in the early days and now we have, in the light of the experience in the two areas, redressed that imbalance, as it were. We now understand more fully than we did in the early days the extent of the operation. We always knew it was going to be huge. On the best evidence that we have from the experts and consultations and discussions through the National Access Forum and so on that we undertook, we took a view on the scale of the operation. We now have a view that that is a larger operation than we had thought initially.

(*Alun Michael*) It is also fair to say that since I took over the responsibility when Defra was formed, I have had regular meetings with the Agency and also with other interested parties, including the Ramblers' Association, the NFU and CLA. The Agency has been quite open where there have been problems and open to discussions with us and with the interested parties. I think that is the right way to approach it and that has helped to build up confidence.

37. In terms of consultation on the draft maps, obviously some of the consultations to the representations will be on the basis of wanting things included in the access area, some of the representations will be the other way and some will be about changes to various boundaries. Does the Department have the statistics of those categories in each of the areas where the work is being done?

(*Alun Michael*) The figures we have are these: in Area 1, 2,500 comments were received on 2,315 parcels of land; 262 parcels were added and 381 were removed. There is a rather different statistic on Area 2: there were 6,000 comments relating to 13,519 parcels of land; 553 parcels were added, 5,822 parcels were removed. The reason for that was the identification of a problem in interpreting data sets. Perhaps it might be helpful if Pam and Roger were to comment on this. I always find, in talking about data sets, theory and looking at the map and

asking what has been taken off and what has been put on is not terribly illuminating as to what is really happening there. I am afraid that some photographs which would have illustrated this were winging their way to us in the course of this afternoon after I had asked some questions but they were edited out by the security system on our internet access. We may supplement this later. I think it would be useful to go on from the purely factual and analytic to actually look at what the differences are.

(*Ms Warhurst*) Predominantly the big shift in Area 2 was what has been called the Macclesfield factor. It was about the incorrect information that was taken from a habitat Phase 1 data set. That was about a legend being incorrectly interpreted. It was a very specific problem to that area, which was identified and resolved, and that is why you have such a big change. Those areas have now been taken out. That is very particular to Area 2 and the lesson that we learnt.

(*Mr Ward*) All I want to add is that, as well as learning lessons for that data set, we have also learnt in parallel some lessons about checking more thoroughly any given data set with the other data sets and aerial photography, so that we build up a composite picture for the area.

38. On that point, is that subject to public consultation? Is this taking areas out of the draft map before they reach the provisional map and therefore under the procedures for looking at draft maps surely there has to be some public consultation? I understand that land has been removed without the opportunity for public consultation, is that correct?

(*Ms Warhurst*) I do not believe so. The process is fairly straightforward, the draft maps are produced, there is a consultation period of 3 months, when all parties have a chance to make comments, those comments are then looked at in detail and a decision is taken by the Agency as to the appropriate action in respect of those. A provisional map is then produced, which is then consulted on for a further three months. The people who have the right to interject at that point are those who have a legal interest in the land, after that it moves on to the appeals process, whereby they have the right to appeal against the provisional map. Whether land is included or excluded is not always on the basis of consultation. If people have made a comment we contact them with the decision in respect of that particular piece of land. It is as transparent and open a process as can be.

(*Alun Michael*) The hope is that before you get to the appeal stage the interpretation of data sets and that sort of thing, which otherwise would lead to a large number of data appeals, have been dealt with in a common sense way so you get down to the issues that are to be dealt with during the appeal stage.

Patrick Hall: We have had evidence from the Ramblers' Association and the Landowners' Association that there has been some retrospective change in the discretion available to the Countryside Agency in terms of what is allowed in

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[Continued

[Mr Borrow Cont]

and what is not, and that some of that has been exercised after the event without the opportunity for consultation, is that correct?

Chairman

39. I think this is the five hectares point.

(*Ms Warhurst*) It is the five hectares point and this is an administrative tweak, as it were, not a change in decision.

Patrick Hall

40. It is not just the five hectares as I understand it.

(*Mr Ward*) It is the five hectares issue where we have changed our approach and amended the methodology following the experience in those two areas. Basically the Act gives the Agency the discretion not to show land on the maps which it considers to be so small as to serve no useful purpose. Initially we interpreted that as saying that any parcel of land under five hectares would only be left off the map if it met a series of criteria, all of them not just some of them. Our experience in the north west was that we ended up with small parcels of land on the side of the valley being included on the map that did not have a useful purpose. We made the criteria a little more flexible. We now look at any parcel of land under five hectares to see if we think it serves a useful purpose, however it does not have to pass all of the tests it just has to pass some of the tests, and it gives us more flexibility either way and enables us to tailor the use of that particular small discretionary power to different parts of the country more than the previous one did. It is not a huge change.

41. The criteria only applies to parcels under five hectares?

(*Mr Ward*) It is a no "useful purpose" discretion to which this change applies. The wider mapping criteria we consulted on have been in place since the start.

42. Can you just explain that a bit more, are you saying that land under five hectares serves no useful purpose? Surely it cannot be that?

(*Mr Ward*) We are not saying that. The Act gives the Agency the discretion to decide whether some parcels of land are so small as to serve no useful purpose for access, and in interpreting that the Agency has identified a threshold of five hectares, above that it is on automatically and below that it is discretionary.

43. We are talking about ones that might be smaller than five hectares, why did such parcels of land appear in the first place?

(*Ms Warhurst*) We are asked to map a certain type of land form and some of those land forms are isolated pockets, as it were, or relatively small areas on the edge of a larger area of open access by definition and it is those that we are asked to have a discretionary view of. As Roger said, we did consult extensively on our views with respect to where that threshold will be, that is why we got the five hectares threshold. We explained our methodology extensively in coming to those decisions.

(*Alun Michael*) It would be true to say that there are some small pockets of land that because they are immediately adjoining to existing open access they could be small but significant and others that could be small but isolated.

44. This leads to another point, in terms of how land is identified, both in terms of putting it in the first place and in terms of the general criteria, but also in response to comments or problems flagged up by landowners with regard to a potential designation. In terms of both is a site visit not always carried out by somebody who is working on the survey, working on the designation? Do you not always carry out a site visit to see what is really there on the ground?

(*Ms Warhurst*) What we try to do is take a balanced view about an effective decision and a value-for-money way of providing. What we have tried to do, and we may take a different view in the future, to date is we look to the data sets and, as Roger said, the corroboration of those data sets with aerial photography. Where it is clear to us what the solution should be then we do not necessarily visit the land. If there is any reason whatsoever for confusion or uncertainty from the evidence we have in front of us then there will be a site visit. That has yielded to date what we believe to be a fair and balanced approach to getting the action on the ground, as it were, and the decisions made in the appropriate time frame.

45. A site visit is not necessarily carried out?

(*Ms Warhurst*) It does not necessarily happen at the moment, no. It always happens if we feel there is no other way of clarifying an issue.

46. Does a site visit follow automatically if the landowner flags up a problem so somebody can see on the ground what exactly is being talked about so that it can be resolved informally at that stage rather than challenging it through the appeal process under the provisional map stage?

(*Ms Warhurst*) One would always seek to find that sort of solution before it went to appeal.

47. This Committee has had some evidence from the Landowners' Association that that may not always happen and therefore we get into the bureaucracy of appeals when a site visit might resolve the issue to everyone's advantage before that. Would you be able to see if that more common sense way of doing things really does apply?

(*Mr Ward*) First of all let me step back to preparing the draft maps, since the Macclesfield situation we have introduced a higher degree of field work to get the draft maps right or fit-for-purpose as draft maps in the first place, so we have a series of what we call drive-by checks to see that we are mapping the right sort of thing and leaving off the sort of land, as in the Macclesfield case, we should never have mapped in the first place. When we get to the consultation stage and people put their comments in we have to determine those comments. As you have seen from the figures the minister quoted a little while ago there are typically a few thousand comments which typically cover more than that many thousand parcels of land, again it is not cost-effective to visit every one. A significant proportion of the comments are based on a

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misunderstanding of how the Act works, and given its complexity that is not surprising. We need to take a view of what are a reasonable combination of factors from which to determine representations that are made. We look again at all of the data sets and the aerial photography in the light of the comment that has been put in. If we think the answer is clear-cut that is the determination, if we do not think the answer is clear-cut we should do a site visit.

48. Earlier we had a question about the quality of the data and it was necessary to go out and do fresh survey aerial photography work in order to be clear about what we are talking about, that has not happened in every case so far but presumably that is now built in?

(Mr Ward) We now have up-to-date aerial photography for the whole country which we did not have at the outset, that has now come on stream.

49. You have that for the whole country now?

(Mr Ward) Yes. That is important because that does give us an up-to-date picture where some of the data sets do not, so we get the chance to validate one with the other. If there are obvious discrepancies there we would go and look at a sample of that particular type of habitat to get a good understanding of what the situation is.

Chairman

50. I thought it was only anoraks like me that did drive-by tests looking at whether this is semi-improved grass land or open countryside, other people play this game, do they?

(Mr Ward) We have anoraks of our own.

51. Let us move on to the regional roll-out. The Minister has taken a decision that there is going to be regional roll-out, is this going to cause difficulties or is this the correct thing to do? There are landowners who say that if you can walk in the lower north west people will say then we can walk in the north east. Is it a problem?

(Alun Michael) I do not think so. I think it is important to be very clear about the programme of opening up. There is an element of uncertainty, we can only be absolutely clear when the appeal process has been worked through and we know what the time scale is. It seems to me infinitely preferable as soon as the process is complete for any region to then open up the access and as a consequence of that to see what problems emerge, if any. Let us hope there will not be any problems. If there are problems as we open up the first regions to access we will be able to learn from that, as has clearly been the case with mapping, and ensure we get a wrinkle-free opening up of future situations. I think by and large people will understand that it is a process that we are approaching logically and in a timely fashion. Personally I think it is the right way to do it. I am satisfied that we have got everything in place to do that. Obviously the orders and the arrangements in respect of closures and things like that need to be in place before the first of the enactments but we are satisfied that we can do that within the time scale available.

52. Are there extra resource implications for the regional roll-out? What is the scale of it?

(Alun Michael) I do not think so. It is clearly a slightly different operation, going for big bang publicity that this is going to happen right across the country, or publicising the availability of the programme in particular regions and the fact that there is a timetable. There is nothing that suggested to me that the resource implications are so large as to cause problems. What it does mean, of course, is that the process starts somewhat earlier and therefore we have had a good deal of discussion with the Agency about the time tabling of work.

Mr Drew

53. Just for the benefit of going back over some of the ground of the first session, where I was asking about local access forums I was saying that Gloucestershire is advertising for people to go on there and I ask provocatively, is it worth my while with all of the spare time I have? Who are you looking for to go on to the local access forums, besides the obvious contenders who will be representing organisations? Are you looking for independently minded people who just have an interest in this area, who are not lawyers, or are there some other identikit type of individuals we could look to to get involved. I think it would be more of an anorak doing this sort of thing than Paddy wandering round seeing if it is happening, this is much more obtuse.

(Alun Michael) I am worried about the way the members of this Committee spend their spare time. The main thing I would say is that if you get people together to talk about a problem then you bring the disagreement out into the open and if the right environment up is created you look for a resolution for those. The access forums are important because there is a need to balance the needs of land managers and the needs of those who want access and the needs of the general public. As I indicated at the beginning, the importance of access for the health of the whole community, for the finances of rural communities in terms of rural tourism has perhaps been underestimated in the past, so I think it is important to get that right. I think it is very easy if you have different interest groups on their own to hear worries and concerns and criticisms. Clearly the Ramblers' Association will give examples of places where the access is not as good as it should be in a variety of counties. You also hear countryside landowners expressing some concerns about the way in which access works. For instance I was in the Lake District a fortnight ago talking to people, looking at a couple of examples of access and it was surprising the degree of common purpose there was about, in other words wanting people to have access to the countryside but to use it in a sensible and responsible manner. I would hope over time that discussions in those local access forums would not be arid but would be about encouraging good practice and discouraging bad practice, on which all the interests would be able to work. I do not think I have an identikit idea of who should be on the forum, I think it should be a mixture of people, including those who are

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passionate about access, those concerned with land management and those who have a wider view of the needs of rural communities, rural economies and the health implications of access to the countryside. Pam chairs the National Access Forum, which may have something to say on it.

Chairman

54. What is the feel to that, Pam?

(Ms Warhurst) I think it is has been a tremendous success for the very reasons the Minister articulated and Nick articulated earlier in that people listen to each others perceptions with a very clear understanding. The Act is there and it has helped people come together to find creative solutions to what have been difficult issues traditionally and historically. That is why the local access forums are incredibly important because it is how these are realised on the ground and how sensitively these issues are pushed forward and how widely they are understood in terms of the benefits that society can get at large, that is really what this all about. The National Access Forum took a view and advised the Countryside Agency of the range of constituents, if you like, that need to be a part of them. They will vary in one part of the country to another. It is really important that the people who are on them want to contribute in a positive way to making this work to everyone's benefit economically as well as environmentally. That is the focus, their willingness to contribute and listen as well as argue their corner.

55. My impression is the whole mapping process has been more difficult than was originally thought because, in a sense, people are drawing from data sets that are not adequate and there has been some more aerial photography done. What is the cost of the total mapping process? In reality who is paying for it, is this grant from Defra to the Countryside Agency allowing you to pay?

(Alun Michael) We are generous to a fault, are we not!

(Ms Warhurst) Absolutely, Minister, you have taken the words right out of my mouth.

56. With stress on the "fault".

(Ms Warhurst) By the end of March 2003 we expect to have spent £13.5 million,¹ which includes staff, running costs and so on. A good proportion of that is the funding of the contractors, and a good proportion of that work is about consultation, dissemination of information as well as mapping, it is a big exercise and throughout the whole thing we are looking for value-for-money, we are looking to get the most out of every pound that is spent. We are also looking to make sure what we get at the end of the day is effective implementation and engagement on the ground.

57. Binnie, Black and Veatch are your lead contractors, they must have put in an estimate for doing this work, are they carrying some of the extra costs or are you paying the total?

(Ms Warhurst) Because of the scale of the operation we have looked at an understanding about core costs that we can shake on, and we are

very clear about that, after that there are some areas of work that we are going over and beyond the statute and we need to talk about that. It is a large operation and it is costing a fair amount of money but then the scale of this and the need to get it absolutely right and get the general public properly engaged means we are really getting the most out of every pound.

Mr Wiggin

58. In the consultation paper on guidance your Agency has promoted the use of informal land management techniques as the simplest means for limiting problems from access. It suggests providing selective visitor information at main entry points and managing paths and vegetation to avoid pressure on sensitive areas, can you tell the Committee what resources will be available to land managers to fund these informal management techniques?

(Ms Warhurst) At the moment we are looking at a range of resources that are already out there that could be used more creatively and we might be able to help evolve, making sure this does work effectively. We are then going to advise Defra about where we see the black holes and we need to take a view on how that is funded. To a large extent it is the local authorities responsibility, it also encompasses work within the national parks, and they have had some additional money, so there is some money out there already. There are other areas of work, whether that be local transport plans or economic regeneration funds, or whatever else it might be, it might even be health funds, one might look to to get this managed on the ground. This is a piece of on-going work where we are identifying what might be used and how we might be able to use that money creatively.

59. What is that in English? None.

(Ms Warhurst) At the moment we do not have a pot of money that says we have identified 3 and 4 pence to make this work. What we are saying is we believe there is a need for appropriate funding but there is already money out there and until we identify what that might be and how it might be effectively spent by the partners making this work in the local access forums and the National Access Forum at a national level we cannot be clear about what the end figure is likely to be.

60. Right.

(Ms Warhurst) It is not all about new money, is what I am saying.

Chairman

61. Let us pursue this a bit more, Nick Barrett said he was hoping you were going to have a bag of money and people would bid in for access points, for information, for management. What you are saying to us, Pam, tell me if I have this wrong, is there are lots of existing resources out there, you want to have a good look at the best use of those existing resources and if there is a funding gap maybe there will be further discussions then?

¹ Note by Witness: ie, on implementing Part I of the CroW Act.

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(*Ms Warhurst*) We need to get that balance right. At this moment in time you would have to ask the Minister if there is more funding.

(*Alun Michael*) I was going to try and draw the distinction between some of the different responsibilities, clearly as far as access is concerned local authorities have existing responsibilities. We have provided additional money through the local authority grant settlement for local authorities to undertake this work. I wrote to all of the local authorities to point out that money was available and the nature of the new responsibilities. We did have some local authorities writing back saying, "When is the cheque going to arrive?" which is a basic misunderstanding of the settlement between central and local government. Of course that is provided through the grant settlement. As a matter of interest I raised the way that we have done this with all four leaders of the political groupings on the Local Government Association and all four of them confirmed the way we have done it is the way they believe is right, it is not just the LGA but all of the groupings within the LGA that endorse that point. The other thing is as far as the national parks are concerned we have taken account of the regional roll-out proposals that we mentioned earlier, which you asked about, about the resources. We have given additional money this coming financial year to all of the national parks to prepare the ground for this work, with most—£400k each—for the Lake District, Peak District and Yorkshire Dales because of regional rollout.

62. Taking that forward, there is money fed into the grant distribution system through the SSA for CRoW, I have seen a figure for this but I have forgotten what it is, perhaps Susan is going to remind me?

(*Ms Carter*) £12 to £19 million has gone in for new statutory duties, that is an annual figure.

(*Alun Michael*) That figure was given at the time of the legislation.

(*Ms Carter*) That is for all of their new statutory duties, for access forums and for the Rights of Way duties in Part II.

63. This is the point I wanted to get to, I think you heard me talking with the Ramblers' Association on this, local authorities have existing statutory duties towards rights of way and presumably through the grants settlement the Department will know how much is within the grant settlement for those existing statutory duties?

(*Alun Michael*) What happens is that additional money is provided for the additional burden. The extension of the responsibility that arises from the Countryside and Rights of Way Act is what has to be funded in addition. Those responsibilities are ones that have always been there for local authorities.

64. I agree.

(*Alun Michael*) There is a mixture. This came under scrutiny at the time when footpaths were being reopened following foot and mouth disease and it was striking that many local authorities took those responsibilities of opening up access very seriously indeed and moved very quickly, others were a bit slower.

65. What you are telling me is that an extra £12-£19 million has gone into the grant settlement.

(*Ms Carter*) Between £12 and £19 million. The support grant is done in a rather complex way.

66. I have learned this to my cost over many years.

(*Ms Carter*) It is somewhere between £12 million and £19 million, and it was fully funded.

67. Presumably prior to CRoW within the existing grant settlement there was some money in there for the recognition of the duties of the local authorities.

(*Alun Michael*) It would not be ring-fenced money. It is really for determination by the local authority of the needs of the area. I would underline the fact of the importance of the fulfilment of those responsibilities, not just in terms of meeting expectations but also in terms of the economy and the confidence and general health. There is some very good work in some parts of the country not only by local authorities but by parish and town councils in terms of completing access around areas and voluntary agreements which go on top of the statutory requirements.

68. That is exactly the point you made earlier on, in the rights of way network farmers and landowners suffered but the wider economy suffered tremendously. What I am trying to get to is when I walk in Nottinghamshire or more particularly when I walk in North Yorkshire and the paths are a mess and I say to the rights of way section in North Yorkshire, "How much are you spending on rights of way?" They say, "We do not know". There are some good local authorities and there are some that are not performing as well. If we knew how much money allegedly they had we could challenge them on it

(*Alun Michael*) That is very difficult when you think of the variations in the nature of access problems in different parts of the area. During the course of the last year or so I have visited every one of the national parks and the problems of access in the Peak District, where there are centres of population, complex geography and settlements compared with the Northumberland National Park where, by and large, there is a very tight boundary and within that boundary you have a lot of open countryside the issues to be handled are very different. Whereas encouraging all authorities to do as much work as makes sense for the type of access challenges they have, bench-marking, whereas it is not impossible, would not be straightforward.

Chairman: Okay.

Mr Wiggin

69. From what I have understood the resources that are available it is a bit of a movable feast with what is there at the moment and with what might be. I do not understand why you did not fully develop the restriction system before deciding to open the new rights of access in the two regions in 2004?

(*Alun Michael*) I think the first thing to say is that the CRoW Act is a very complex piece of legislation. I share your wish to see things done

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earlier. Susan and I speak about this fairly frequently, one has to acknowledge that there is an enormous amount of pressure on our policy officials and lawyers in fulfilling the requirements of the countryside and rights of way for the very reason that it is a balanced piece of legislation.

(*Ms Carter*) The restrictions will be in place before the right of access comes in. There is no question of us allowing the access before the restrictions are in place.

(*Alun Michael*) If time had been put into preparing those early then time would not have been put into preparing other bits of legislation. There is a lot of secondary legislation required.

70. I appreciated that. One of the problems is there is a temptation to overlook this and simply say well, visitor information on entry points, managing paths and vegetation we will leave that to the land owner. There is a resource issue here and it is not resolved at all by all accounts.

(*Ms Warhurst*) From the word go we recognised this to be a fact, it was a huge task and we had to do things in a sensible and logical manner, we had to get on with the mapping, we had to make sure the consultation was right, and so on. The Countryside Agency and the Access Forum have always said there is going to be a figure attached to this in terms of resources in order to make this work correctly. What we are saying is at some point, and we do not know when, we need to say, "What are you doing? What can we learn from each other? What funds are you already putting into the National Trust, the LGA or the national parks?" There is existing money in the pot. There is a discussion tomorrow in Newcastle with the National Access Forum. You need to understand the scale of the operation. You need to understand what information needs to be put on the ground or on the Internet and then we need to, having identified the scale of that, see what existing monies might have been used and then take a view about where the gaps are. It is just about working through a process.

71. One of the problems is, and I hope you will clarify this for me, this is extra. Whatever existing pots of money there are at the moment are probably already been used, this is an extra level of commitment from landowners, is it not?

(*Ms Warhurst*) Yes, it is. The Minister has already indicated that in terms of economic regeneration and the tourist industry it is not just about there will be no benefits to society at large and therefore we need a great big cheque, it is about looking creatively at what there is.

72. To something like the National Trust that makes perfect sense because it is a big organisation and they have huge commitments as well as resources, to somebody who has to cut the brambles back that does not cut much ice, does it?

(*Alun Michael*) It is also in the interests of landowners to be working with the other interests. If I revert to an example I mentioned earlier, a landowner closing off access to something that will be likely to be opened up under the processes that have been gone through at the moment, that loss of voluntary arrangement was felt very strongly by the people like the Ramblers' Association, the British

Mountaineering Council, and so on, and the end result was a good deal of discussion about how to deal with it, consequent agreement on managing that, more responsible approaches, publicity to members to do so in a positive way, and people talk on both sides of the equation very positively about that. What the new legislation does not do is take away the need for people to get together, to listen to each other and to act responsibly, which in the long term is to the benefit of everybody, including the landowner who has access on to his land.

73. Earlier on when I was talking to the Ramblers I went through the list of restrictions and I asked them whether they felt that bio-security and animal welfare might be useful extra restrictions, what are your feelings on that?

(*Alun Michael*) The arrangements that are in place I think are the range of restrictions that are necessary and they will be dealt with in the implementation. I am not sure what is meant by that. In terms of bio-security there are arrangements under existing legislation, if you are thinking of the protection of SSSIs, access and things like that. I am not sure what you are referring to.

74. For me bio-security is more to do with animal diseases.

(*Alun Michael*) I thought you said bio-diversity. Bio-security, we have the protections which we used in terms of foot and mouth disease. I think bio-security is important but it is actually more to do with those working with animals than about walkers. There was a lot of talk about walkers during foot and mouth disease but there is no evidence that any spread of foot and mouth disease took place as a result of anybody walking. It is actually contact between people working with different groups of animals, and things like that, that raise the serious issues of bio-security, so it is farmers or people moving from farm to farm.

75. I think that is quite a dangerous quote. I am on a statutory instrument on pig and cattle welfare tomorrow and there is a huge amount of emphasis from the Government on things like scrubbing your boots—

(*Alun Michael*) Absolutely. During the period of vulnerability of foot and mouth disease people were expected to observe that when they went on to the hills, to wash your boots between visits, et cetera, so it is important to involve the basics. I am just making the point that the walkers are not really the problem in terms of threats to bio-security.

Chairman

76. I am conscious, Minister, you have given us more time than originally planned. Before you go I think the Committee wants to get a handle on financing. You told us, Susan, £12 to £19 million this current year through the grant distribution system. Pam told us there are other pots of money, funding streams that could be made available to fund this. I have a suspicion that lurking somewhere in the grant distribution system is a notional sum of money that local authorities are allocated

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through that system to do their existing rights of way, it would be helpful if you could list out a little note for us.

(Alun Michael) I would be very happy to provide a note on this. All I can say is that the finances that are contributed as a stream through Defra are not notional, they go out from our budget in terms of the increased grant to the national parks for their

access responsibilities, into the local government pool, in terms of their access responsibilities to the Agency as part of the on-going discussions of making sure they are resourced to do their important job properly.

Chairman: That is the point, we want to see it delivered on the ground. Thank you very much, Alun, and thank you to the rest of the team.

Memorandum submitted by the Country Land and Business Association (CLA) (R2)

INTRODUCTION

The Country Land and Business Association, whose 45,000 landowning and rural business members are involved in all aspects of rural land management, is pleased to have this opportunity to contribute to this inquiry. Indeed, it is land managers who will bear many of the obligations to operate the provisions of Part I of the Countryside and Rights of Way Act (CROW Act), in terms of open access, on the ground, and who will have to integrate these obligations into their normal land management operations.

When the Act was passed, CLA stated that the priority must be the Act to be able to work, and for the resources and flexible management provisions to be put in place to enable it to work. We look to the inquiry not to examine the principles of the Act, which Parliament has decided, but to examine whether progress on implementation is achieving the essential objectives of securing the confidence and goodwill of land managers and of providing new opportunities and greater certainty for the wider public.

To make our evidence more digestible, we have broken it down into the following sections:

- A. Mapping of access land;
- B. Access management and the need for resources to make the Act work;
- C. Part II of the Act; and
- D. Opportunities for rural tourism arising from increased access.

Inevitably, there will be interconnections between the points raised in these different sections. One underlying theme stands out: the more flexibly the provisions of Part I of the Act in particular are implemented, the less need there will be for closures and restrictions, and the lower the costs to land managers, many of whom are hard pressed upland farmers. Conversely, the less well resourced the implementation, the less flexibly the provisions are implemented, the more closures and restrictions will inevitably be demanded, and the greater will be the costs for land managers and the rural economy.

Ministers have stated that it is their belief that the implementation of the Act will not incur significant costs for land managers. This implies to us the need for flexible implementation sympathetic to the needs of land managers

A MAPPING OF ACCESS LAND UNDER PART I OF THE ACT

The CLA wishes to ensure that the access provided benefits walkers but remains a resource available for economic land management. However, it is apparent that the mapping process continues to create real difficulties and it is important that these points should be rectified.

The CLA's overriding concern is to get as many problems solved at the consultation stage to avoid unnecessary problems at the provisional map stage and when the rights of access under CROW are implemented.

CLA believes that a disproportionately large amount of land in England is being mapped on the draft and provisional maps. We refer to predominantly small, enclosed parcels and inbye land that, for the majority, is improved or semi-improved grassland, or is land where inclusion is impractical. Improved or semi-improved grassland is specifically excluded from the Act. At the same time, there are also areas of moorland which have not been mapped but should be. CLA believes that these anomalies have arisen from the method, rather than the objectives set, for mapping.

APPLICATION OF MAPPING METHODOLOGY

These problems appear to have arisen from the mapping methodology currently being used, which has been amended following comments on the original version. Despite the amendments the criteria and discretion operated by the Countryside Agency have led to continued concern on the following points:

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- CLA believes that the public's expectation that the right of access should apply to "open country" (mountain, moor, heath and down) should be reflected in the criteria for "openness" in the Countryside Agency's methodology. Instead, we see an unmerited over reliance on the criterion of whether land contains habitat akin to that of mountain, moor, heath and down.
- We see the need for greater discretion to be encouraged in the methodology to identify land parcels as so small as to be of no useful purpose for access. Allowing pragmatism to play a greater role will enable smaller areas of access land still to be included where they are useful for public access as opposed to being included because it is possible for the public to access it.
- Improved and semi-improved grassland should be defined according to its management (for example, mowing or topping) in addition to identification based on vegetation.

1. *An emphasis being placed on the "openness" of land to take fully into account public expectation that the right of access should apply to "open country" (which is MMHD) as opposed to land containing habitat akin to that of MMHD.*

One particular worry is that land parcels comprising a series of small fields are being mapped as are steep scarp slopes. We find it hard to accept that such land constitutes "open" country. The revised mapping methodology has clarified the Countryside Agency's (CA's) views as to the criteria that they will be using to define "open country" in footnotes 7, 8 and 9, page 21. For example:

"In describing moor as comprising land 'usually of an open character', we mean that, whilst individual land parcels might compromise enclosures of varying size, they will in combination form a landscape that provides open vistas (though sometimes these are interrupted by woodland, incised valleys or other local features). Many areas of moorland include (on the edge of or within otherwise relatively larger tracts of land) smaller areas bounded by walls or fences, which are an inherent part of the moorland landscape and will therefore be included as 'open country'". (footnote 7, page 21)

Clearly the assessment of whether land is or is not of an open nature is fairly subjective. We believe that it has always been the intention of the Government to provide a right of access to "open country" in the full sense of the words, ie that the land has a sense of openness. We appreciate that there may be a few smaller areas included that are more enclosed, for example, where enclosed areas are clearly no longer used for their original purpose, the walls having fallen into disrepair. However, we would expect that the majority of access land should provide the public with a sense of freedom and the ability to walk unfettered by numerous stiles and gates.

The Government has given the impression that the right of access will apply to land with a sense of "openness" ever since the original DETR consultation paper identified the North Pennines on the front cover almost five years ago. This land is the type the majority of the public would take to be open country. Throughout the Parliamentary process statements by Ministers perpetuated this interpretation:

In relation to amendments to remove heath and down Mr Mullin stated ". . . those are precisely the types of land to which people should be given a right of access. They are uncultivated and open in character, and people have campaigned long and hard for the right to walk responsibly across such land."

In relation to common land Mr Meacher stated "Indeed, many such commons in lowland England are the only areas of uncultivated, unenclosed land within areas of intensive agriculture. That is important, and I certainly wish to retain it. We therefore intend to ensure that they are not forgotten."

What we have found is that land, which does not take on this open character, is also being included on the draft maps to the surprise of land managers (including the Peak District National Park). This land often consists of smaller, enclosed land parcels, which are really not practical and add ambiguity to where access land boundaries should be. Including this land on the draft maps is giving rise to resentment.

We propose that the definitions of open country be redefined to take into account what we believe was the intention of the act and public perception of "open country" and not a landscape definition.

2. *The criteria for identifying open country so small to be of any useful purpose to be widened to allow greater discretion to be used. Allowing human pragmatism to play a greater role will enable smaller areas of access land to be included because they are useful for public access as opposed to being included because it is possible for the public to access it. Clarity is essential.*

This point relates to the lack of use of the Agency's discretion to map land too small to be of any useful purpose. With few, if any, parcels of such land depicted on the maps (identified by mauve colouring) it is clear that the criterion is over restrictive in nature and has been set with in the mapping methodology.

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The methodology places a limit on the size of the area that can be considered, and lists a series of requirements that need to be fulfilled before the land can be excluded. Although it is perfectly valid for the Agency to list considerations in exercising its discretion, there are many reasons why a small area might serve no useful purpose in being mapped. A definitive list of requirements would appear to fetter the agency's discretion and we would ask that the methodology be amended. So that the agency can take into account all points raised even if not included on the list and to be able to take into account the individuality and location of each land parcel.

Further to this experience is showing that setting a fixed size limit above which the Agency would not exercise their discretion to exclude does not allow adequate consideration of whether or not an area is so small to be of any useful purpose. The size of a "useful" parcel of land will vary depending on circumstances—this was an issue highlighted within our response to the Agency consultation on the mapping methodology (par 15 and 16).

Particularly small parcels of land are of no useful purpose and should not be mapped—the costs outweigh the benefits of inclusion. Small parcels should be excluded based on qualifying criteria. These criteria should not, however prevent areas greater than five hectares also being excluded. For example if there is an extensive area of access land near to a "small" parcel the size at which that parcel serves no useful purpose could well be greater than five hectares.

The Government certainly supported the Agency discretion to have considerable flexibility, which with hindsight, we see as vastly more beneficial than a *de minimis* size compounded further by limiting criteria. We propose that the criterion not to map land parcels so small that their inclusion would serve no useful purpose should be revised to enable wider discretion to be used.

3. *Improved and semi-improved grassland: definition by vegetation and type of management.*

A further area of significant concern is the inclusion of areas which our members consider to be improved. We believe the Government indicated from the beginning that if agricultural land was subject to the right of access its use would be no more than for rough grazing of livestock—an intention reaffirmed by Ministers during the Parliamentary process.

"The countryside bodies will assess whether land is mountain, moorland, heathland or downland. They will be expected to include only agricultural land used for extensive grazing, not that used for more intensive agriculture. That is the key point. Only grazing used for rough grazing, where the stock density was low because of the poor productivity of the land, would be included." (Michael Meacher—1/17)

Unfortunately land that is used for more than solely rough grazing is being mapped because the definitions for improved and semi-improved grassland do not adequately consider management of land.

The definitions of improved and semi-improved grassland rely primarily on vegetation type having been affected by "improvement", ie the extent of grass species present within a land parcel is less diverse. They do not take into account management activities that may be carried out on land which under the present definition is semi-natural grassland. Whilst the definitions, and the methods being used to identify access land, should prevent the majority of improved and semi-improved grassland being mapped, they will not exclude marginal grassland which land managers treat and manage as being improved.

We propose the criteria relating to improved and semi-improved grassland is amended to include reference to management activities carried out on the land in addition to the type of vegetation cover. This will consider better the actual use of inbye land within whole farm management than is currently the case.

IDENTIFICATION OF EXCEPTED LAND

Whilst we appreciate some areas of land will change in status and be excepted land for short periods, other more permanent features, for example golf courses, gardens and building curtilage will remain static and therefore could be shown differently on the Conclusive maps or as a statutory overlay.

We believe the depiction of a parcel of land as open country which is also in its entirety excepted land will be sure to create confusion. How will the public be adequately informed that the land has no right of access to it? It would be far simpler to exclude such land as it has, in effect, no useful purpose.

MAPPING DATA USED TO PREPARE MAPS

Use of this criterion is compounded by the fact that the mapping is solely a desktop study. The Agency is relying on data sets currently available which identify mountain, moor, heath and down (for example, the moorland line map and phase one habitat survey). These are often out-of-date (10 years old in some circumstances) and so do not take into account any land subsequently improved. The Agency identifies individual land parcels and applies the data to them resulting in land being categorised as access land or not.

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The result, as raised above, causes anomalies in the land mapped as access land. This puts a considerable onus on land managers to ensure that those doing the mapping have got it right, rather than the other way round. Whilst we accept that areas 1 and 2 mapped where a test for the data used to provide the first draft maps for consultation, the lessons that should have been learnt persist. Many farming members are concerned at the amount of inbye land that has appeared in error on the draft maps in area 4.

The CLA believes that part of the problem is the fact that the mapping is being conducted solely from offices without the Agency being on the ground to test the accuracy and practicalities of providing access to these disputed areas. In Wales, by contrast, we see a situation where considerable time and effort is being put into ensuring that the boundaries of access land are practical and unambiguous. The Countryside Council for Wales (CCW) is actively surveying boundaries from roads to ensure land that is clearly open country is mapped, with questionable land excluded at draft map stage. This reduces the burden on CCW to consider representations, and possibly, appeals, both of which will slow down the right's implementation. This stands in some contrast to the procedure in England.

We would comment further that the CA is not inspecting all land parcels which are subject to an objection on the grounds of improved land at the draft stage. This means that land is being included on the provisional maps in error due simply to the lack of an inspection, which incurs cost to our member at appeal and to the public as an unnecessary appeal has to be dealt with.

The CLA would like to see the CA take a similar and more pragmatic approach to CCW when it is mapping the remaining areas. This will help to ensure that the problems we are currently experiencing are significantly reduced and eventually provide a right to land that is mountain, moor, heath and down, that is clearly identifiable and can be well managed.

B. ACCESS MANAGEMENT AND THE NEED FOR RESOURCES TO MAKE THE ACT WORK

Restrictions, closures and liability

At this stage it is difficult to comment on the restriction and closure regime. We would, however, emphasise that one of the principles of the Act was not to impede existing land uses.

We have major concerns on the following points:

Mines and Quarries

In relation to liability, two major issues of concern have emerged to date amongst our members; first the question of abandoned mines and quarries; second, what to do about potentially dangerous activities on the land such as the keeping of dangerous stock or shoots (including clay pigeon shooting).

Turning first to mines and quarries, under the Mines and Quarries Act 1954, section 151, owners have been under a duty to plug or provide and maintain some other form of barrier to prevent accidents on mines which have been worked since August 1872. However, the majority of older mines have been exempt from this requirement, save where "by reason of its accessibility from a highway or a place of public resort, it constitutes a danger to members of the public" (s151 M&QA 1954).

In such a case, even a pre-1872 mine becomes a statutory nuisance unless plugged or provided with an effective barrier that is also maintained. A similar provision applies to all quarries (whether abandoned or working) in that they have to be fenced if accessible to the public and thus dangerous.

On access land, all such mines and quarries will be accessible to the public and the owner will have to provide a barrier. This will impose substantial costs on individuals and, in practical terms will on many occasions prove an impossible task given that the location of many old mines is simply not known (the first indication of their existence being the loss of grazing stock).

Section 42 of CROW, allows for regulations providing that, in effect, the right of access can be disregarded in deciding if a place is accessible to the public. Such regulations would remove the statutory obligation to provide and maintain a barrier or plug. During the lobbying process the government agreed that regulations would be passed but none are in place.

It is essential that regulations be brought into force before the right of access to avoid significant cost implications for occupiers of land with mines and quarries.

This is not the end of the story as, even without the obligation to provide a barrier, many owners of land with mines and/or quarries are concerned both morally and legally (under the Occupiers Liability Act 1984 as CROW only removes liability for natural features), that they will have to take steps to prevent accidents. In practical terms this will, at least, necessitate the use of warning signs which need to be placed such that walkers can be aware of the risks. However, in addition, much of this land with abandoned workings, will be too dangerous to roam. The only solution in such cases will be for closure of the land or restriction of the right of access to defined paths.

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The access authority must ensure that access points where warning signs will be placed, are known to the public; that the authority provides such signs in a format recognised and accepted by the public, and that the authority treat as a priority applications by owners for the authority to close or restrict access on the basis that the land is dangerous to the public.

Potentially dangerous activities and the grazing of animals

Occupiers of land will have to take into account the safety of those exercising the right of access in conducting the everyday management of access land (occupiers and land managers owe duties of care under common law negligence, the Occupiers' Liability Act 1984, and Health & Safety at Work Act 1974). The steps necessary to discharge their duties and avoid accidents are proving a particular concern for those conducting dangerous activities such as shoots (including clay pigeon shooting).

In addition, the grazing of certain animals will prove a particular problem as, under the Animals Act 1971, owners of animals which are either particularly dangerous individuals (for example stallions), or are dangerous at particular times (for example cows with calves) bear strict liability for damage or injury caused by that animal. (There is no need to establish any fault on the part of the owner, simply that someone has suffered injury or damage caused by the animal).

Strict liability for animals, along with the other duties of care, present practical problems and potential costs for occupiers of access land. There is a need for:

- (a) recognised warning/closure/restriction signs to be provided by the access authority;
- (b) access points known to the public to ensure that, as far as possible, such signs are seen; and
- (c) a flexible closure and restriction regime—the access authority need to appreciate fully the legal obligations and genuine difficulties for land managers.

Also it is apparent that land which is mapped is being used for other purposes than agriculture, for example clay pigeon shooting ground, greyhound training, camping sites etc. All rural business, especially agricultural, operating on “open country” land have expressed deep concern on the issue of public access and impact on management of existing business and liability they need a flexible and sympathetically applied closure and restriction regime to minimise the impact on their business. Combined with a grant to cover the necessary infrastructure to manage the public access.

Funding/grant opportunities to facilitate the implementation of the CROW Act

The CLA understanding is that it was the intention that funding would be made available to reduce the impact of access management. Commitments were given during the passage of the Bill that the CA would run a grant scheme for land managers in particular for any extensive work required to make access land safe for public use. The CLA believes that a grant scheme could also reduce the number of applications for restrictions and closures.

We would comment that the grant must be easily accessible, stand alone of existing funding opportunities. Currently the main grant schemes accessible to land managers to create new public access opportunities are:

- The Woodland Grant Scheme (WGS).
- Countryside Stewardship Scheme (CSS).
- Environment Sensitive Area Scheme (ESA).
- Rural Enterprise Scheme (RES).

The grant schemes CSS and ESA currently provide funding for infrastructure required for new public access created over and above that which a land manager is legally bound to allow. Therefore we would question whether land managers would qualify for grant aid under these schemes as the public have a right of access under CROW. The RES is a possibility however it is an extremely complicated scheme to secure grant funds through and would be a very cumbersome method of providing access grants. The WGS is unlikely to be applicable on most sites as woodlands do not fall in the definition of “open country” and are unlikely to be mapped.

The Government will need to give careful consideration as to which body administers the grant. Recently only marginal increases in funds have reached the Rights of Way Departments, after increased funding allocation to Local Authorities to cover the cost of CROW. We therefore would urge the Government to set up an Access Management Grant Scheme with ring fenced allocated funds to land managers to provide the following:

- specialist visitor management;
- infrastructure such as entry/crossing points, car parks, signs and information points;
- links to islands of access land from the local path network;

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- positive management of visitors; and
- literature promoting access opportunities.

We strongly believe that the funding will enable land managers to minimise the impact of the new access provisions on their business, where the proposed closure and restriction regime would be impractical and difficult to administer. Correct and clear signage and access points would increase the public's confidence and create certainty and understanding of the new provisions.

C. PART II OF THE ACT

Progress on implementation will depend on the availability of resources to local authorities, and for that reason progress is not expected to be quick. Separate funding has been made available for the "Lost Ways" initiative, but that is a different objective from trying to bring the rights of way network into the 21st century, to the benefit of users and land managers alike.

Improving the rights of way network will, ultimately, involve new paths and redirections of paths, to make routes more in tune with what walkers, cyclists and horse riders need.

In the meantime, the FMD outbreak showed how many paths still go through farmyards or near to farmyards. From a biosecurity and health and security point of view this is far from optimal. Moreover, if an owner wishes to divert such a path, he or she must overcome the costly and uncertain procedures of a diversion application. There is a strong case for such applications to be given priority and a faster, cheaper track. £1,500 is a lot of money for an owner to risk with little certainty of a satisfactory result. Until the local authorities are in a position to take forward co-ordinated improvement plans, this situation will remain, and confidence from owners in advancing improvements themselves will remain low.

D. OPPORTUNITIES FOR RURAL TOURISM ARISING OUT OF ACCESS TO THE COUNTRYSIDE

The choice of mountain, moor, heath, down and registered common land for open access under the CROW Act does not produce an exact overlap with the opportunities for rural tourism. Not all areas of open country and registered commonland are likely to generate such opportunities, and there are other parts of England and Wales which may have a greater capacity and/or attraction for increased visitors than some of the areas expected to be mapped under the Act.

However, this incomplete overlap still leaves important opportunities for rural tourism to be developed in the coming years.

It is essential that in developing such opportunities:

- There is closer co-ordination than between managers of the land to be visited, accommodation, visitor attractions, tourist information centres (or other points), local retailers and transport providers than currently exists in many places. CLA has undertaken a wider review of rural tourism, and one of the key findings has been this need for greater co-ordination among tourism operators and with public bodies. CLA plans to finalise and publish its findings in a policy document on rural tourism in March.
- The needs of land managers to manage their land viably are recognised. The Foot and Mouth outbreak in 2001 in particular demonstrated the reliance of tourism on active and viable farming, and economic viability is a fundamental element of overall sustainability. Moreover, on many areas of land likely to be mapped as access land, farming will not be the only economic use of the land. Indeed, those other uses may provide a significantly greater contribution to the overall income earning potential of that land, and its sustainability, than farming itself. Shooting and minerals extraction are particular examples. It is not common for the income from shooting rights to exceed the returns from farming on the heather moorlands of northern England. Income from shooting also helps to maintain accommodation and other services during the winter months. So in developing opportunities for walkers, it must be recognised that shooting is an important contributor to rural tourism, and that the demands of different users have to be balanced and reconciled. Furthermore, if the underlying viability of land use is eroded, an essential element in the attraction of the countryside for many visitors—a working and peopled landscape—is jeopardised.
- Opportunities for increasing the local spend from visitors are fully developed. This is partly a matter of providing information on attractions and walks near local centres where there are places to buy food, drink and other services. But other initiatives, such as loyalty and discount schemes for visitors who spend locally, should be explored. CLA is itself exploring such a scheme in the south west.

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- Other initiatives to improve rural tourism—both for the visitor and for the operator—are taken forward. These initiatives could include: better quality and efficiency of service, supplementary quality standards to reflect particularly rural characteristics (such as local access opportunities, views, availability of locally sourced food in shops and restaurants), training and market research to avoid local over supply of tourist services. These and other initiatives for rural tourism across the country will be described in more detail when CLA publishes its rural tourism document.
- The Countryside Agency in England and the Countryside Council for Wales work closely with land managers and (other) tourist operators to support the necessary infrastructure (signs, stiles, access points etc) to promote walking in places where there is least disruption and cost to land management, and greatest scope for providing a satisfying visit for visitors.

Not all land management businesses will benefit financially from increased access—many will face increased management obligations or costs. Where there are opportunities for local businesses and their employees to benefit, it is extremely important that they are developed carefully and fully. Any potential upside for the local economy from increased access must not be lost. Not only will the local economy benefit from a positive economic input from visitors, but also the practical difficulties of managing access will be much easier to bear.

Country Land and Business Association

30 January 2003

Examination of Witnesses

MR MARK HUDSON, Deputy President, MRS CAROLINE BEDELL, Access Adviser and DR KAREN JONES, Chief Legal Adviser, Country Land and Business Association, examined.

Chairman

77. For the third part of the play, as it were, the third act, we have Mr Mark Hudson, the Deputy President of the Country Land and Business Association, Dr Karen Jones, the Chief Legal Adviser and Mrs Caroline Bedell, who is the Access Adviser. Thank you very much for coming and thank you for listening to the earlier part of our discussion, I guess you know the things that we are interested in. Let me just ask a broad brush question to begin with, Mark, how do you think the process is going? What is the CLA's view on how the process is going?

(Mr Hudson) I think the process is proceeding reasonably well, you have had a lot of evidence already today from the Ramblers' Association and the Minister and his advisors that it is a very complicated and time-consuming process and there are problems that we are finding, particularly in the mapping, which you teased out a bit from the Minister. We are particularly concerned about two things, if I may say so, one is resources, which again we have spent a lot of time talking to the Minister about, and the Chief Executive of the Ramblers' Association made his point quite clearly there. We are concerned if there are insufficient resources coming who is going to pay for the costs that are required and, secondly, we are very concerned about the liability, and that is something that you have not touched on yet today, and it follows to a certain extent from resources.

78. Shall we deal with the liability first. As I understand it what you are saying is if you have mine workings or old pit sites up on the hills and somebody has a right of access and goes down the hole who is liable?

(Mr Hudson) I would like to ask Dr Karen Jones to take that question, if I may.

(Dr Jones) It is a little bit more than that. As it stands, under the Mines and Quarries Act generally at the moment you do not have to fence off or cap old mines or quarries unless they are accessible to the public and dangerous. It is quite a draconian preventive measure and it only kicks in when you have a real problem of accessibility. The point with these old mines in particular is in practice it is not known where many of them are and obviously on access land you are going to be in a situation where by definition they will be accessible to the public, so immediately you then have right from day one the responsibility of the occupiers to try and find these mines and cap them or fence them and on quarries to fence them off whether they are abandoned or not. That was never intended and as a result and there is a provision I have written about—and I will not bore you with it—in CROW that would allow the Government to introduce regulations to make it so that very draconian preventive measures did not have to take place from day one with the huge cost implications associated with it and we are saying, "Look, please, do not see them as backburner type regulations you can bring in any old time, please bring them in before you get the right of access", particularly as it has been accelerated. Please do not ignore these key regulations otherwise people have a very big cost burden from day one, which I do not think was intended.

79. What are Defra saying? Where are these regulations?

(Dr Jones) We have not seen them.

80. Are they imminent?

(Dr Jones) I do not know where they are in the process.

(Mr Hudson) We do not think they are imminent but they certainly need to be brought forward, along with a number of other things.

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[Continued

[Chairman Cont]

(Dr Jones) I was going to say, that it is not the end of the story dealing with the preventive measures you have from day one of fencing and capping mines to try and get rid of that but you still have a practical problem both under the Occupiers Liability Act and morally that access land with these mines is going to be very dangerous. Our members are phoning me up and are very worried, they say they do not walk on certain land and they do not go off the path because they are worried about these mines, because nobody really knows where they are. Our point is, look, please, can priority be given by the Agency to applications that ask for closures for this type of land on the basis it is dangerous, because it can be in nobody's interest for this to be open. Where that is established we would ask that closure is given priority there.

Patrick Hall

81. The point I wanted to clarify was not just obvious dangers of disused mine shafts, etc but what about people tripping over bushes, trees and mucking about and falling over, are there liability issues there for the landowner that concern you?

(Dr Jones) What has happened is that during the lobbying process we made the point about difficulties with occupiers liability, particularly where you are talking not about a path but people being anywhere, it was almost an impossible burden to leave the occupier with all liability for people. The Government then brought in a kind of modified liability system where the landowners are not liable for accidents caused by natural features and in deciding liability for other than natural features factors are looked at such as the cost of trying to deal with the problem and the character of the countryside, etc. The liability regime has been ameliorated quite a lot but it has not been touched as regards activities on the land so, for example, the keeping of animals, which is one of the things we raised, is a particular worry because under the Animals Act if somebody gets hurt by an animal that you know is dangerous you bear strict liability, it may not be your fault but you have to pay. This cannot be the correct regime to have on access land where you cannot control the access. We would therefore ask that when people ask the Agency for a closure because they have a cow with calves or a particularly nasty stallion and they say, "Please will you allow us to close off this land", that the Agency should not say, "How about an informal management technique?", because it will not do. They need to say, this is closed, otherwise the landowner has strict liability, but if it is closed and the person is a trespasser they do not have strict liability, they are only liable if they have been negligent. It is technical points like which the Agency have to be fully briefed on, specific points. Animals, mines and quarries are ones that are shining out as being problematic where we need closures. On mines and quarries you may need closures in areas that are intrinsically dangerous in themselves and with animals you need closures in much smaller areas where people have got dangerous stock.

82. Closures meaning that they never open up in the first place?

(Dr Jones) No, as they graze from area to area the owner gets in contact.

Patrick Hall: With regard to mine shafts you know where they are. If we do know where mine shafts are, if we do know where they are in advance, presumably the landowner might know, are you saying the land should never be available for access or that nothing should happen until the potential danger is sealed?

Chairman: You have five minutes to think about the answer to that. We have to go and earn our money, this is how we get paid. We have to vote. Some of us will come back but then we only have a very short period up to 6 o'clock. We will back as quick as we can.

The Committee suspended from 5.35 pm to 5.43 pm for a division in the House

Chairman

83. You were mulling over Mr Hall's question, what is the answer?

(Dr Jones) I have mulled over it so much I have forgotten what he asked.

(Mr Hudson) If I can remind my colleague, Patrick Hall was slightly confused as to whether closure meant closure all of the time or only part of the time?

(Dr Jones) I think basically we are talking about if the land is intrinsically dangerous, such as where it has mines on it and you do not know where they are we say there should be permanent closure effectively because it is intrinsically dangerous land. With animals we are not asking for that at all. What we are saying is that when the Agency are deciding on an application for a closure or a restriction, particularly when dangerous animals are involved, they should be fully aware of the liability issue for the occupier and an informal technique will not work, the only way legally to protect that person from strict liability is for there to be a closure.

84. I think the key topics that we need to come back to are, yes, there have been delays with the mapping process and there have been difficulties, you have heard what other people have said about this, would you give your perception about what has happened?

(Mr Hudson) Thank you, Chairman. I did hear the Minister saying he felt the mapping was getting better, I think it would not be fair of me to say that is not correct, there have certainly been some improvements, but we are still finding that there are mapping problems. I would like to ask my colleague Caroline Bedell to go into that a bit more.

(Mrs Bedell) There are two areas here, one is the old and out-of-date data sets that they are using, and we have heard about those from everybody, this is tending to map in the inby-pasture land, the land between the main valley floor going up to the mountain and moorland line and this causes everyone concern, especially in the livestock areas. We just talked about liability and that is what we are really being hit by, the liability issue, but it also causes them upset that they are having to deal with the wrong areas being mapped, it is causing confusion from the outset. One other concern is once they have put an application in and they say they are not happy with your draft map they are not getting a site visit so some people are forced to go to an appeal

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[Continued

[Chairman Cont]

where it is definitely improved pasture. I can send you an example of one of our members who has been through this whole process. They are forced to go to appeal and the Countryside Agency do not tell them why they still continue to include that piece of land.

85. There is no explanation.

(Mrs Bedell) It comes at the appeals process, but in a way you would reduce the number of appeals if people could understand why the Countryside Agency has reached a decision before they appeal.

86. Perhaps I got this wrong, I understood Pam Warhurst to say there was going to be a visit wherever there is an appeal, that is clearly not the case.

(Mrs Bedell) That is not happening at the moment. My understanding of what she was saying is where they think it is value-for-money there would be a visit but that still puts our member to cost if they have to go to appeal.

(Mr Hudson) Can I clarify that, the appeal procedure is only just beginning in the first areas, it is a bit early for us to know whether there are going to be visits on every appeal or not, but we have our doubts. The ability of the Countryside Agency to visit enough sites in the past from a draft map point of view, and even before the draft maps were produced, does give us some concern. Again, we understand that it is a huge undertaking and no one is pretending it is not.

87. You are telling us that the data that was worked on to begin with was quite inadequate?

(Mr Hudson) Especially in the lower north west, which was acknowledged.

Chairman: That is fine. I know that David Drew wanted to ask about regional road maps.

Mr Drew

88. Clearly your members are going to balance loss of privacy on the one hand against potential earning capacity, if they offer bed and breakfast, and other things that they might be able to sell people. Take me through those arguments, the two extremes? I will come in and ask you another question on the back of that?

(Mr Hudson) Clearly people who own private property do own it for many reasons, and one is for an element of privacy, so you are quite right in stating that is one consideration. Landowners for generations, hundreds of years have lived with the rights of way network which has worked very well and it has been, on the whole, well looked after—there are examples where that has not happened so well—and it has worked for the public. The privacy argument only goes as far as privacy from near where they live more than anything else. In terms of the potential benefit to owners and occupiers and other rural business people from increased access, ie tourism in particular, you mentioned bed and breakfast, and there are all sorts of other areas, yes, that could be a very major spin off and that is why I think we must all work very hard to make sure access is going to work successfully, I would like to emphasise that, we want it to work as much as anybody else. If we can have the spin-offs of benefits

to the rural economy, to our members, and people that are not our members for that matter, then that is a plus point.

89. My second question is a very difficult one, I will have a go anyway, I accept there are going to be more tensions within regions rather than between regions, in terms of a continual of this region and will get it sorted fairly quickly as against, Oh Lord, in the end they will still be at this in the next millennium, give us some feel for how you are approaching this and how you are trying to pull the different sides together? Is it possible to talk about that or is it really every region will have its own ways of sorting it and it is very difficult?

(Mr Hudson) There are two points there. The first point on the actual roll-out, which the Chairman mentioned, the early roll-out the Minister decided that he was going to do, we have been against that really and purely on the subject of costing. Although you did question him on that and he gave you an answer it seems to us bringing forward the regulations on closure and restrictions earlier than was anticipated is a cost and getting all of the infrastructure in earlier—which will have to be in even if only one region opens out—is a cost. If that is the case so be it. If at the end of the day in about three or four years' time we hear that there is not enough money for managing access because of the additional cost of rolling it out early I think there will be a lot of unhappy members in our Association and I suspect unhappy people in the countryside where the way marking is not sufficient and the closures are not being clearly identified. That is our view on the roll-out. We think there is going to be additional cost and it may impinge on all of us at a later date. Having said that, there are arguments for rolling-out early, and the Minister said this himself or maybe Pam Warhurst did, they can learn from rolling it out from one region and benefit in later regions, but that is not your question, your question is, do we have a feeling whether it is going to be worse in certain areas than in others? All I can say is it is going to be obviously more difficult in those areas that will have more access land, and that is areas like the lower north west, where we heard there are something like 8,000 representations, compared to the south east, where there were only 2,000 or 2,500. In areas where there is going to be a lot of open access those are the areas where if the management is not in place there could be problems, but we must all work very hard to avoid this.

Chairman

90. Let us move on, you said that it is good in economic terms to do this, it is good in legislative terms, there is a set of issues about infrastructure and implementation and resources and you heard the Ramblers' Association say, we would like the Countryside Agency to have a bag of money and people could bid for it. What is your perception? Good land management is something your members are experts on, getting access to the access fund is a key issue for you, how are we going to take this forward?

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[Continued

[Chairman Cont]

(*Mr Hudson*) We have some ideas, and I will ask Caroline to touch on those in a minute. Can I make a point on resource in general, the bag of money, which I think was your phrase rather than the chief executive of the Ramblers' Association, but I am sure that is what he was after. I have spoken to him about this and there is no question that the Ramblers and ourselves being two of the key organisations involved have common cause here. We all want to make sure that there are the right resources in the right place and in the right hands so that access can be rolled out in such a way that the public are clear as to where they can go and where they cannot go and when they cannot go there why they cannot go there. While we need a national database, which was mentioned earlier, not everyone is rushing on to websites yet, they may be in fifteen years' time, but getting on to on websites is not great fun and takes up time. A lot of people may decide to get up from their chair and go for a walk and go up to that area. If they get there they want to know whether it is closed or open and if it is closed they want to know why it is closed and the signs, et cetera, et cetera and the information needs to be there. That is a huge task, I have not worked out how many access points there might be in England and Wales, or in England as this is what you are looking at, but there would be thousands and thousands of access points. As far as the money is concerned I will ask Caroline to comment on to that, listening to the Minister and the Chairman of the Countryside Access Forum it seems to me there is a lot of pass the parcel going on with this money, it was not clear to me, the Minister said there is £12 to £19 million in grant aid but we all know that is not ring-fenced, and he admitted that himself. He can exhort local authorities, as he has tried to do. Similarly using existing monies that Pam Warhurst is talking about, there may be money but if they are used they are already earmarked for something else, so if they are pulled away and brought on to access somebody else is going to shout about it. Resources are a problem, I accept that, but we have a particular idea to put to you, and I would like to ask Caroline to do that.

(*Mrs Bedell*) The local authorities have statutory duties they have to enforce and therefore they need to be funded, so you want that to be adequately resourced. There is very much emphasis going on on voluntary management, this is going to be up to the landowner *per se* not up to the local authorities and they need a grant scheme of some form in place, and that is for visitor attractions such as a small car park, they are going to need to put signs up, they are also going to need to put signs up for closures and restrictions. They will need signs to signpost people round the routes they would prefer them to take, even though they cannot guarantee them to take. We would be asking for the Countryside Agency to administer a grant scheme that stands alone for that kind of access management, it might need the approval of the local access forum or the local rights of way authority and they need to be able to clear and understand how you get to those funds because, I must admit, have listened to the discussion I am confused as to how this is going to be funded as a scheme anyway. It needs to be clear and definite for them to go for.

91. Do you have any idea what scale of this fund would be?

(*Mrs Bedell*) I think it is very difficult because in some areas you are going to want large car parks because you are going to get a lot of people to a honey pot where everyone wants to get to and in other areas you might want to put a layby at the top of a track so that people can get out, park their cars and walk. It is difficult to establish how much they are going to need.

Mr Wiggin

92. To what extent is that the responsibility of the landowner to put in a car park?

(*Mrs Bedell*) I think they are going to have to, when you are driving up a south Shropshire lane up to the top and there is no where to park, these people can drive up to the top, park blocking the gateway and how do you get your tractors through on to the land? I think they are going to want to put these in to manage it.

93. Is there not a significant difference putting in a car park and putting up a "beware of the bull" sign?

(*Mrs Bedell*) I think there is. This is where your grant scheme is going to have to be wide enough to take that into account, it is not just the liability, it is a question of how you manage the whole countryside, and when you are on narrow lanes it is very difficult.

94. There is a real danger that the car park thing could be funded but actually where I leave my car is my responsibility, it is not the landowner's responsibility, whereas if you have a dangerous animal, and we touched on these rather *ad hoc* arrangements for advertising it, that is going to be really down to the landowner and should be because nobody else is going to know whether the bull is dangerous or not. The point is that it is going to be very difficult to pop down to the council and get £50 for three or four signs.

(*Mrs Bedell*) If I can pick up on signs, we think the Countryside Agency must produce a statutory type of sign that is clear to be understood because we are concerned that a painted daub that says "this is closed for 24 hours" is going to have no relevance to most people. We think they should be provided free of charge by the Countryside Agency when a restriction or closure is granted. When it comes down to car parks and restrictions the reason I am concerned about that is having managed estates quite often people do park their car wherever they want to and they block your road and your access, so you might want to get on and manage your land and reduce the impact of this legislation to be able to put in facilities for visitors.

Chairman

95. This leads to a set of wider issues the CLA talked about, which is rural tourism and how you link the car park with attractions and how you develop an infrastructure that works together. Your grant scheme would be for landowners themselves?

(*Mrs Bedell*) Landowners or occupiers, it does not have to be for landowners *per se*.

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[Continued

Mr Wiggin

96. If you are the tenant farmer or if you put the car park in who gets the money?

(Mrs Bedell) If are you tenant farmer and you have agreed it for diversification it would be the tenant who gets it. I do not think the landowner will ask for that, to be honest, having managed estates.

Chairman: It has been a bit disruptive, but we have run out of time. I am grateful for your help and for those final ideas. If there are things we have not asked

you about and you wanted to say just drop us a note very quickly, if you would, because we have to move on quickly and make sense of all that we have heard today because we are in a position to help make and shape policy and we hope to produce a short report within a matter of a few weeks. Thank you all very much for coming.

APPENDICES TO THE MINUTES OF EVIDENCE

APPENDIX 1

Supplementary Memorandum submitted by the Ramblers' Association (R1a)

1. LOCAL AUTHORITY SPENDING ON DUTIES IN RELATION TO EXISTING DUTIES ON RIGHTS OF WAY

Local authorities have had duties to protect and assert the public's rights to enjoy rights of way for many years, but evidence shows that they are failing to spend enough to meet these existing rights of way duties.

For example, local authorities' Best Value performance indicators for 2001/2 for the "ease of use of rights of way" (BV178) show that only 69% of England's rights of way are in the condition required by law. In addition, the Countryside Agency's ("the Agency") "Rights of Way Condition Survey 2000" found that walkers can expect to come across a serious problem every 2km. In the light of this survey, the Agency estimated that an investment of £69.2 million (or £366 per km of path) was needed to make definitive rights of way easy to use, yet local authorities are spending far less than this.

In 1999–2000, the CSS (formerly the County Surveyors Society) surveyed local authority expenditure on rights of way in England. From that research, the CSS estimated that local authorities were spending £32.6 million on their rights of way duties; and it found that the average expenditure on maintaining the network stood at £108 per km. (Source: "Resources for Public Rights of Way 1999/2000", CSS, January 2001.)

Many authorities do not see the link between a good rights of way network and health, the economy and sustainable transport. This is despite the fact that the economic importance of paths was shown so graphically by their closure during the foot-and-mouth disease outbreak. A report commissioned by the Government Office for Yorkshire and the Humber found that "the closure of footpaths is the single largest factor impacting on rural tourism", with the estimated loss of £34.8 million to the tourist industry in the Yorkshire region alone between March and May 2001. The Ramblers' Association believes that local authorities should invest more in their rights of way network. It needs to be recognised as a valuable resource, which is relatively cheap to maintain. Some local authorities are increasingly recognising the value of their networks, and are including a rights of way target in their Local Public Service Agreement. We would like to see more authorities selecting rights of way targets in this and the next round of LPSAs.

In addition to this local authorities should spend existing resources more wisely. For example, they should take enforcement action. This is where a landowner who obstructs a path is required by the local authority to remove the obstruction, and if he or she doesn't, the authority removes it and bills the landowner. This ensures the speedy re-opening of paths and is much cheaper than the "tip-toe" tactics of negotiating with the landowner, sometimes for several years. The Ramblers' Association is also concerned that many authorities spend public money diverting public rights of way, solely for the benefit of the landowner, with no benefit to the public.

We think it would be tremendously helpful for DEFRA to issue guidance to local authorities highlighting the benefits rights of way bring, urging authorities to invest properly in the networks and in the training of their rights of way staff, and pointing them to evidence of good rights of way practice (such as the Good Practice Guide issued by the Agency, the CSS, the Institute of Public Rights of Way Officers, and the LGA).

2. LOCAL AUTHORITY SPENDING ON NEW DUTIES AND POWERS UNDER CROW.

Local authorities will have several new duties and new powers under CROW. These are summarised as follows:

Powers

- Making/enforcing bylaws relating to access land.
- Appointing wardens for access land.
- Erecting notices indicating boundaries of access land and excepted land.
- Entering into agreements to provide means of access to access land.
- Providing access in absence of agreement with land owner.
- Removing obstructions to access land.
- To make combined legal event and definitive map modification orders; and to prepare consolidated definitive maps.
- Ordering removal of overhanging branches from bridleways.
- Making Traffic Regulation Orders for conserving natural beauty and SSSIs.
- Creating, stopping-up and diversion of rights of way for crime prevention etc.

Duties

- To establish local access forum by August 2003.
- To publicise effect of redesignation of RUPPs.
- To keep for public inspection registers of applications for definitive map modification orders; to keep for public inspection registers of declarations as to the existence of highways made under section 31(6) of the Highways Act 1980; to keep for public inspection a register of applications for diversion and extinguishment orders made by landowners.
- To prepare a rights of way improvement plan within five years.
- To deal with notices served on them relating to removal of obstructions.
- To have regard to needs of people with mobility problems when authorising the erection of stiles or gates.
- To publish reports on delivery of rights of way functions.
- To make decisions on landowner applications for diversion and extinguishment orders within four months.

A number of these will be essential to the effective implementation and smooth operation of the CROW provisions on the ground. In addition to these new duties and powers, local authorities will also have to cope with the implications of the “cut-off” date for the addition of historic public rights of way to the definitive map. Whatever arrangements are made by DEFRA and the Agency for the researching of these routes, the task of making the orders and taking them through to confirmation will rest with local authorities.

The Ramblers’ Association has carried out a survey to find out what funds local authorities have allocated for the implementation of CROW (in relation to all Parts of the Act) for the financial year 2002–3. A copy of the results of this survey is enclosed and shows that many authorities have allocated little or no money to this area of work.

In the light of this evidence and in view of our experience with local authorities in relation to their existing duties on rights of way (as described above), we have concerns that authorities may not allocate sufficient resources to carry out their new responsibilities under CROW.

The Ramblers’ Association believes that the money which will be allocated to local authorities for carrying out their new powers under CROW should be controlled by the Agency and distributed to authorities through a grant scheme, rather than allocated through the SSA directly to local authorities. We accept that this system may not need to be permanent but should be in place for at least for the first five years of the commencement of the new rights coming into being to allow for the new infrastructure to be set up. This should ensure that the money is spent on the purpose intended and will allow the Agency to monitor the work done and allocate funds based on both need and performance.

In addition to this, local authorities should be issued with guidance that explains the importance of their new powers under CROW in terms of health and the economy and sets out clearly what they are required to do.

In relation to the money allocated to local authorities through the SSA for carrying out their statutory duties under CROW, the Ramblers’ Association believes that the amount allocated to each individual authority should be a matter of public knowledge as it is in Wales.

In addition to this we think it would help to ensure that the money is spent on the purpose intended if local authorities were issued with guidance to ensure that they are made fully aware of the money’s existence within the SSA in relation to their new duties under CROW, and to set out the importance of the new right of access and rights of way in terms of health and the economy.

3. RETROSPECTIVE CHANGE TO MAPPING METHODOLOGY

On 17 April 2002 the Agency announced a retrospective change in the mapping methodology in reference to the discretion allowed to the Agency to omit land that qualifies as open country but is less than five hectares and which they consider to serve no useful purpose. Originally, land could only be omitted under this discretion if it met all of the following criteria:

- There was other access land nearby.
- The land did not provide a route to other access land.
- There was no nearby parcel of land which had the potential to be linked with the parcel to form a larger unit.
- The land did not contain any feature of special interest to the public.
- The land was not close to any settlement, visitor attraction, right of way or public road.

Under the amended methodology the Agency were only required to bear these criteria in mind when making a decision. In addition, the methodology was applied retrospectively to Regions 1 and 2, thereby removing land without its removal being subject to public consultation.

The original methodology had been agreed following public consultation. The new methodology dealing with areas less than five hectares was announced after the process was already underway. It was not consulted upon and was applied retrospectively. In addition to this, we have concerns about the way the discretion relating to areas less than five hectares is being applied by the Agency (see 5. below).

4. PRE-DRAFT MAP INFORMATION

The Agency has invited any person to submit existing data from surveys or “other local information” to it in advance of the publication of draft maps in each region. In some cases the Ramblers’ Association has been able to submit local information based on knowledge of the land. However, the deadlines for pre-draft submissions in Regions 7 and 8 were both brought forward by approximately three months (though this decision was not consulted upon or advertised). This meant that the Regional Partners Seminars for Regions 7 and 8 are being held after the date for partners to submit pre-draft map data and makes it very difficult for our members to submit information in time. At best, this suggests a lack of communication between the Agency and their contractor, Binnie, Black and Veatch, which in turn leads one to question whether the mapping contract is being properly managed by Agency.

5. CONCERNS ABOUT THE APPLICATION OF THE MAPPING METHODOLOGY

We have compiled a list of examples given to us by our members of land that has not been included on the provisional map in Regions 1 and 2, where we consider the methodology to have been inconsistently applied. Examples include land parcels that appear identical to adjacent or surrounding land parcels that have been mapped. We are concerned that this will cause confusion for walkers who will not be able to distinguish between what does and does not qualify. These examples have been submitted to the Agency for comment.

We also have concerns about the way in which the Agency has applied its discretion to exclude areas of open country of less than five hectares if it thinks the area serves “no useful purpose”. Not only has the Agency altered the methodology to widen this discretion, we also have examples of it being applied in ways we would wish to question. For example, it appears to have been applied to two or more adjacent parcels that together have an area of more than five hectares and to areas adjacent to large. Again, examples of decisions that concern us have been submitted to the Agency for comment. The Agency has stated that as a rule it is minded to leave on the map parcels of five hectares or less that are contiguous with other areas of open countryside and registered common land. However, we understand that the Agency has admitted that it was wrong to leave one such parcel (parcel P20180) off the provisional map for the lower northwest and has stated that it has no powers to undo a “no useful purpose” decision.

If it appears that errors have been made, the Ramblers’ Association would like to see a provision in the regulations on the correction of provisional and conclusive maps (not yet published) to allow for errors where land has been left off the map to be corrected or, failing this, an assurance that an early review of the map will be carried out at the first available opportunity.

6. LOCAL ACCESS FORUMS

The Ramblers’ Association believes that local access forums will be useful bodies in providing advice to local authorities and national parks about how the new right of access will work locally and also about the improvement of public access to land in that area in general. It is important that members of local access forums work constructively to achieve this end but also that local authorities and national parks take their advice seriously and provide the money necessary to implement their proposals.

The Ramblers’ Association is concerned about the process that some authorities are using in appointing members to local access forums. For example, in the Yorkshire Dales National Park the two members who conducted the interviews with potential members of the local access forum are also the National Park representatives on that forum. Similarly, in Oxfordshire, the member who conducted interviews for the Oxfordshire local access forum is also the Oxfordshire County Council member on that forum. The Ramblers’ Association would like to see much clearer guidance issued to local authorities and national parks setting out how appointments to local access forums should be made.

7. RESTRICTIONS SYSTEM

The Ramblers’ Association looks forward to the publication of regulations on restrictions and closures, which are due to be published this month. We support the principle that the “least restrictive option” necessary to deal with any individual situation should be applied. The restrictions system must be transparent so that users can understand and respect it. It will be dependent on good information on the ground in order to work. This information must be standardised and consistently applied across England and Wales. Users must be given adequate notice of any closure and there should be public consultation on long-term closures or restrictions. It is essential that the system be adequately funded.

APPENDIX 2**Supplementary memorandum submitted by the Country Land and Business Association (R2A)**

Thank you for inviting us to give evidence in front of the Select Committee. As an organisation we felt that a review of the implementation of CROW was an excellent idea as the impact of the legislation is now being felt and practical problems are coming to light.

Clearly, you have our evidence submitted both before and at the Inquiry. However, we do have some further comments stemming from the evidence given by others, and what follows is a brief run through our major concerns.

The Mapping

One of the key practical problems is the mapping of parcels comprising a series of small enclosures. These parcels are often next to the moor wall, and are used for the grazing of stock. Frequently improved in some way and in themselves without an open character, although next to open land, the inclusion of such parcels is fuelling resentment. In addition, the use of these parcels for stock does not sit easily with public access; for example liability problems with dangerous stock, the potential for dogs to worry livestock and the practical need for the construction and maintenance of numerous stiles and gates.

To avoid these problems, when mapping, the Agency must be encouraged to look at the openness of areas, to give a broader and more realistic definition to semi-improved grassland (to reflect the Government's commitment during the passage of the Act that only rough grazing land would be mapped) and to use its discretion to move the boundary of open country to clear features, such as the moorline wall. In this way true open country will be mapped and many practical problems for land managers, access authorities and the public alike, avoided.

Minimising conflict

At present there are no detailed regulations on closures and restrictions in England. However, even at this stage, concerns are being raised on how to cope with the right of access. Our evidence on mines and quarries and the difficulties of keeping dangerous livestock on access land illustrates the need for a flexible closure and restriction regime in practice as well as in theory; the Agency must be aware of the difficulties of land managers when deciding whether to grant closures/restrictions.

Successful management of the right of access, whether in the form of closures, restrictions or informal methods, hinges on the public being made aware of relevant information. In addition, there is a major concern that excepted land will not be differentiated from access land open to the public and that this will lead to disputes on the ground. To help avoid these difficulties nonstatutory overlays for the maps must be produced, showing excepted land and access points where information could be posted. This information could then easily be added to advertising literature and OS maps. Although the mapping methodology allows for overlays, there is no evidence of these being created and we believe that this point must not be ignored.

Further, a clear system of recognised signs and notices produced by the Countryside Agency and CCW is needed, in which signs are provided free to land managers, to enable recognised advertising of access land, closure and restrictions, excepted land, access points etc. Correct and clear signage and access points would increase the public's confidence and create certainty and understanding of the new provisions.

Grants

Commitments were given during the passage of the Act that the Countryside Agency would administer a grant scheme for land managers, in particular for any extensive work required to make access land for safe public use. The evidence to the Select Committee suggested that, although funds have been put into implementation of the right of access, these have not been ring fenced and thus are unlikely to be used for the intended purpose.

Given the many types and uses of access land, it is impossible to believe that access can work successfully on the ground without funds; it is vital that monies provided for access are used for the purpose. We therefore would urge the Government to set up an Access Management Grant Scheme with ring fenced allocated funds to land managers to provide the following:

- Specialist visitor management.
- Infrastructure such as entry/crossing points, car parks, signs and information points.
- Links to islands of access land from the local path network.
- Positive management of visitors, and
- Literature promoting access opportunities.

APPENDIX 3**Memorandum submitted by the Rt Hon Alun Michael MP, Minister for Rural Affairs and Urban Quality of Life, Department for Environment, Food and Rural Affairs (R12)**

1. When I appeared before the Committee on 3 February, I agreed to provide more information on the resources available to local authorities and others to implement the Countryside and Rights of Way Act 2000. Your Clerk subsequently sought additional information on landowners' liability for accidents at disused mines and quarries.

RESOURCES

2. The Government has funded the Countryside Agency, the Planning Inspectorate, National Park Authorities and local authorities fully for their new responsibilities under the Act. Because the budgets are not ring fenced and in many cases new activities build on those already undertaken, it is not always possible to give precise details of expenditure. Further, the final figures for 2002-03 are not yet known and allocations for the next financial year are still being refined. But I hope that the description below will be helpful.

ACCESS TO OPEN COUNTRY UNDER PART I OF THE ACT

3. The financial provision for implementing Part I of the Act includes expenditure by the Countryside Agency in mapping open country and registered common land, and by the Planning Inspectorate in dealing with appeals against the maps. It also covers expenditure on other items such as the need for the Agency and National Park Authorities to put in place systems for dealing with restrictions casework. The Agency (outside the National Parks) and the Park Authorities will be responsible for recording and publicising land managers' use of a limited power to restrict access to their land, and for determining the need for additional restrictions, both on application by land managers and for other purposes such as nature or heritage conservation. In the current financial year, provision to the Countryside Agency has been £9.25 million and to the Planning Inspectorate (from the Office of the Deputy Prime Minister) £1.5 million. National Park Authorities were given £875k in total in their National Park Grant.

4. For 2003-04, National Park Authorities have been allocated £2 million in total. As I mentioned to the Committee, the Lake District, Peak District and Yorkshire Dales will each receive £400,000 because the new statutory right of access will come into effect earlier in their areas than in the other National Parks, where the National Park Authorities will each receive £200,000 next year. Defra will also meet the Planning Inspectorate's additional costs: these will depend on the number of appeals. Grant-in-aid to the Countryside Agency has yet to be settled but it will include a larger sum for access than this year and the Agency will give priority to this work.

RIGHTS OF WAY UNDER PART II

5. The Committee was particularly interested in local authority expenditure on rights of way. As we explained the Government provided an assessment that this would involve an additional sum of between £12 million and £19 million a year for local authorities for their new duties and the additional cash in the local authority settlement is within that bracket. I can also state that the leaders of all political groups in the Local Government Association have told me that the way we are meeting this obligation has their support. Local highway authorities received the first full annual payment in 2002-03.

6. This funding is subsumed in the unhypothecated Environment Protection and Cultural Service block, so that we cannot say exactly how much has gone to individual authorities. Moreover, because funding for rights of way work has for many years been delivered through an unhypothecated block grant, we do not know how much money individual authorities receive specifically for all their rights of way work and therefore what baseline level of funding the £12 to £19 million supplements. To give a rough order of magnitude, research undertaken by the Countryside Working Group of the County Surveyors' Society indicated that total local authority expenditure on public rights of way in England stood at £32.6 million in 1999-2000.

7. While local authorities are best placed to decide exactly how much of their funding to spend on rights of way, their decisions are clearly critical to the successful implementation of Part II of the Act. I therefore wrote to all highway authorities in 2001, advising them of the increase in the overall financial settlement for rights of way functions in 2002-03 and asking them to share the Government's commitment to the provision of a clearer and stronger rights of way network.

8. There are a number of ways in which we can monitor the performance of local authorities in carrying out their rights of way duties. The statutory best value performance management framework requires authorities to review their functions, publish annual plans showing past and promised future performance and be subject to an audit and inspection regime. There is currently one rights of way performance indicator measuring the ease of use of rights of way. When authorities publish data against the performance indicator, their performance can be measured and the public can make an assessment of how its services can be

improved. We believe that the best value indicator is a vital tool in getting local authorities to resource their rights of way work adequately.

9. We already pursue evidence of poor performance with individual authorities. In addition, with the Countryside Agency, we shall be monitoring the production of Rights of Way Improvement Plans particularly carefully. Should such monitoring prove inadequate, section 71 of the Countryside and Rights of Way Act 2000 empowers the Secretary of State to make regulations requiring local highway authorities to publish reports on the performance of their functions relating to rights of way. Regulations may prescribe what the reports should cover and how they should be published. There are no plans for such regulations at present, but they could be used to “name and shame” local authorities that were failing to fulfil their rights of way duties.

LOCAL ACCESS FORUMS UNDER PART V OF THE ACT

10. Local highway authorities and National Park Authorities have also been funded to establish local access forums. In the case of the National Park Authorities, this comes from their National Park Grant. In the case of local highway authorities, it is, like the additional funds for rights of way, part of the unhypothecated Environment Protection Cultural Services block. (Strictly speaking, the modest funding for this is separate from the £12 to £19 million for rights of way, not included within it as one of Susan Carter’s answers to the Committee may have implied).

LANDOWNERS’ LIABILITY

11. You asked for a note on landowners’ liability under Part I of the Act following concern expressed by the Country Land and Business Association (CLA) about the potential for accidents at disused mines and quarries on access land.

12. During the passage of the Bill, Ministers considered very carefully the representations on the liability of occupiers of access land towards someone who is legally on their land as a result of the Act. As with all other aspects of the Act, we have struck a careful balance between the increased right of users of statutory access land and a reduction in the liability on occupiers. Section 13 of the Act amends the Occupiers’ Liability Act 1957 so as to cap the liability of occupiers of land towards those exercising the new right of access at the level normally owed to trespassers.

13. It further provides (by amending the Occupiers Liability Act 1954) that, at any time when the right is exercisable, occupiers of access land will owe no liability to those exercising the right of access, nor to trespassers, in respect of risks arising from: natural features of the landscape; trees; shrubs or plants of any description; any rivers stream, ditch or pond; and the passage of any person across a wall, fence or gate (except by proper use of a gate or stile). Liability is not excluded in any of these circumstances if the risk arises from anything done intentionally or recklessly by the occupier—nor in relation to the occupier’s lawful visitors, such as tradesmen.

14. Furthermore, the Act provides that the courts, in determining whether any liability is owed to non-visitors on access land, must have regard to certain additional considerations, including the fact that the existence of the new right of access should not place an undue burden (whether financial or otherwise) on the occupier.

15. There is an existing duty for the landowner to have an efficient enclosure or plug to prevent any person accidentally falling into an abandoned coal mine, or any other type of abandoned mine which has been worked since 1872. Abandoned non-coal mines that have not been worked since this date, and abandoned quarries, are exempt from this duty. But related statutory nuisance provisions allow local authorities in effect to enforce the same requirements under the Environmental Protection Act 1990 if there is danger to the public because the old workings are accessible from a highway or place of public resort. The CLA is concerned that a barrier will be required for all mines on access land, with significant cost implications for its members.

16. Section 42 of the CROW Act enables the Secretary of State to make regulations to provide that the fact that land is subject to the new right of access is to be disregarded in deciding whether the land is or is not a “public place” for the purposes of a specific enactment. The CLA has suggested that this mechanism could be used to avoid the introduction of the new access rights leading to new requirements on owners to secure old workings. We have not yet taken a decision on this proposal, but we are preparing a consultation document on the scope of the regulations under Section 42, and intend to issue this shortly.

17. Owners of access land will be able if they wish to apply to the Countryside Agency or, if their land is in a National Park, the National Park Authority for a direction restricting access to the area around abandoned workings, for example if they consider there is a real danger to the public that is not obvious. The Agency and National Park Authorities will consider such applications on their merits.

18. I hope this provides the information you need. Please do not hesitate to contact me if you have any queries.

27 February 2003

APPENDIX 4**Memorandum submitted by Mr Roger Lankester, Marine Ecology & Sailing (R3)**

The main intention of the act was to give greater access to “mountain, moor, heath, down and registered common land” on foot as outlined in the consultation document. This was re-affirmed in the Governments framework for action of March 1999 and which received almost universal acclaim from citizen stakeholders.

However, in the consultation paper it further stated:

PROPOSAL 4

The Countryside Commission and the Countryside Council for Wales should report in the year 2000 on the extent to which there is access to other types of open country. The Forestry Commission will report before this on access to forest and woodland. The Government will consider extending access to other types of land after these bodies have reported. Any primary legislation should be drafted to permit extension to these areas of a right of access by secondary legislation if necessary.

PRACTICAL QUESTIONS

Land to which the public might be given a right of access under secondary legislation.

Q3. What types of open country should be included in the proposal to extend a right of access by secondary legislation if necessary? How should they be defined?

My response to this was to suggest the need for better public access to the marine countryside for quiet leisure enjoyment by sailing boat, canoe and rowing boat, especially to the sheltered waters of river, creek and estuary. The concept was encapsulated in project Greensail, which has also been the subject of submissions to this H of C Committee. The background papers and the submitted memoranda of evidence can no doubt be found in the library.

Section 18 of Governments framework for Action document further committed the Countryside Agency to report on access to other forms of countryside and for other forms of enjoyment. So far no indication of when this promised report will be made available has been made.

I would invite the Sub-committee to inquire when this report will be placed in the public domain, what action government is intending to assist access to “other” countryside, in particular much needed improved public access to the marine countryside for the leisure enjoyment of this environment.

I thank the Sub-committee for the opportunity to comment on the progress made in the implementation of the Countryside and Rights of Way Act 2000.

Roger Lankester
Marine Ecology & Sailing

29 January 2003

APPENDIX 5**Memorandum submitted by the Institute of Public Rights of Way Officers (R4)****INTRODUCTION**

1. The Institute is the leading professional body representing those who are responsible for the management of public rights of way. It is also likely to represent many of those who will be concerned with the implementation by access authorities in particular of the provisions contained in Part I of the Countryside and Rights of Way Act 2000.

2. The Institute welcomes the thoroughness with which the Department is implementing Parts I and II of the Act, and in general has no concerns about the timetable. However it wishes to draw the committee’s attention to one matter of timing, and also to the more general issue of funding for the implementation of the Act by local authorities.

SECTIONS 53 TO 56

3. Sections 53 to 56 of the Act provide for the extinguishment of rights of way not recorded on the definitive map and statement at the “cut-off date” (1 January 2026 or such date up to five years later as may be prescribed by regulations). Estimates of the number of rights of way which could be affected by this provision vary, but all are agreed that the number runs into tens of thousands in England alone (the issue applies also to Wales).

4. Identifying these ways through research and then seeking to have them recorded on definitive maps will be a major task. Whatever the efforts of volunteers and surveying authorities, and the assistance that may be provided by the Countryside Agency's Lost Ways Project, there is no certainty that all relevant rights will be recorded by 1 January 2026.

5. Section 56(2)(b) gives the Secretary of State power to make regulations containing transitional provisions the effect of which would be that any orders or applications in the system at the cut-off date would be protected and allowed to continue to completion of the process.

6. The Institute understands that the Department has indicated that it intends to make such regulations. However it is not aware than any formal commitment on the matter has been made by the Secretary of State or on her behalf. The Institute regards the making of such regulations as an essential part of the process of recording these rights. It is concerned that the Department's timetable for implementation of Part II has the implementation of sections 53 to 56 at the end of its list, meaning that it is probable that no regulations will be made until 2005.

7. The Institute considers that regulations under section 56(2)(b) to provide protection for orders and applications in the system could be made much sooner without interfering with the timetable for implementation of the remainder of Part II, and without the need to implement other aspects of sections 53 to 56 any sooner.

8. The Institute therefore asks the Committee to consider this matter.

FUNDING FOR LOCAL AUTHORITY IMPLEMENTATION

9. The Minister wrote to local highway authorities in September 2001 stating that significant funds had been allocated for implementation of Part II, and asking authorities to put those funds to good use in providing a thriving rights of way network. However the Department failed to identify the exact allocation for each authority. This presented serious problems for those of the Institute's members responsible for rights of way management in local authorities. When they sought, in internal discussions, to have the promised additional funds added to their budgets they often failed because no amount had been specified.

10. The Institute understands that neither the government nor the Local Government Association favour "ring-fencing" of funds such as this allocation. However it believes that it should be possible for the government to be able to identify for each authority the effect of adding a sum to the total for all authorities. It appears to the Institute that it is simply a matter of running the calculation for each authority using the formula that divides the total, first for the total before the extra is added, and second for the total after the extra is added, and then subtracting the first from the second.

11. It is now too late for this calculation to be of any use for the current financial year, but it could be of some value for the next and subsequent years, and the Institute asks the Committee to consider this matter.

12. If any extra funds that are to be made available to local authorities to act as access authorities under Part I of the Act are to be allocated in the same way, then the Institute can foresee similar problems arising.

Institute of Public Rights of Way Officers

30 January 2003

APPENDIX 6

Memorandum submitted by the Open Spaces Society (R5)

INTRODUCTION

1. The Open Spaces Society, formally the Commons, Open Spaces and Footpaths Preservation Society, was founded in 1865 and is Britain's oldest national conservation body. We campaign for the protection of common land, town and village green, open spaces and public paths, in town and country, throughout England and Wales. We have 2,350 members consisting of individuals, organisations and local authorities.

2. The society has campaigned throughout most of its existence for freedom to roam on common land and open country. For us, as for thousands of others, the enactment of the Countryside and Rights of Way Act 2000 was an important milestone and a cause for great celebration. We are delighted too that implementation of access to open country and common land by the end of 2005 is a government PSA target.

MAPPING OF ACCESS LAND

3. We recognise what a massive and complex task this is, and consider the Countryside Agency deserves credit for what it has achieved. Naturally, we have felt frustrated at the delays in the process, but we recognise that this was uncharted territory and the agency had quickly to establish how it was going to carry out this task, with no opportunity for experiment. Not surprisingly, there have been problems with the early regions,

especially region 2, but we understand that the agency and the contractors feel they have learnt from their mistakes. Provided that there are no further problems from now on, access should still be achieved on target.

4. The sad discovery is that, as a result of the last-minute amendment to the bill to exclude improved and semi-improved grassland, much land which we had thought would appear as downland has been excluded from the map and land which we, and many in Parliament, had thought would be access land has been excluded. This is particularly regrettable in the south of England where access land is anyway limited.

5. In some cases we have been puzzled by the exclusion of some land from the draft maps when other land which appears identical in character has been included. It would help if it could be made clear to the public exactly why these discrepancies occur.

6. We welcome the announcement by the minister, Alun Michael, at the end of last year, that access would be commenced on a regional basis, starting with regions 1 and 3 in the summer of 2004.

SMALL AREAS

7. Under section 4(5)(b) of the act, the agency has discretion about the inclusion of areas “which are so small that . . . their inclusion would serve no useful purpose”. We are concerned that, after publishing the draft maps for regions 1 and 2, the agency changed the way in which it decided whether the areas should be included. In fact it made it easier to exclude them (ie originally, areas of less than five hectares had to fulfil five criteria, now the agency only has to bear these criteria in mind, which is more subjective).

8. In the case of regions 1 and 2, the agency had included on the draft maps the areas it was minded to exclude under the original, tougher, criteria, thus giving people the opportunity to argue for their inclusion, but the agency then applied the new methodology retrospectively and the public lost out on the chance to argue for the inclusion of these areas. This is particularly regrettable in those areas where open country occurs only in small parcels anyway, and which are therefore even more valuable to the public

Discrepancies between draft and provisional maps

9. We submitted over 100 comments on the draft map for region 1, claiming that land which was omitted ought to be included. The agency sent us “determination” sheets showing the fate of each of the areas we had claimed. Some of them were included, but, in four cases, land we had been told would be included did not appear on the provisional map. We queried this in December 2002 and await a reply. We do not know what is the process for rectifying such errors.

EAST SUSSEX COMMONS

10. After the Countryside Agency had produced the draft maps for region 1 it discovered that there was no final common land register for East Sussex. The registers were lost in a fire in 1993 and the council promoted a private bill (at some expense) in 1994 to enable it to reconstitute them. East Sussex ratepayers may be surprised to learn that eight years later the council has still not finalised the register, with the result that commons in that county cannot be included on the access map. As a result the public will lose out on access to the commons until the maps are reviewed. We are aware that the minister has asked the council to speed up the finalisation of the register, and the agency has said it will have an early review of the access maps here to enable the commons to be included as soon as possible.

RESOURCES

11. It is essential that government provides sufficient resources for the successful implementation of access once the land is mapped. The legislation will work much more smoothly and without argument if money is available to assist owners and occupiers in positively and sympathetically managing the land for access. They should be encouraged to use management measures instead of applying for closures and restrictions.

12. Clearly the closures and restrictions will be costly to the public purse. Far better value for money can be achieved through using that money to manage of the land in the interests of everyone. We trust therefore that the government will enable this valuable legislation to work to the greatest public benefit by ensuring that there are sufficient funds available now and in the future.

13. It is vitally important too that local authorities spend the additional money they are given for implementation of the Countryside and Rights of Way Act for that purpose and not allow the money to be filched for other things. We urge government to keep a close watch on this and ensure that the money is spent on access.

The Open Spaces Society

31 January 2003

APPENDIX 7

Memorandum submitted by the Royal Society for the Protection of Birds (R6)

1. INTRODUCTION

1.1 The RSPB welcomes this opportunity to provide evidence to the Environment, Food and Rural Affairs Committee on the “Implementation of the Countryside and Rights of Way Act 2000”.

1.2 RSPB is a wildlife conservation charity, governed by an elected council and supported by a subscribing membership of 1,012,000. Our key objective is to promote the conservation of wild birds and their habitats. We achieve this through the advocacy of environmentally sustainable land use policy and practice; acquisition of land as nature reserves and dissemination of public information. The RSPB now owns or manages 150 nature reserves in the UK, covering 102,800 hectares.

1.3 The Society contributed fully to the consultative and parliamentary process that led to the enactment of the Countryside and Rights of Way Act 2000 (CROW Act). We have continued to assist implementation of the Act, focussing on Part III, in relation to protected wildlife and sites and species and Part I, access to open country (including through our membership of the National Countryside Access Forum, which advises the Countryside Agency on its role in relation to access; the EN/CA Wildlife and Access Advisory Group; undertaking research to improve our understanding of the relationship between access and wildlife).

1.4 In this submission, we wish to draw the Committee’s attention to two specific issues: (i) our concern about the uncertainty of funding for access management and (ii) delays in issuing key guidance documents and Regulations which is inhibiting effective implementation of Part III of the CROW Act in relation to the protection and management of SSSIs.

2. ACCESS TO OPEN COUNTRY

2.1 The RSPB supports the provision of more public access to the countryside, in ways that do not harm the resource people have come to enjoy—including wildlife habitats.

2.2 The new right of access on foot to open countryside will apply to some of the most important and sensitive wildlife habitats in England: heathland, downland and upland. Commonland contains important wildlife sites, embracing a wide range of habitats. About one third of the land to which the new right will apply has been notified as SPA/SAC¹ under European wildlife legislation to safeguard its interest; about 70% has been notified SSSI² under English legislation.

2.3 In many cases, we believe the new right can be introduced without harm to the wildlife resource. However, access can cause damage to wildlife, directly or indirectly. Examples of direct damage include disturbance to ground-nesting birds, trampling of sensitive vegetation communities. Indirect examples include disrupting grazing animals and enhanced incidence of fire.

2.4 Section 26 of the CROW Act allows the Countryside Agency to restrict or close land to the right of access to protect nature conservation, in light of advice from English Nature on the wildlife interest of the site and its vulnerability to damage or deterioration from access.

2.5 It is widely acknowledged that sensitive access management can mitigate many of the adverse effects that access on foot could have on wildlife. This includes appropriate location of access points and car parking to ensure a “long walk in” to sensitive areas, path improvements to guide people away from sensitive areas, provision of information and wardening. All measures involve some cost: either capital to provide access infrastructure, or ongoing revenue expenditure, such as for information and wardening services.

2.6 RSPB is supportive of the approach that the Countryside Agency and English Nature intend to adopt towards the safeguarding wildlife sites; that the principle of “least restrictive option” should be applied. Thus, management measures should be used in preference to Section 26 restrictions or closures; in the event of restriction under Section 26 being necessary, then this should be the minimum necessary in time and space to protect the interest of the site.

2.7 The RSPB’s greatest concern is that it is not at all clear as to where the funding for access management measures will come from. There appear to be three alternatives: (i) EN meets the cost under an agreement with the owner/occupier; (ii) the Countryside Agency meets the cost through a dedicated access management fund; (iii) Defra provide funding through agri-environment measures. We do not consider it appropriate to require the land manager to bear these costs.

2.8 If the financing or implementation of management measures is in doubt at a particular site, we are of the view that the Countryside Agency must make a Section 26 restriction or closure. Failure to do so may leave the Agency in breach of its legal duties as a competent authority under European legislation, or a Section 28G authority in relation to SSSIs under the Wildlife and Countryside Act 1981 as amended. It might also

¹ SPA: Special Protection Area designated under the EU Directive on the Conservation of Wild Birds 79/409/EEC; SAC: Special Area of Conservation designated under the EU Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora 92/43/EEC.

² SSSI: Site of Special Scientific Interest notified under Section 28 of the Wildlife and Countryside Act 1981 as amended.

risk leaving individual users at risk of prosecution for reckless damage or disturbance to the notified interest of protected sites, or to specially protected species. The RSPB considers such a situation would be most unwelcome. The RSPB asks the Committee to urge Government to ensure resources are made available to fund access management, ideally as a dedicated scheme.

3. SITES OF SPECIAL SCIENTIFIC INTEREST

3.1 The provisions relating to the protection of Sites of Special Scientific Interest (SSSIs) came into force on 30 January 2001. Since then, Defra has made progress on a number of issues in relation to the implementation of the revised Section 28 of the Wildlife & Countryside Act 1981 (WCA 81). However, there has yet to be any implementation of the following areas:

3.2 *Denotification of SSSIs*: guidance on implementation of Section 28D (denotification of SSSIs) has yet to be finalised in England and Wales. The RSPB only supported the inclusion of this section on the understanding from the Government that clear guidance would be provided to English Nature (EN) and the Countryside Council for Wales (CCW) on the circumstances when it would be appropriate to exercise this new power. Absence of finalised guidance has meant that key bodies involved in implementing the Act have not had their new duties explained to them.

3.3 *Strategy for EN and CCW*: the CROW Act provided the agencies with enhanced duties and powers (some of which they are beginning to use) and the Government committed both agencies to developing an enforcement strategy clarifying the circumstances in which it would deploy them. However, no strategy has yet been produced by either agency.

3.4 *Management statements*: an important new aspect of the provisions is the “management statement” developed as part of the site citation under Section 28(4). These provide the basis on which negotiations concerning site management are to be based. Progress is being made on the development of these statements and being prioritised for those sites needing positive management agreements concluded as a matter of urgency. However, it is unclear whether the target of having “management statements” for all SSSIs within five years will be met.

3.5 *Public bodies*: Section 28G of the 1981 Act places a duty on all public authorities and bodies to take reasonable steps to further the conservation and enhancement of SSSIs. The RSPB is not aware of any public authority or body that has begun a comprehensive review of their activities in relation to this provision or of any moves by EN or CCW to facilitate this. In part, this is due to absence of the Section 33 code of guidance referred to above.

3.6 *Byelaws*: EN and CCW gained a power to introduce byelaws to control damaging activities, which was introduced during the passage of the Act following lobbying from organisations (including the RSPB) concerned at the loss of Nature Conservation Orders (NCOs). However, whilst 20 SSSIs have now lost the protection of NCOs, none have had new byelaws introduced to ensure the level of protection afforded to the SSSI has not diminished.

3.7 *Resources for EN and CCW*: whilst the new provisions are to be applauded, the RSPB is concerned that adequate resources are not being made available to either EN or CCW to implement them. Defra has a new Public Service Agreement stating that 95% of SSSIs in England will be in favourable condition by 2010. Without significant additional resources for EN, there is a real risk that the Government will be unable to meet this PSA target.

31 January 2003

APPENDIX 8

Memorandum submitted by the British Mountaineering Council (R7)

I attach some questions, on issues of concern, from the British Mountaineering Council for the Environment, Food and Rural Affairs Committee inquiry into the implementation of the Countryside and Rights of Way Act 2000 on Monday 3 February 2003.

Areas of less than five hectares and other small areas.

Can the Government give an assurance that areas of less than five hectares, and other small areas which qualify as access land, will not be excluded from the conclusive maps if they contain natural features which are of recreational interest such as cliffs and crags, or features which may be of interest to members of the public such as a stone circle or other features of historical or archaeological interest?

Educational and Training activities.

Can the Government give an assurance that, whilst activities of a commercial nature are restricted under Schedule 2 of the Act, activities which are concerned with the education and training of young people, and activities which are concerned with the training of adult teachers and leaders by guides and instructors will be recognised as not restricted under Schedule 2 of the Act. (The education and training of young people and teachers and leaders is undertaken by a considerable number of Outdoor Activity Centres throughout England and Wales as well as by instructors and guides.)

Slippage in the mapping process.

Can the Government give any reassurance that the mapping timetable will not be delayed any further, and that measures have been taken to change working practices to avoid further slippage of the mapping timetable?

31 January 2003

APPENDIX 9**Memorandum submitted by the Ordnance Survey (R8)****BACKGROUND**

1. Ordnance Survey is Great Britain's national mapping agency. We maintain the definitive topographic framework for Great Britain, as well as capturing and marketing a wide range of geographical information. Our Director General is the Government's adviser on geographical information. Ordnance Survey is a Government Department and Executive Agency, and since 1999 has operated as a Trading Fund.
2. While not directly involved in the implementation of the Act, we have a strong interest in the process of disseminating information about access land from both public interest and commercial perspectives.

COMMENT

3. Ordnance Survey is committed to depicting access land on the 1:25,000 scale Explorer^(TM) paper map series. This will serve the public interest and also increase the usefulness of these products to members of the public who wish to enjoy the countryside.
4. We welcome the decision to adopt a region-by-region roll-out, rather than a national release, because it will help us to manage the extra load on our cartographic and production resources during the implementation period.
5. We contribute to the Joint Working Group which briefs the Minister on progress (along with the Countryside Agency, Countryside Council for Wales, DEFRA, Forestry Commission and the Welsh Assembly Government).
6. The detail of the way in which access land will be depicted on Explorer maps is still under discussion among members of the Joint Working Group. It should be understood, however, that the depiction of access land on Explorer must necessarily be indicative rather than definitive due to the limitations of scale (as has always been the case with Rights of Way).
7. The timetable for regional release of the conclusive maps now appears to be firm, and we are developing plans to introduce revised editions of the appropriate Explorer maps showing access land. These will be updated at the same time to reflect other known change. There are approximately 250 Explorer map sheets covering England and Wales, and we would normally expect to revise them all over a period of five years. Costs and staffing requirements rise steeply as the timescale for introduction of new editions is shortened, and we are not currently in a position to announce an accelerated revision programme. Inevitably there will be a delay between the publication of the conclusive map and the introduction of revised Explorer mapping. In the case of Explorer sheets that span two or more regions, it may be necessary to wait for all the relevant conclusive maps to have been published before revising the Explorer map.
8. We shall be happy to provide further evidence to the Committee if required.

31 January 2003

APPENDIX 10**Memorandum submitted by the League Against Cruel Sports (R9)**

We note that paragraphs 6 and 7 of Schedule 7 of the Act have not as yet been implemented. These paragraphs would have the effect of changing the law about the use of horses on footpaths and the use of quad bikes on bridleways.

At the moment, someone using a horse on a footpath or a quad bike on a bridleway can defend themselves by claiming that the right to use their horse or vehicle was valid. The burden of proof would be on the prosecuting authority.

When these paragraphs are implemented, the burden of proof would switch to the horse or bike rider. Prosecution would become much easier and there would effectively be restrictions on the ability of hunters and hunt followers to travel around the countryside.

This would help to reduce the amount of disruption caused to other users of the countryside by the hunt. Footpaths are not intended for use by horses, nor bridleways for use by mechanically propelled vehicles, and when individuals ignore the restrictions on use of these byways, problems can frequently be caused to legitimate users. Individuals can, for example, be forced off footpaths or bridleways due to these being blocked or made dangerous by illegitimate use, leading to unintentional trespass; or they can effectively be prevented from using such paths at all.

The implementation of Schedule 7 would not be problematic for legitimate use of byways. In cases where there is evidence that horses or vehicles are entitled to use a particular byway, such proof would consist a valid defence. The changes would, however, make prosecutions for illegitimate use significantly easier, improving access to, use of, and enjoyment of countryside byways for all.

31 January 2003

APPENDIX 11

Memorandum submitted by the National Farmers' Union (R10)

The National Farmers' Union (NFU) welcomes this opportunity to submit comments to the Committee's inquiry into the implementation of the CROW Act. As the main representative body of professional farmers and growers in England and Wales, we have closely followed the passage of this Act and its subsequent implementation. The inquiry, albeit short, provides a valuable opportunity to evaluate progress.

The Countryside and Rights of Way Act has correctly been associated with the introduction of a new right of access on foot to registered common land and open country. However, we would urge the Committee not to focus exclusively on this aspect of the Act. It also introduced new provisions relevant to other aspects of rights of way (including the diversion and stopping up of certain routes, the preparation of rights of way improvement plans and the formation of local access forums) and the protection of SSSIs and AoNBs. We would hope that the Committee would also consider the effectiveness of implementation on these aspects as well as the better publicised objectives of the Act.

In this evidence we have identified only "headline" issues that we believe should be considered by the Committee. We would be happy to enlarge on these should the Committee have the time to consider them.

1. MAPPING OF ACCESS LAND (PART 1, SECTIONS 1-11)

The main focus of implementation since the passage of the Act has been the mapping of access land in England and Wales. As this provides the basis on which the new right of access will be granted, the importance of establishing an accurate and widely respected record of access land cannot be underestimated. In this respect the farming community must have complete confidence in the mapping process and in the independence of the appeal process. Inevitably lessons have been learned from the lead mapping areas in England and Wales, nevertheless we have some concerns about the mapping process.

We notice marked inconsistencies in the mapping of open land categories between England and Wales, even though similar definitions of the land types are given in the Agencies' (non-statutory) mapping guidance. Farmers in the Peak District report that access maps showing moorland have included areas of improved or semi-improved grassland expressly excluded by the Act (Section 1(2)). Our understanding is that some of this land was included on the basis of outdated survey information, a lack of field verification and/or as a result of faulty digitisation. Poor quality control may also explain the withdrawal last summer of the provisional map of South-East England.

As the mapping exercise relies on secondary data sources, we would recommend that the Countryside Agency secures more contemporary and accurate sources and institutes more effective quality control procedures before issuing draft and provisional maps.

The farming community must have easy access to consultation copies of the draft maps, whether in electronic or paper form. We believe that this will improve farmers' awareness and preparation for the introduction of the new right. We are encouraged that the agencies have both made efforts to provide information in preparation for, and during, the mapping process. As a statutory consultee, the NFU has welcomed the provision of complementary copies of the access maps for distribution through its own offices.

However, we are surprised that farmers in England have to pay for paper copies of the maps, whereas in Wales complementary copies are provided free of charge on request.

We note that about 180 appeals have been lodged within the South-East region and about 400 in the lower North-West mapping region. It is too early to comment on the effectiveness of the appeal process, but we would emphasise that it is critical that this independent process produces robust and practical decisions respected by all parties to each appeal. We have received no complaints as yet from farmers concerning the efficiency with which the Planning Inspectorate is handling appeal applications.

2. MANAGEMENT OF ACCESS LAND (PART 1, SECTIONS 17-33)

The management of access to open country presents the greatest “unknown” for many farmers. While the Act provides for land managers to restrict access to land in certain circumstances, this will be subject to procedures administered by the Countryside Agency. The Government and Agency undertook a joint consultation on the exercise of exclusions and restrictions to access land last spring. Despite this consultation and while it may be some 18 months before the new access rights come into force, in our view too little is known about how these management procedures will be supported by the Countryside Agency nor whether farmers will be able to obtain them when required.

During the passage of the Act, Ministers gave assurances that the new right of access will not prejudice existing farming operations. The system of managing access provided for in the Act is intended to assist in this process. Farmers need to be assured that the ability to apply for access restrictions or exclusions will be available well before the new right comes into force and that the Agency will give full consideration to the agricultural case for any application.

While informal or formal access management will provide one means of steering use to those areas most able to cope, we are convinced that this alone will prove ineffective. We believe that the Agency must also provide advice on managing access via locally based access wardens and capital grants to put in place effective access management (eg waymarking, information boards, styles and self closing gates). The Government must ensure that this type of provision is available to farmers at no additional cost. The National Countryside Access Forum will be discussing possible incentives at its next meeting this month.

3. PROMOTION OF ACCESS LAND

We are disappointed that the Government has decided that the new access right should be “rolled out” across England as the mapping process is completed. We have consistently argued against this approach as we expect this to result in considerable confusion for users and farmers alike. (For example, in areas where mapping is still to be completed that adjoin those where the right of access is launched). Our preference would be for access to be “launched” on a national basis during 2005. This would give land managers sufficient time to prepare for the launch and for an effective publicity campaign to be run by Government to inform the public accurately about the new right.

On a more local scale information about access land is also an issue. We understand that the Countryside Agency will be reliant on third parties to inform the public about the location of access land in each region. Local highway authorities, tourist information centres, walking magazines, local papers and parish councils must all play a role. The Committee may wish to explore with the Minister and the Countryside Agency how these groups will assist in disseminating advice, especially that relating to temporary restrictions to access land.

However, it is likely that many users will consider the Ordnance Survey (OS) as the authoritative source. Again the Committee may wish to consider how the OS will convey information. Issues to consider include:

- Access to conclusive maps.
- Mapping of “access points” to open country.
- Illustration of excepted land (such as golf courses) on OS maps.
- Provision for updating OS mapping of access land.

4. DIVERSION OF RIGHTS OF WAY (PART 2, SECTION 57)

We welcomed the CROW Act’s provision allowing rights of way to be diverted or stopped up as a consequence of proven concerns about crime. The Government consulted on secondary legislation implementing this provision last summer. During the passage of the Act we successfully lobbied for this provision to apply equally in rural or urban areas (the original proposal implied that urban areas would be its primary focus). However, the Government’s consultation appeared to step back from the wider provisions of the Act to focus on urban settlements.

The Committee may wish to reflect on whether such a measure should be so narrowly focused. In our response to Defra we have called for the measure to be “rural proofed” to ensure that legitimate concerns about specific routes could be resolved. (In association, we have also argued that diversion of rights of way may also be justified on animal welfare, biosecurity or health and safety grounds).

5. LOCAL ACCESS FORUMS (PART 5, SECTIONS 94 AND 95)

The NFU supported the sections that require local highway authorities to establish local access forums containing a balance of user and land manager interests. Subsequent secondary legislation now requires authorities to establish forums by mid-summer 2003. We believe these bodies could provide a positive means of bringing together local users and land managers, as well as others interested in countryside access, to agree practical means of improving the local access network and advising the highway authority on how best to discharge its functions. Experience during the foot and mouth crisis demonstrated the value of this type of strong local liaison.

Most local authorities have yet to implement this provision. In those that have, we are unsure that the required balance between land managers and user groups is being implemented appropriately. Just as the interests of user groups vary widely, so does the nature of land managers' interest. For example, it would be questionable whether the relevant Water Company or the National Trust effectively represents the interests of hard-pressed hill farming communities—yet all three groups are “land managers”. The Committee may wish to consider how the Countryside Agency and Defra are monitoring local authorities' implementation of this aspect of the legislation.

6. RIGHTS OF WAY IMPROVEMENT PLANS (PART 2, SECTION 60–62)

We have welcomed the concept of rights of way improvement plans as a means to prioritise effort to modernise the route network and so ensure that it fits the needs of the Twenty-first Century. We have always regarded these documents as a means of balancing the needs of users with those of land managers. Therefore, we are discouraged that the weight of the Government's guidance emphasises identifying the nature and location of demand for new provision, rather than making better use and maintenance of the existing network. We would also urge that the Government ensures that resources devoted by local authorities to preparing improvement plans does not detract from authorities' existing duties to define and manage the current route network.

7. NEW SSSI PROVISIONS (PART 3, SECTION 75)

Schedule 9 of the CROW Act introduced substantial changes to the protection of SSSIs, the introduction of management notices and management schemes being of particular relevance to the farming community. While we have discussed the measures with English Nature, we question whether it has sufficient funding and appropriately trained staff to assist farmers to understand their new obligations.

The new provisions also introduce new obligations across the public sector. In this respect the proposed updated “Article 33” Ministerial guidance, which was the subject of lengthy discussion during the passage of the CROW Act with interested bodies, remains unpublished. The guidance is important as it explains to all parties how the new provisions are to be implemented, and in particular emphasises the spirit of co-operation that should characterise relationships. We believe that continued delay of this Guidance is a very significant omission and one that should now be rectified.

SUMMARY

We welcome the EFRA Committee's scrutiny of the implementation of the CROW Act. We believe that it timely to assess progress to date. In our submission we have identified a number of issues that need to be followed up with the Department and the Agency in respect to new right of access to open country. However, we would emphasise that this is only part of the CROW Act; the Committee should also consider other provisions of the Act including those dealing with SSSIs. While the Act itself has spawned a huge number of consultations and secondary legislation, the Committee should also consider adequacy of funding to implement these provisions.

3 February 2003

APPENDIX 12

Memorandum submitted by the Local Government Association (R11)

The Local Government Association represents all local authorities in England and Wales and our attention has been drawn to the short Inquiry being held into the implementation of the Countryside and Rights of Way Act 2000. It is understood that the main emphasis of the Inquiry is to consider the issue of mapping within Part 1 of the Act and therefore we have limited our comments to this due to the timescales involved.

The LGA played an active role in development of the CROW Act and supports the aim of improving access to “open countryside”. Local authorities are working with the Department for Environment, Food and Rural Affairs, the Countryside Agency and others on planning for implementation of the new access arrangements, including best use of our powers.

With regard to Part 1 of the Act we would make the following points:

- The decision to allow commencement of the new right of access in pilot lead areas (lower North West and South East) ahead of other areas will require careful management and timely, locally accessible information. The Countryside Agency should work closely with local authorities and national park authorities, particularly in and around the borders of open access areas, to ensure consistency of information and advice to users and land managers.
- Incentives for managing open access need to be developed as part of broader priorities and programmes covering transport, rights of way, economic regeneration, tourism, health etc. DEFRA are being encouraged by the LGA and the Association of National Park Authorities to ensure any new grant aid and advice is administered through existing, local arrangements and complements related plans and strategies.

31 January 2003

**ENVIRONMENT, FOOD AND RURAL AFFAIRS
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Session 2002-2003

FIRST REPORT: Review of the Common Fisheries Policy, HC 110, published 28 November 2002.

SECOND REPORT: Annual Report of the Committee 2002, HC 269, published 23 January 2003.

THIRD REPORT: Mid-term Review of the Common Agricultural Policy, HC 151, published 21 January 2003.

FIRST SPECIAL REPORT: Government reply to the Committee's Tenth Report of Session 2001-2002, The Role of Defra, HC 340, published 28 January 2003.

SECOND SPECIAL REPORT: Government reply to the Committee's Ninth Report of Session 2001-2002, The Future of UK Agriculture in a Changing World, HC 384, published 4 February 2003.

THIRD SPECIAL REPORT: Government reply to the Committee's First Report of Session 2002-2003, Review of the Common Fisheries Policy, HC 478, published 4 March 2003.

Session 2001-2002

FIRST REPORT, The Impact of Foot and Mouth Disease, HC 323, published 23 January 2002 .

SECOND REPORT, The Countryside Agency, HC 386, published on 13 February 2002.

THIRD REPORT, Radioactive Waste: The Government's Consultation Process, HC 407, published 13 February 2002.

FOURTH REPORT, Disposal of Refrigerators, HC 673, published 20 June 2002.

FIFTH REPORT, Genetically Modified Organisms, HC 767, published 18 June 2002.

SIXTH REPORT, Departmental Annual Report 2002, HC 969, published 17 July 2002.

SEVENTH REPORT, Illegal Meat Imports, HC 968, published 23 July 2002.

EIGHTH REPORT, Hazardous Waste, HC 919, published 26 July 2002.

NINTH REPORT, The Future of UK Agriculture in a Changing World, HC 550– I, published 6 November 2002.

TENTH REPORT, The Role of DEFRA, HC 991, published 14 November 2002.

FIRST SPECIAL REPORT, Government Reply to the Eighth Report of Session 2000-01 from the Agriculture Committee, New Covent Garden Market, HC 272, published 22 October 2001.

SECOND SPECIAL REPORT, Government Reply to the Seventh Report of Session 2000-01 from the Agriculture Committee, The Implementation of IACS in the European Union, HC 273, published 22 October 2001.

THIRD SPECIAL REPORT, Government Reply to the Ninth Report of Session 2000-01 from the Environment, Transport and the Regions Committee, The Draft Water Bill, HC 499, published 14 January 2002.

FOURTH SPECIAL REPORT, Government Reply to the Fifth Report of Session 2000-01 from the Environment, Transport and the Regions Committee, Delivering Sustainable Waste Management, HC 659, published 5 March 2002.

FIFTH SPECIAL REPORT, Government Reply to the Committee's Second Report, The Countryside Agency, HC 829, published 14 May 2002.

SIXTH SPECIAL REPORT, Government's Interim Reply to the Committee's First Report, The Impact of Foot and Mouth Disease, HC 856, published 21 May 2002.

SEVENTH SPECIAL REPORT, Government Reply to the Committee's Third Report, Radioactive Waste, HC 1221, published 24 October 2002.

EIGHTH SPECIAL REPORT, Government Reply to the Committee's Fifth Report, Genetically Modified Organisms, HC 1222, published 24 October 2002.

NINTH SPECIAL REPORT, Government Reply to the Committee's Sixth Report, The Departmental Annual Report 2002, HC 1223, published 24 October 2002.

TENTH SPECIAL REPORT, Government Reply to the Committee's Seventh Report, Illegal Meat Imports, HC 1224, published 24 October 2002.

ELEVENTH SPECIAL REPORT, Government Reply to the Committee's Eighth Report, Hazardous Waste, HC 1225, published 24 October 2002.

TWELFTH SPECIAL REPORT, Government Reply to the Committee's Fourth Report, Disposal of Refrigerators, HC 1226, published 24 October 2002.

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