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4<sup>th</sup> September 2018

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

Dear Ken

As expressed in our September 2017 submission and at our meeting last December, Mountaineering Ireland supports the proposal for an Outdoor Recreation Bill for Northern Ireland that seeks to expand opportunities for people to engage in outdoor recreation activities, and to improve the quality of the experiences people enjoy. This letter develops the idea of an Outdoor Recreation Bill, outlining what Mountaineering Ireland believes should be included in the Bill.

It may be helpful at the outset to clarify Mountaineering Ireland's position in relation to access. The policy of Mountaineering Ireland is that we are actively seeking reasonable access for responsible users. Our aim is to have:

- open, unrestricted access on foot across hills, mountains and coastal areas, where there are either minimal or no active farming practices apart from rough grazing;
- a network of paths allowing for access to the above areas, which could be permissive paths, leased paths or public rights of way.

Mountaineering Ireland recognises that most land in Northern Ireland is privately owned, and that in the majority of hill and coastal locations public enjoyment of that land is available, largely due to the goodwill and tolerance of the landowners. 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 growth in outdoor recreation activities in recent decades. It remains the position that in a great many places frequented by recreational users, that access may be withdrawn without notice. Given the increasing importance of outdoor recreation, to personal health and wellbeing and to the rural economy, DAERA's current review of Outdoor Recreation legislation is necessary and welcome.

Mountaineering Ireland believes strongly that instead of focusing on the detail of amending existing access legislation that a fresh, wider and more positive approach is needed. This approach should identify what legislative framework is required to support the continued development of Northern Ireland's outdoor

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recreation sector, with emphasis on achieving better coordination and management of outdoor recreation activities and an aim of delivering high quality recreation experiences.

The following is an outline of what Mountaineering Ireland believes should be included in the Outdoor Recreation Bill:

#### **A brief Introduction covering the following points:**

- The significant social, economic and health benefits that will flow from expanded opportunities to engage in outdoor recreation activities;
- That a balance is essential between the provision of outdoor recreation opportunities, and maintaining the integrity of the natural environment so that Northern Ireland's natural environment can continue to provide high quality, adventurous recreation experiences for future generations;
- The need for investment in the coordination and management of outdoor recreation activities, as well as investment in physical infrastructure and in mitigating the environmental impacts of recreation activity;
- That landowners will not be liable in a situation where a recreational user is injured as a result of their own decision-making.

#### **The Preamble to the Bill would define:**

- Purpose of the Bill (draft):
  - To provide expanded opportunities for people to engage in outdoor recreation activities and to improve the quality of the experiences people enjoy, in a way that optimises the many benefits of this activity, whilst ensuring that measures are in place to minimise adverse impacts on landowners, the natural environment and host communities;
- Definition of Outdoor Recreation – Mountaineering Ireland proposes the following definition from the 2011 issues paper that fed into the NI Outdoor Recreation Action Plan:  
*“Outdoor Recreation” is defined as non-motorised sporting and recreational activities that take place in the natural environment and that generally do not require a dedicated pitch or building.”*
- The spatial extent of the Bill, or more usefully what areas it does not include (military lands, curtilage of private houses etc, this might be different for different articles of the Bill).

#### **Preamble also to include:**

- A statement on the social value of outdoor recreation activity (based on how outdoor recreation contributes to the outcomes in the Programme for Government, health and wellbeing, economic benefits etc). There is a need to assemble all available, relevant evidence to make this case for the Bill (initial examples included in Appendix 1);
- The rationale for the adoption and use of the risk benefit model by all those involved in the provision of outdoor recreation in Northern Ireland. The Visitor Safety in the Countryside Group Risk Control Matrix may provide a useful overarching framework for development of the Northern Ireland Outdoor Recreation Bill (<https://vscg.org/guiding-principles/risk-control-matrix>);
- An explanation of the core elements of the Bill, where needed.

## To be included in the Bill:

- Enable the creation of organisational structures to implement the Northern Ireland Outdoor Recreation Bill, to:
  - develop and implement a Strategic Plan for Outdoor Recreation in Northern Ireland;
  - provide guidance and support to Councils, AONB management bodies and other bodies with a role in delivering the plan;
  - co-ordinate cross departmental activity that contributes to outdoor recreation.
- An obligation on Councils to include an Outdoor Recreation section in their Community Plans and Development Plans, and to benchmark the provision of outdoor recreation opportunities for the people of the area against the NI Strategic Plan for Outdoor Recreation;
- A mechanism to provide resources to Councils, AONB management bodies and other bodies to support their work in delivering the NI Strategic Plan for Outdoor Recreation;
- A mechanism to more efficiently designate and defend Public Rights of Way, including a dispute resolution mechanism and provision for creating new Public Rights of Way to connect public roads and car parks with uplands and coastal areas;
- An obligation on each Council to develop and maintain a core path network to include community trails, greenways and access routes to hill and coastal land;
- A right of access to publicly-owned lands for responsible recreation (limiting rights to those who are acting responsibly provides a lever for preventing and dealing with poor behaviour);
- Mechanisms to open up access to a coastal margin around Northern Ireland including beaches, sea cliffs and rough grazing land;
- An obligation on Councils (and possibly also AONB management bodies) to create Outdoor Recreation Areas, in hill, mountain, woodland and coastal areas, where there are either minimal or no active farming practices apart from rough grazing. Provision should be included to create Outdoor Recreation Areas based on an agreement with landowners, or by acquisition. The support mechanisms for Outdoor Recreation Areas should include:
  - Indemnity arrangement to protect landowners against any claims from recreational users (other than where the landowner has wilfully cause harm to the injured party);
  - Erosion control measures and provision of necessary infrastructure to facilitate recreational activity (e.g. parking areas and stiles);
  - Provision for landowners to be paid for agreed works to maintain access routes and recreation infrastructure;
  - Point of contact for landowners to deal with any issues arising from recreational activity on private land;
  - A mechanism for dispute resolution through the Department (i.e. without having to resort to the courts) where there is disagreement in relation to land included in an Outdoor Recreation Area, or proposed for inclusion in such an area.
- In keeping with the risk-benefit model, the value of adventurous experiences should be recognised within the bill, counter-balanced by a clear statement of personal responsibility (reflecting the ethos of personal responsibility that is fundamental to most outdoor recreation activities, and key court judgments in this area – details can be provided if required);
- Clarification of minimal duty of care owed to recreational users (both voluntary and commercial; the duty of care should not be increased by granting permission for entry);
- A statutory framework for the licensing of commercial outdoor recreation providers (this may perhaps be addressed through separate legislation but should be aligned with the Outdoor Recreation Bill and could perhaps be incorporated in it);



- Recognition of the importance of ongoing education and initiatives to encourage responsible outdoor recreation behaviour, and the inclusion of mechanisms for support to governing bodies, Councils and AONB management bodies to enable them to fulfil this role;
- A voluntary contribution scheme for recreational users to contribute to the cost of erosion control and path repair in upland areas;
- An obligation on Northern Ireland Statistics and Research Agency (NISRA) to collect outdoor recreation data;
- A mechanism for periodic review of the activities covered and the spatial scope of the Bill, as well as the effectiveness of the Bill (e.g. to deal with emerging activities).

Mountaineering Ireland is aware that much of what's above is provided for in current legislation, but it is clear that the vision of those who created the 1983 Access to the Countryside Order remains very largely unrealised. Hopefully your information-gathering has provided insights into why that is the case.

The current growth in participation in outdoor recreation activity is obvious, and is surely also indicative of future potential. It is important that rather than looking back at existing legislation that we look forward, with a firm commitment to providing quality outdoor recreation opportunities for this and future generations, in a way that achieves a balance between the common good, the rights of landowners and protection of the natural environment.

We hope that these recommendations will be of assistance to you in finalising your presentation for the Strategic Outdoor Recreation Group and we look forward to contributing to further stages in this process.

Yours sincerely

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Helen Lawless  
Hillwalking, Access & Conservation Officer

## **Appendix 1**

### **Research that supports the case for an Outdoor Recreation Bill for Northern Ireland:**

Assessing the Economic Impact of Outdoor Recreation in Northern Ireland -

<http://www.sportni.net/sportni/wp-content/uploads/2013/03/Economic-Impact.pdf>

BOSS project – Benefit of Outdoor Sports for Society - <http://www.outdoor-sports-network.eu/boss-project-second-meeting/> (report due)

In Wales, the Active Travel (Wales) Act 2013 requires Councils to map existing walking and cycling routes, and to set about improving and linking these up. This forward-looking legislation also gives the public a legal right to propose new routes <http://www.legislation.gov.uk/anaw/2013/7/crossheading/introduction>