

Cambrian Caving Council

Cyngor Ogofeydd Cymreig

Response to WG document on improving opportunities to access the outdoors for responsible recreation

1. Introduction

This document is a response to the consultation document WG 25568 regarding improving opportunities to access the outdoors for responsible recreation. It has been prepared by the Cambrian Caving Council, a non-profit organisation, which represents and supports caving and mine-exploring on behalf of member clubs and individuals. The council is recognised by Sport Wales as the governing body for the sport of caving within the principality and represents a total of 53 caving and mine-exploring clubs with over 2000 members.

Wales is blessed with significant limestone outcrops in both North and particularly South Wales and these over geological time have been weathered and, in some areas, been permeated by mineral rich inclusions. Groundwater and active streams have dissolved some of the limestone to leave passages and chambers which have attracted cavers keen to explore, document and carry out scientific research. While both North and South Wales have a significant number of caves, there are several in South Wales which are very extensive and have international significance. Mid Wales is not to be forgotten and while there is little in the way of limestone, there is extensive mineralisation in certain areas. Here, there has been significant mining over the years which has left many interesting underground sites.

The heyday for mining was in the 18th and 19th century when there was extensive mining for mainly lead, zinc and slate. In some areas, particularly North Wales, mining continued into the 20th century. The miners have now long gone, but their legacy is of interest to mine historians, archaeologists and recreational mine-explorers.

Welsh Government concerns include low levels of physical activity and mental health especially in deprived communities. It is seeking better local opportunities and a more diverse range of activities. Caving is an easily accessible active pursuit, an escape into a different world, for an evening to a whole day. It could improve the well-being of many more people in Wales at modest cost for the equipment and with very little travel due to the large limestone area in the south of the country. Training is available from commercial providers and for free within amateur clubs. Improved statutory access to land would help considerably in developing our sport both for residents in Wales and those coming here from the rest of UK and abroad, this would raise the profile of Wales and help draw in more income from tourism as a result.

Access to caves generally requires agreement with the landowner even if the caves are on CRoW Access Land. NRW and Natural England, relying on advice from DEFRA, claim that the CRoW Act does not apply to caving. This is because the act specifies “open-air recreation” at Section 2.1 and DEFRA is claiming that caves are not in the open air.

The British Caving Association (BCA) is attempting to broaden DEFRA’s narrow interpretation of “open-air” so caving falls within the scope of the act, but this is likely to be a slow process. The situation with regard to mine-exploring is even more restricted as most landowners close off any access due to perceived liability in the event of an accident or because of legal duty under the Mines and Quarries Act. Some mines on National Resources Wales (NRW) land and Welsh Government (WG) land are now accessible after a legal agreement brokered by the Cambrian Caving Council. The former Cwmystwyth Mines are also now accessible with the purchase of the land by the Cambrian Mines Trust. Cavers and mine-explorers have access to Cwmorthin Slate Mine via an access agreement between an adventure company and the landowner.

It is hoped that the WG review will help improve access for both caving and mine-exploring, Both these activities offer significant benefits in terms of exercise, comradeship and mental stimulation and potential new scientific discoveries. There are very few physical activities that an average member of the public can partake in which may lead directly to new scientific knowledge or archaeological discoveries but caving and mine-exploring provide both of these.

2. Responses to the points in the Green paper

Q1 – Views on the vision for access and outdoor recreation in Wales

The proposed guiding principles seem to be a move in the right direction and the Cambrian Caving Council wholeheartedly supports this vision. In addition to the points proposed, it is suggested that publicity and documentation is another important area to make everyone aware of any changes.

Q2 – Issues related to access

Access from the point of view of caving and mine-exploring has been a problem over many years and there is still some disagreement on the best way forward. In the past, access to caves has required the permission of the landowner, either explicitly or implicitly depending on local practice, and this remains true even if the land is designated as Access Land under the CRoW Act. This act implicitly allows access for walking, rock climbing and mountaineering since these are indisputably “open-air recreations” but caving is considered outside this scope by DEFRA. Caving is not prohibited by the Act in the way hang-gliding and camping are, so the ambiguity seems to revolve entirely around the meaning of “open-air”.

Recently a group of cavers obtained a formal legal opinion as to whether the CRoW Act in England covered caving and their QC barrister concluded that: “I consider that the right of access granted under CRoW should properly be read as applicable to access to land for the purpose of recreational caving”.

As a result, the British Caving Association held a referendum amongst its members to determine if the BCA “should campaign for the CRoW Act to apply to going underground”. The result was heavily in favour of liberalisation and the BCA currently in discussions with Natural England and DEFRA.

It seems anomalous that a person can freely walk across CRoW Access Land to a cave entrance, but then cannot enter it – most of the time. DEFRA concedes that vertical potholes may be descended and then climbed back out because this is like rock climbing, provided one does not lose sight of daylight. A further definition of “open-air” put forward by DEFRA during discussions is “a place where one could be rained upon”. But they then further conceded that a horizontal open cavern on a hillside is a place where one cannot be “rained upon” but entering it is the same as hill-walking provided one does not venture beyond daylight which seems to be DEFRA’s interpretation of “open-air”.

Access to mines and quarries is even more fraught as the CRoW Act only applies to “natural features”. Quarries are of interest to rock climbers and cavers for recreation. The removal of rock may have created steep walls of rock for the former or exposed the beginnings of cave passages for the latter. So we would like to see the term “natural features” broadened to “physical features” in future legislation as well as broadening the “open-air” term.

Mines and quarries are subject to their own legislation (the 1954 Act as amended) so many landowners who have mine entrances on their land have back-filled, fenced or gated them due to legal obligations or fearing claims should anyone get injured.

The CRoW Act removes occupier liability for landowners when people use Access Land and we would like to see this explicitly extended to include all underground spaces. Landowners would still need to provide barriers like fencing to prevent accidental entry but would cease to be liable in the case of cavers or mine-explorers entering deliberately and by choice.

Q3 – Access to land – Public Rights of Way

The current system of recording public rights of way needs to be overhauled so that definitive digital maps are available online. Flintshire has an online zoom-able map of public rights of way:

<https://stratus.pbondemand.eu/connect/flintshire/?mapcfg=publicrightsofway>

This is an excellent resource for this one county, but it is sadly not available elsewhere in Wales. If uniform rights-of-way maps were available it would help locate many of the under-used paths which have lost their marker signs.

Q4/5 – Access to land – Local Authority changes

Improved signage and/or simple way-markers would help public access. Often paths lead into a field and it is difficult to find the continuation. Many paths did originally have way-markers, but these have often decayed or been removed.

Q6 – Local Access Forums

LAF's as bodies established by the CRoW Act, seem to have little relevance to caving whilst it is claimed that underground activities are not within the scope of the Act. Nevertheless, it is incongruous that LAF's such as the Brecon Beacons one have not even mentioned caving for many years when the very same national park has acquired GeoPark status and is the most important region for caving in Wales and also a major area within the UK

We also feel that it may not always be right to recruit LAF members from individuals putting themselves forward. Conflicts of interest may arise where, for example, a person who holds office in landowner or farming bodies may be an unfortunate choice to represent the interests of a sport at LAF meeting even if they happen to have a personal interest in the sport itself. The national governing body of that sport gets no say in their selection and worse, if the person cannot attend a meeting then no substitute may be supplied as their position is a personal appointment.

Instead of the current system, we think it is better for LAF convenors to create a list of countryside sports operating in their LAF area and then invite the sport national governing bodies to send one LAF representative of their choice.

Q7 – Dogs rights and responsibilities

No Comment

Q8 – Reform of legislation allowing a wide range of activities on paths and Access Land

We support the suggestion in the Green Paper “to improve opportunities by allowing areas already accessible for a wider range of activities” such as by re-defining Access Land to include access on foot into underground spaces regardless of their “air” characteristics and reasons for existence. This would bring underground exploring in line with the existing undisputed activities of walking and climbing.

Q9 – Motorised vehicle rights

No Comment

Q10 – New/improved access opportunities

We agree that improved access for visitors should be coupled to reduced occupier liability for landowners.

The provisions of the CRoW Act for making access improvements only at the edge of Access Land (e.g boundary gates and stiles) should be extended so that paths within the land can also be improved and maintained under statute. To this end ROWIP's should be retained and broadened accordingly.

The extension of access to include coastal areas would be helpful as there are several areas where natural caves occur on the cliffs or beaches. Sometimes access to these areas is problematic. Mine-explorers may also be interested in gaining access to disused quarries on the coast where there may be underground workings of archaeological interest. At present mines and quarries are excluded from the CRoW Act because of the narrow term "natural feature" and we would like to see this replaced by the term "physical feature".

Q11 – Responsible recreation on all land in Wales

The Scottish system of responsible access to all land surfaces, the air above and the space beneath, subject to some exclusions, has a lot to commend it. However there is considerably more 'wilderness' area in Scotland compared to Wales and so there is said to be more chance of friction between landowners and recreational users here. Yet the Scottish system applies equally to their urban and densely populated areas like the "Belt" as it does to the Highlands.

We believe that if a broad accord could be reached between the stakeholders; that is landowners, visitors, conservation bodies and local government etc., underpinned by codes of conduct for responsible land access, then this would be the best long-term solution for Wales too.

Q12 – Inland water access

No Comment

Q13 – Coastal water access

No Comment

Q14 – Statutory code

A statutory code covering outdoor recreation in Wales would be a very positive step. At present there are too many documents covering different aspects of access. What is needed is a code of practice clearly understandable by both landowners and recreational users setting out clearly what is expected of each of them.

3. Final Comments

Caving and mine-exploring have taken place in Wales for well over a hundred years and a significant number of new caves and extensions to existing ones has been the result. Some of the caves contain formations of breathtaking beauty and it is imperative that conservation is a high priority to preserve these for future generations. It is equally important that there is fair and easy access to experienced individuals who wish to explore, survey and photograph these underground sites.

Former mines present their own challenges as they are subject to ongoing decay due to lack of maintenance. However, many mines contain features of important archaeological significance and the mine-exploring community can help by documenting and photographing underground areas where others fear to tread. Some mines have benefited from remedial work undertaken by mine explorers such as bypassing collapses and repairing ladders. This voluntary work preserves such historic sites for future generations.

For and on behalf of the CCC clubs and members,

Dave Tyson
Cambrian Caving Council Secretary

Email: secretary@cambriancavingcouncil.org.uk
Mobile: 07805784357

102 Rake Lane
Wallasey
Wirral
CH45 5DE