



Irish Sport HQ  
National Sports Campus  
Blanchardstown  
Dublin 15, Ireland

Tel +353(0)1 625 1115  
Email:info@mountaineering.ie

Ken Bradley,  
Department of Agriculture, Environment & Rural Affairs  
Klondyke Buildings  
Gasworks Business Park  
Cromac Avenue  
Belfast  
BT7 2JA

1<sup>st</sup> July 2017

### **Re: DAERA Review of Outdoor Recreation legislation**

Dear Ken

Mountaineering Ireland welcome's DAREA's review of access legislation in Northern Ireland. As the governing body for mountaineering, with a membership active in all aspects of walking and climbing, Mountaineering Ireland is committed to securing and improving access for responsible recreational users.

The policy of Mountaineering Ireland is that we are actively seeking reasonable access to unenclosed mountain and coastal areas, and a network of paths allowing for access to these areas for responsible users. Mountaineering Ireland recognises that most land in Northern Ireland is privately owned, and that in the vast majority of hill and coastal locations public enjoyment of that land is available. This is largely due to the goodwill and tolerance of the landowner, rather than it being based on formal permission or a legal right. While access has been secured in certain places, through the provisions of the 1983 Access to the Countryside Order or the 1986 Recreation and Youth Services Order, this has not had any meaningful overall effect when set against the very significant increase in participation in outdoor recreation activities since 1983.

It is very clear to Mountaineering Ireland that access legislation is just one aspect of the system required to ensure responsible and sustainable outdoor recreation which benefits participants and the host community. Therefore, Mountaineering Ireland supports the view of the National Outdoor Recreation Forum (NORF) that Northern Ireland would be better served by a new Outdoor Recreation Bill, rather than attempting to make extensive amendments to the 1983 Access to the Countryside Order. The shortcomings of the 1983 Order were evident early on, and were well documented in the Access to the Northern Ireland Countryside report published in 1994, and in Mountaineering Ireland's 2010 submission to the Second Programme of Law Reform (<https://tinyurl.com/yaarglcf>).

Mountaineering Ireland contributed to NORF's initial response to this review; this submission is intended to be read in conjunction with the NORF letter (Appendix 1 below) and is largely very supportive of that response.

Directors: P. Barron; F. Hackett; N. Hore; P. Kellagher; U. MacPherson; M. Maunsell; R. Millar,  
P. O'Sullivan, I. Sorohan, D. Stelfox; Seamus Walsh; Simon Walsh.

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Following further discussion of the review within Mountaineering Ireland, this submission includes **additional** relevant points:

1. The rationale for the Outdoor Recreation Bill should be based on the health, education and community benefits of outdoor recreation and linked to the Programme for Government (draft published October 2016) and its overall purpose of *improving wellbeing for all*. The Bill would contribute towards a number of the programme's 14 desired outcomes. In this regard Mountaineering Ireland highlights the Reconomics Plus report which provides compelling evidence of the economic benefit which flows from outdoor recreation in the UK, as well as the health benefits of nature-based recreation (<http://www.sportandrecreation.org.uk/pages/reconomics-plus>).
2. Achievement of the potentially significant benefits identified above will require investment in infrastructure and environmental management, and also in personnel to manage recreation. Resources will be required at Council level with a minimum of an Outdoor Recreation Officer within each council.
3. Delivery of Outdoor Recreation should be co-ordinated and supported centrally through a lead department. Given the increasing emphasis on community benefit, the role of councils and the connections between sport and outdoor recreation, it is Mountaineering Ireland's view that the Department for Communities should become the lead Department for outdoor recreation.
4. The Outdoor Recreation Bill should recognise and accommodate the increasing commercialisation of outdoor recreation activity (this relates to the inclusion of the word 'informal' in point no. 1 of the NORF response 30<sup>th</sup> May 2017). Having a cohort of skilled outdoor activity providers in the area enhances a community's offering to visitors and therefore brings wider benefit in addition to benefit to the providers. Mountaineering Ireland's position is that those who work commercially in the provision of outdoor recreation have an additional responsibility to those whose land they conduct their business on, to ensure that a positive relationship exists and to avoid any burden or nuisance on the landowner. However it is the view of our organisation that access for walking and climbing, whether recreational or commercial, should be free of any direct charge to the user, other than a reasonable charge for parking.
5. The Bill should include provision for an Outdoor Recreation Scheme to be incorporated in the next round of farm payment schemes. The purpose of the Outdoor Recreation Scheme or Measure would be to encourage landowners to facilitate recreational enjoyment of their land and to reward them for maintenance or other work involved in doing so. This could be part of a wider suite of measures to reward landowners for the delivery of a sustainably managed environment, on the basis of the public good this provides. This investment would benefit upland areas and society as a whole. Brexit provides an ideal opportunity to re-focus farm payment schemes in this way.
6. Despite various publications clarifying the current occupiers' liability legislation in Northern Ireland, landowners remain fearful of being sued should a recreational user be injured on their land, however unlikely that may be (this relates to point No. 7 in the NORF response). The introduction of an indemnity for any landowner participating in the Outdoor Recreation Scheme would relieve landowners of any potential liability, meaning that no landowner could be taken to court for injuries sustained by a recreational user in the course of their activities. Such an arrangement is currently being introduced in the Republic of Ireland as part of a pilot Mountain Access Project.

7. Mountaineering Ireland urges the inclusion of a Northern Ireland coastal path as a flagship measure within the Outdoor Recreation Bill. Northern Ireland's coastline is a key natural asset, which supports healthy activity and is highly attractive to visitors, particularly those who do not have easy access to the coast from their home. Attention is drawn to the Marine and Coastal Access Act under which Natural England is currently putting in place the England Coast Path. In addition to delivering a national coastal path, the Act makes a margin of land along the length of the coast accessible for recreation.
8. The importance of care for the natural environment should be a theme throughout, as it will not be recognised by all, particularly those with a tourism or development focus. Likewise, there should be a strong emphasis on personal responsibility with a commitment to education and public awareness in this regard.

Mountaineering Ireland highlights the extent to which a vision of secure and responsible access for recreational users depends upon private landowners, and therefore urges early consultation with landowners and farm representative bodies. An Outdoor Access Bill has the potential to be supportive of landowners by managing the worry and nuisance factor of recreation, particularly for those living and working in areas where there is a good deal of visitor activity.

It is Mountaineering Ireland's assertion that in the context of ever-increasing recreational activity, and the need to diversify farm income, especially on less productive land, the approach outlined in this submission has considerable merit. This current review, taking place as it does at the time of Brexit, could not be better timed for taking a fresh approach which rewards landowners based on the benefits they provide for society.

Mountaineering Ireland reiterates the significant alignment between the proposal for an Outdoor Recreation Bill that seeks to provide and expand access for the purpose of responsible recreation, and the purpose of *Improving wellbeing for all* in the Programme for Government.

In conclusion, Mountaineering Ireland emphasises that this submission should be read in conjunction with the NORF response of 30<sup>th</sup> May (below). Mountaineering Ireland is supportive of that submission and is committed to working with DAREA and the other members of NORF in the further stages of this review process.

Yours sincerely

Helen Lawless  
Hillwalking, Access & Conservation Officer

Cc Graham Seymour, NORF

# National Outdoor Recreation Forum

National Outdoor Recreation Forum  
C/O Outdoor Recreation NI  
The Stableyard  
Barnett Demesne  
Malone Road  
Belfast  
BT9 5PB

30 May 2017

Dear Ken,

## **Review of Outdoor Recreation Legislation Relating to the Department of Agriculture, Environment and Rural Affairs**

Thank you for your recent presentation to the National Outdoor Recreation Forum (NORF) and, through your letter of 28 March 2017, inviting us to contribute at this early stage to your review of the above legislation. We welcome this development and NORF is keen to play a constructive role throughout the process.

We note that the principal driver for this review is the Department's commitment made in the Outdoor Recreation Action Plan published in 2014. The inadequacy of the current legislation (principally the Access to the Countryside Order, 1983) was one of the key themes to emerge during the consultation for the Action Plan. It is clear that the Access Order has not generated either the quantity or quality of public access that was envisaged when it was introduced. To the best of our knowledge, significant elements of the Order have rarely or never been used, for example Part III – Access to Open Country. The Ulster Way and the Waymarked Ways rely heavily on permissive paths which fall outside the remit of the Access Order.

That said, there are important clauses in the Access Order that relate to assertion and protection of public rights of way. The evidence of the last 35 years suggests that there are very limited public rights of way in Northern Ireland – far fewer than in other regions of the UK. Where they do exist, however, they provide opportunities for physical activity and enable local communities to enjoy their surroundings. But they play only a small part in the provision of outdoor recreation and should not be the focal point of any new legislation.

It is well known that councils have experienced considerable difficulties implementing these clauses, particularly in circumstances where a landowner challenges the assertion of an alleged right of way. Some councils have put significant resources into resolving disputes but arguably at the expense of addressing current recreational needs. We are pleased that the Department is consulting the district councils and trust that their officials will provide you with more detailed insights into the deficiencies of this aspect of the current legislation.

Rather than trying to amend an already cumbersome Access Order, it is our view that Northern Ireland would be better served by a new Outdoor Recreation Bill that seeks to provide and expand access for the purpose of recreation. The opportunity should be taken to bring together in one Bill several dispersed legal instruments to ensure that the right environment can be created to deliver appropriate facilities for outdoor recreation. This would be a significant milestone towards achieving a number of outcomes in the emerging Programme for Government relating to health and well-being, environmental sustainability and tourism development.

Since 1983 there have been very significant developments in relation to access to the countryside in England and Wales, Scotland and the Republic of Ireland. It is time for Northern Ireland to 'catch up'. Ours is the only region in the UK that does not have legislation enabling a "right to roam" under certain circumstances. Given that something similar in Northern Ireland would be very contentious, we are advocating an approach that is tailored to our unique circumstances. This would take account of the small size of land holdings, a dispersed settlement pattern and a tradition of de facto access in some hill areas. However, it would still be worth exploring some aspects of Scotland's Land Reform Act of 2003; for example the emphasis on *responsible access* and the concept of *core path networks*.

The three underpinning principles set out in the Policy Position on Access to the Natural Environment produced by Sport NI in 2011 are a good starting point for considering what form new access legislation should take:

- Creating the best possible access to the natural environment for sport and physical recreation must be regardless of race, age, ability or location, so as to encourage a lifelong healthy lifestyle and equitable opportunities for all to participate.
- That increased access must be mirrored by responsible and sustainable usage and therefore users must follow sound environmental ethics such as the Leave No Trace principles.
- That access to private land should principally be through agreement of landowners.

To these three principles we would add a fourth:

- That quality access is fundamental to enable people to engage with the natural environment.

A new Outdoor Recreation Bill should aim to deliver on these objectives. Our thinking is at an early stage, but we envisage that such a Bill, championed by DAERA, might include the following elements:

1. An introductory statement making it clear that the primary purpose of the Bill is to provide for informal, outdoor recreational activities and the enjoyment of the countryside. Moreover, the provision of access on private land should be underpinned by responsible behaviour from users.
2. A statutory right of access on public owned land apart from exemptions for operational, public safety and security reasons.
3. A requirement on councils to produce (within a given period) core path networks that provide for the needs of walkers, horse riders, cyclists and those seeking access to water for recreation. Councils should consult on core path networks which should take account of relevant Community and Development Plans.



4. Relevant clauses enabling councils to enter into permissive path agreements (currently made under the Recreation and Youth Services Order) and, in exceptional circumstances for paths identified in core path networks, public path creation orders (currently in the Access Order).
5. A provision for councils to make agreements covering areas of open country (currently in the Access Order), recognising a desire for free movement on the hills.
6. Provision for the assertion, protection and maintenance of public rights of way including a new dispute resolution mechanism that avoids costly court cases.
7. A clarification on the duty of care owed by landowners and occupiers to those who use their land for recreational purposes (amending Clause 52 in the 1983 Order and the related Occupiers' Liability legislation).

Furthermore, new access legislation should be accompanied by investment in education, recreational management and infrastructure. This is particularly important in AONBs and other special landscape areas where demand for recreation is at its highest and where the impacts of inadequate management are most damaging to the natural environment. A small number of pilot projects, perhaps focussing on mountain access, would act as a test bed for new access arrangements. The Department should also be proactive in ensuring that councils comply with the new legislation.

Investment in the development of a new, fit for purpose legal framework for access to the countryside is long overdue in Northern Ireland and we believe it would be broadly welcomed by society. Moreover, the development of a new post-Brexit farm subsidy regime in the UK presents a unique opportunity to ensure that enhanced public access is included as a key component, reflecting the principle of public money for public good.

I trust that you will find this response helpful and we look forward to further engagement with you and your colleagues.

Yours sincerely

Graham Seymour  
Chair, NORF