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Public access for walking in the Irish countryside – Can supply be improved?¹

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Abstract

Public access to the Irish countryside for walking and recreation generally is a contentious issue. Increased affluence, mobility and changing values have brought about increased demands with respect to recreation in the countryside. There is also a greater emphasis on consumption demands for goods and services in rural areas. However, provision of a walking product has not been without problems in Ireland. This paper focuses on how public access provision for recreational walking might be enhanced by exploring the situation and precedent in a cross section of European and other developed nations and by examining the concerns of landowners especially with regard to public liability. Supply side factors affecting public access provision are examined in an economic context and a discussion is offered on how the supply might be improved. In the absence of compulsion through legislation, which seems unlikely in an Irish context, this paper contends that the supply of public access is dependent on factors such as cost of provision, potential monetary incentives and landowner preferences. Finally, a change to the Occupiers Liability Act to a definitive enter at your own risk situation would help dissipate liability concerns.

1. Introduction

Public access to the countryside for walking in Ireland is largely confined to statutory rights of way and permissive access through public or private lands. A right to roam or walk on uncultivated lands which is applicable in many other EU countries does not prevail. The popularity of outdoor recreation in Ireland is of recent origin. Increased demand for recreation has direct implication for existing land use activities such as agriculture, forestry and conservation. The interests of land managers and recreationalists have at times become divergent and conflicting. Landowners have concerns about potential damage to crops,

livestock and property as well as potential liability for injury to individuals crossing their lands. These issues have led to negative attitudes regarding access to private lands (Quinn, 2007). In addition, some landowners are concerned with the increasing costs they suffer from public access on their land. These costs can be termed externalities from public access (Cullis and Jones, 1992).

Increased demand has caused conflict between landowners and recreational users (O'Reilly, 2006). Under Irish law in the absence of a right of way, access is at the discretion of the landowner and he/she may prohibit access or withdraw consent without prior notice. Similarly, there is no entry right to state or semi-state lands, though permission is normally given or implied, except where security, health and safety or habitats would be put at risk.

Landowner welfare can be negatively affected by the activities of the general public. This can arise not only through detrimental effects on the business activities of farms (lost output or increased costs), but also through reductions in the amenity and aesthetic qualities of a property. This has the potential to reduce the 'private' benefits derived from land ownership. In some instances, negative externalities from public use have led to attempts either to reduce access or to generate compensating income to offset costs associated with access-related activities (Crabtree and Chalmers, 1994).

In 2004, the Minister for Community, Rural and Gaeltacht Affairs set up the countryside recreational council Comhairle Na Tuaithe. The role of this council is to examine the issues of access to the Irish countryside, develop a countryside code and develop a countryside recreation strategy. Significant progress has been made on the latter two objectives (Comhairle na Tuaithe, 2006) but the problematic issue of access remains (O'Reilly, 2006). Ongoing negotiations indicate that farmers are not opposed in principle to access but have asked for compensation and expressed concerns as to who will be responsible for trail

maintenance and management. In a study commissioned by Agri-aware² it was found that 84 per cent of respondents (drawn from the general public in Ireland) believe that the Government should intervene in order to introduce solutions for both landowners and users of the countryside with regard to land access issues. Of this number, a majority (77 per cent) cited clearer legislation and provision for dedicated walkways as possible solutions. Also, almost half (48 per cent) of those surveyed said they would be willing to pay a nominal charge for countryside access (Bogue, 2005).

In this context the aims of this paper are to:

- 1) review the access situation in selected European and developed countries including the laws on public liability,
- 2) examine the current opportunities for public access to the Irish countryside,
- 3) consider the factors that influence the supply of public access provision and
- 4) explore the options available to policymakers in Ireland should they decide to improve public access to the Irish countryside.

2. Public access in other developed countries

In a case study of access rights and freedom across a number of European countries Scott (1991, 1998) suggested categorisation into three main groups, namely: countries which rely solely on traditional rights of access not codified in legislation; countries where traditional access rights are codified in legislation and finally countries with public rights of way but few rights of access over private land. These are discussed below.

² A charitable trust, established in 1996 "To Improve the Image and Understanding of Agriculture, Farming and the Food Industry amongst the General Public."

Countries which rely solely on traditional rights of access not codified in legislation

In Sweden access to private land by the public for non-destructive recreation exists through the concept of Allemansretten ("Everyman's Right" or "The Right of Common Access"). This concept grew out of customary practices in the Middle Ages and is an unwritten law. It is a package of "ill-defined" rights, responsibilities and obligations. It allows free access across another's land, the right to stay overnight and the right to pick berries, flowers and mushrooms anywhere, provided that there is no damage done to the owner's property. It excludes access to private grounds, parks, croplands and gardens (the "Home Peace Zone"). The concept retains the support of landowners, although it faces challenges such as costs to landowners from increasing public use, a tendency for commercial businesses to capture the benefits but not the obligations of Allemansretten, and disturbance from recreational activities such as snowmobiles and camping. While the Right of Public Access is guaranteed in Sweden's constitution, it is not enshrined in law and there is no statute that exactly defines its scope. It is hedged around by various laws that set limits to what is allowed. It is therefore not always possible to say exactly what you may or may not do in the countryside. While the courts have the power to interpret the Right of Public Access, not many cases have actually come before a court (Swedish Environmental Protection Agency, 2007).

Countries where traditional access rights are codified in legislation

In 2003 the Scottish Parliament in one of the first acts of devolved government overwhelmingly passed the Land Reform (Scotland) Act 2003 that fundamentally changed property rights in Scotland and enacted an everyman right or right to roam across the countryside. Rural Scotland is dominated by a small number of large estates (particularly in the Highlands) farmed by tenants. The Scottish Executive (Government) was concerned about the adverse effects of absentee landowners, land owned by trusts and companies, and large

estates being used exclusively as hunting and fishing estates (Alvarez 2003).

One objective of the Land Reform (Scotland) Act 2003 is to promote "responsible access" to land, whereas, previously, rights and responsibilities regarding access involved a complex mix of legislation and common law. The Scottish "model" for access comprised three elements: changes to legislation, an outdoor access code and new responsibilities for local authorities. The legislation (Office of Public Sector Information, 2007) provides for a statutory right of "responsible access" to all land (including enclosed agricultural land, as well as open and hill ground) regardless of ownership. The legislation allows restrictions on access to buildings in the interests of privacy, health and safety, and or the national or public interest.

In Norway the Allemannsretten is also part of the country's cultural heritage, and has traditionally enabled the public to travel over, enjoy short stays, or collect natural products for personal consumption on land and waters owned by others. The 1957 Outdoor Recreation Act adapted traditional rights to modern circumstances and codified them in detail. Walking is allowed on all public roads, uncultivated land, forests, and cultivated land when frozen or snow-covered (except from 30th April to 14th October). In Denmark the 1968 Conservation of Nature Act permits walking in state forests and other public lands, on beaches; rural roads and paths; roads and consolidated paths in forests and on uncultivated and unfenced land.

In Germany the traditional right of public access (Betretungsrecht) has been given a modern statutory basis. The basic principle is that of a public right of access to forests, unenclosed land and foreshores, and along footpaths and roads. The right does not give access to enclosed farmland, except on farm roads and tracks. This right applies to about one third of the former

West Germany, comparable information is not available for the former East Germany. In Switzerland a traditional right of public access is also recognised, particularly over land which is not cultivated. The Swiss enjoy ancient rights of access (also called *Betretungsrecht*) to forests and woodlands enshrined in a civil code³. Access is also relatively unrestricted in the high mountains. Federal law ensures legal protection for walking and hiking path networks. In Austria there is a traditional right to roam throughout. The *Forstgesetz* provides a legal right of access to forests, subject to conditions and restrictions. Austrian society's historical respect for the countryside (especially agricultural production and nature conservation interests) and the nature of the terrain (Alps) limits the extent to which such rights may be exerted.

Virtually all of the land in England is under private ownership and access to the countryside has historically been possible through an extensive network of rights of way (Mulder et al., 2006). People in Britain are accustomed to free access to the wider countryside whether in a *de facto*⁴ or *de jure*⁵ sense (Beard, 1995; Bennett and Tranter, 1997; Crabtree and Chalmers, 1994). In England and Wales the Countryside and Rights of Way Act 2000 applies. This gives rights of free access only in certain areas that are mapped. The legislation confers a right of access (foot access only) to defined "access land" but not the "right to roam" over all land. The Countryside Agency (now Natural England) and the Countryside Council for Wales have the power to map and designate 'open country' as 'access land' over which, subject to certain conditions, the public have a statutory right of access. The Act considers that 'open country' means land that appears to consist wholly or predominantly of mountain (land situated above 600 m), moor, heath, down or registered common land (Keirle, 2002).

³ A civil code is a systematic compilation of laws designed to comprehensively deal with the core areas of private law.

⁴ Authority being exercised or an entity acting as if it had authority, even though the legal requirements have not been met.

⁵ Lawful

There is no compensation for any landowner resulting from the creation of a statutory right of public access over his or her land where it is defined as "access land". The Act does, however, remove landowners from owing any duty to any persons from risks resulting from the existence of natural features or from walls, fences or gates (except proper use of gates or stiles). Landowners may restrict access for any reason for up to 28 days per year without permission, with the opportunity to seek further restriction or exclusions on land access for management reasons. In addition, the Act provides for a "country code" to cover the arrangements for land access. It establishes a National Countryside Access forum composed of representatives from landowners, local government and recreational groups to advise on the development of policy and procedures on access to the access land and rights of way.

Countries with public rights of way but few rights of access over private land

In the Netherlands and France, provision is made for access in specifically designated areas (recreation areas and national parks) or by voluntary access arrangements. In France, rights to privacy and private ownership of land take precedence in the French countryside. Traditional rights of way are largely restricted to rights of passage and to walking along canals and rivers. Private ownership rights are dominant in the Dutch countryside. Access rights relate primarily to public rights of way such as public roads, cycle-ways and footpaths and public access to seashores.

Outside of Europe, New Zealand has traditionally allowed freedom of access to Crown Lands (state lands). However, access is not freely available to privately managed land or to Maori lands except where well established routes are in place. New Zealand has 13 National Parks covering one third of the country, as well as forest parks, regional parks and an extensive national network of trails (Fitzpatrick, 2005).

According to Acheson (2006), in the USA virtually all states have a legal situation where landowners control the right of access. There is no tradition of others using the land for recreation without permission except in Maine, however even access in Maine is becoming increasingly problematic. In Minnesota for example, hunters must obtain permission of landowners before hunting on agricultural land. Failure to get permission constitutes a misdemeanour. In Kansas, hunters must have permission of the landowner to hunt on any kind of land, posted⁶ or not. In Michigan it is illegal to trespass on the land of another “after having been forbidden to do so” (Acheson 2006, pg.23). Even in the state of Maine where there has historically been an open access tradition, hunters from other states are fully aware of the rights of landowners, but are still loathe to enter private property without permission when they come to Maine.

Acheson (2006) notes that Maine has a strong landowner liability law. This protects landowners from lawsuits by people who get hurt on their land while they are engaged in some recreational activity. The landowner is protected whether or not permission is given to use the land. This protection removes a strong motive for landowners to forbid people to use their land. Maine has a land-use tradition that is unique in the USA. In Maine, landowners have traditionally allowed members of the public to use their property for a wide variety of recreational activities free of charge. In recent years, this “open land” tradition has been changing, and large amounts of private land are being posted. This change has been driven by several basic demographic changes at work. A larger population and more suburban sprawl have reduced the amount of sparsely populated rural areas, while an increase in rural sports has brought more people to rural areas seeking recreational opportunities. These trends have

⁶ “Posting” refers to legally serving notice on members of the public that trespassing in general, or certain activities, will not be permitted on the land. The most common means of posting is to place signs around the perimeter of the property.

brought those using other people's land into close proximity with those who own the land. In addition it is noted that posting tends to be self reinforcing. When a number of people in a small area post their land, others will follow suit to avoid excessive use of their property. As one respondent put it, "If I am the only person with unposted land on the peninsula, my land would get all of the hunters and [the] others who used to be on a thousand acres" (Acheson 2006, pg. 25).

3. Current public access opportunities in Ireland

All land in Ireland is owned privately or by agents of the State such as Coillte, the National Parks and Wildlife Service, Bórd na Móna, Local Authorities and the Electricity Supply Board (ESB). As noted by Quinn (2007) public access to the countryside in Ireland may be obtained in one of 4 main ways:

Rights of Way - Rights of way do exist in Ireland, however the network is very limited. The public can claim a right of way over land only if a particular and defined route has been dedicated by a landowner and accepted by the public. A dedication is an absolute statement that permission never need be asked again and that the owner is no longer involved. The right of way is created by grant and is solely between the landowner affected and the relevant Local Authority. Public rights of way are a form of highway and are the responsibility of City and County Councils. The Planning and Development Act 2000 requires public rights of way created or recognised under the Act to be registered. The process of registration has, in the few instances where attempts have been made, proved to be an unwieldy and laborious process (Quinn, 2007). Providing the traditional rights of way have been recorded, it cannot be extinguished by non-use, no matter how long a period or by any action of a landowner whose land it crosses. Abolition occurs only with involvement of a local authority, and the

Minister, and must involve a public enquiry. Unrecorded rights of way are difficult to prove with the passing of time.

Public lands - There is permissive access to National Parks and Wildlife Service lands, to Coillte Forests, and to walks along canals and rivers managed by Waterways Ireland. Coillte permits access to over 440,000 hectares of forest land and actively promotes the use of certain forests for recreation (Fitzpatrick, 2005). There are a small number of occasional walking routes through lands owned by ESB. National Parks have been established to conserve extensive areas of important landscapes and natural and cultural resources in Ireland and to enable the public to visit and appreciate them. The National Parks and Wildlife Service is responsible for their management. There are 6 National Parks covering in excess of 56,500 hectares. These are located in Wicklow (17,000 hectares), Donegal (Glenveagh, 14,000 hectares), Mayo (Ballycroy, 11,000 hectares), Kerry (Killarney, 10,230 hectares), Galway (Letterfrack, 2,957 hectares) and Clare (The Burren, 1,500 hectares). The public generally have free access to the parks, and are only delimited by issues of safety or protection of habitats.

Permissive Schemes - There are a small number of official and quasi-official schemes in the country for establishing and managing walking routes. The principal ones are the National Waymarked Ways and the Slí na Sláinte Scheme. The Slí na Sláinte scheme was set up by the Irish Heart Foundation in 1996 and 140 walking routes have been established throughout the country varying in length from 3km to 60km. Each kilometre is marked with a distinctive way mark. These are mainly over public roads and public land.

The National Way-marked Ways Advisory Committee (NWWAC) of the Irish Sports Council was formed in 1978. At present 31 way-marked ways are in existence, these are estimated to

account for 3,421 kilometres in total distance (Irish Sports Council, 2007). The agencies and committees who have overseen the development of the ways in partnership with the NWWAC include local authorities, local Rural LEADER groups, Coillte and Waterways Ireland. However, 50 per cent of the ways are on country roads, while approximately 26 per cent are on Coillte lands. The remaining 24 per cent crosses private property, National Parks or other public lands. Permissive paths have been procured as access routes by means of negotiations between the occupiers and local committees. The paths are not rights of way and may be revoked at any stage by the landowners. Normally the agreement is secured for a stipulated period. When a new way or walk has been ratified, the NWWAC subsidises 45 per cent of the cost of insurance with the remainder being paid principally by the Local Authority. In the case of way-marked ways promoted by a local authority and approved by the NWWAC, indemnity is given through an insurance policy with the Irish Public Bodies Mutual Insurances Limited (IPBM). When a new way is being created, the names and addresses of all owners and occupiers affected are given to the IPBM and form part of the policy. Local management committees (Leader, Coillte, Local Authority etc.) administer the routes and have responsibility for annual maintenance.

Private initiatives - A private landowner, on his or her own initiative, could open up land for access to user groups or to the public at large. This has happened in a limited number of locations. These represent commercial ventures where visitors are charged for car parking or an entry fee. Charging for car parking does not put a duty of care on the landowners under the Occupier Liability Act but those charging for entry do have a responsibility and normally carry appropriate Occupier Liability insurance.

4. Public Liability Issues in Ireland

Under Irish case law, occupiers of land have a duty of care to those entering their property, including trespassers. The matter of liability is consistently highlighted by farmers who are concerned about potential liability should an individual crossing their land suffer an injury. The economics of farming in the uplands makes it unlikely that farmers in marginal areas would carry private liability insurance.

The Occupiers Liability Act of 1995 contains specific provisions designed to facilitate the use of land for recreational activity. It created three categories of entrants⁷ – visitors, recreational users and trespassers (Comhairle, 2007). The duty for the occupier of premises differs depending on the kind of people who come onto the property.

The duty of the occupier of the land towards a recreational user is not to ‘intentionally injure’ or to act with reckless disregard for the person or his/her property. The Supreme Court in 2005 referred inter alia to the requirement of ‘reckless disregard’ as a condition by which a landowner would be found liable for injury under the Act. Essentially under the Act if a landowner is deemed to fail to prevent danger when they were aware of it and a recreationalist is subsequently injured then the farmer is potentially liable in the courts⁸.

⁷ **Visitors** - In general terms, visitors, for the purposes of the Act, are people who come on to a premises because they have been invited or allowed in; because they are there to perform a term of a contract or they have a right to be there and are exercising that right.

Recreational Users - A recreational user is a person who is on a premises without charge (except for reasonable charges for car parking), who may or may not have permission to be there and who is there for recreational activity. The Act defines recreational activity as that conducted in the open air, including any sporting activity, research and nature study so conducted, exploring caves and visiting sites and buildings of historical, architectural, traditional, artistic, archaeological or scientific importance.

Trespassers - Trespassers are people who are neither visitors nor recreational users. The law of trespass gives landowners the right to exclude access from all of their land. If land is entered without the express consent of the landowner, he/she is entitled to use ‘reasonable force’ to eject a trespasser if a request to leave is declined. The law on trespass gives landowners the right to exclude people from all their land except where a public right of way exists.

⁸ A farmer had to pay out £8,000 to a shooter who injured his foot by stepping on a harrow which was covered in grass (Irish Farmer Journal, August 7th 1999).

The Mountaineering Council of Ireland (MCI) takes the view that persons engaged in recreational activity in the countryside should be doing so entirely at their own risk (MCI, 2005) and suggest the adoption of what is known in Australian law as ‘volenti non fit injura’ – a willing person cannot be injured (in law). In Australia, liability increases if a fee is charged to gain access. There is no doubt that the issue of public liability insurance is a serious concern for landowners in Ireland and currently where walking is permitted this issue has been addressed. This is further discussed below.

5. Public Access Provision – Supply side factors

Mulder et al (2006) suggest that virtually all countryside access research in the public domain looks at the issue from the demand side (see for example Hynes et al. 2007; Christie et al., 2007) and tends to ignore the supply side. Determinants of access provision to private land are discussed below (Gratton and Taylor, 2000; Millward, 1996; Mulder et al., 2006):

1. Price: Price influences a business’ chances of profitability. It’s assumed that an individual engages in a business enterprise to maximize profits. The fact that private landowners rarely self-designate or volunteer public access (or a right of way) is a clear indication that increasing the supply of public access does not contribute to landowners’ profitability and is therefore not a priority for landowners. Unless landowners are in a position to exclude recreation users and thereby charge for entry then provision of public access for recreation has public good characteristics (non rival and non excludable) the benefits of which are not captured by landowners through a market mechanism. Public goods by their very nature can provide a benefit to many but in the absence of incentives, regulation or government intervention will normally be under supplied.

The supply of public access to the countryside is related to the rewards a landowner is able to derive from allowing public access to their lands. These rewards can either be intangible, such as a sense of community involvement or altruism, or more tangible rewards such as remuneration through schemes specifically designed to encourage landowners to increase public access to the countryside. When a price mechanism is introduced for increasing supply such as the Countryside Stewardship Scheme in England (or its replacement – The Environmental Stewardship) then some suppliers may be tempted to enter the market, thereby increasing the supply of public access areas. These schemes recognise the public good nature and positive external effects associated with recreational access and aim to incentivise provision.

The Countryside Stewardship Scheme has had limited impact on the provision of new permissive footpaths, access bridleways and open access land (Mulder et al., 2006). One of the reasons is that the remuneration in the scheme is based on an ‘income foregone’ basis rather than an economic rent for the service provided. Using ‘income foregone’ means that the landowner is no better off in financial terms for increasing access which in turn provides little incentive to promote public access. The revenue lost for say the reduction of animal or crop production is replaced by the subsidy for increased public access. In economic terms, when using ‘income foregone’ as the basis for compensating landowners financially, the marginal utility of increasing access in return for sacrificing some other form of production is zero. Therefore, the only incentive for landowners to increase access is if their own tastes and preferences are predisposed towards access rather than other areas of their business.

In contrast to the Countryside Stewardship Scheme, the Woodland Welcome scheme piloted in the South East of England by the Forestry Commission offered remuneration based on an economic rent for the services rather than income foregone, as well as practical help with signage (i.e. a defraying of costs that would otherwise have had to be met by landowners). Woodland Welcome proved to be so successful that the scheme received applications for nearly four times the amount of available funds. This suggests that market forces can be brought to bear on increasing the supply of public access to private land (Mulder et al., 2006).

In Ireland such an initiative was introduced under REPS I⁹. This included a provision that farmers who permitted public access could receive an extra payment (Supplement 5). The payment was conditional on access being to a specific route or area which must be agreed with a Local Community Body or a Local Authority. The farmer was responsible for maintaining the route/area. In an extraordinary decision, the EU held that Supplement 5 of REPS I in practice did not fit into the scheme objectives. The EU concluded that Supplement 5 was simply "Paying for Access" which was contrary to EU policy. Hence REPS has not included an Access Supplementary measure since 1999.

Theoretically, high-value land is more likely to be in private ownership and protected against trespass (Bromley, 1991). Lands with high economic value for production, privacy, or game are usually guarded through fencing, posting, and threats of prosecution or even physical harm. By contrast, where land is plentiful and cheap, owners spend less time and money fencing or policing their lands; uninvited users thus may acquire de facto

⁹ The Rural Environment Protection Scheme (REPS) was introduced in Ireland under EU Council Regulation 2078/92 in order to encourage farmers to carry out their activities in a more extensive and environmentally friendly manner.

(and in some jurisdictions de jure) access to the land. This has resonance for land in Ireland such as commonage.

- 2. The costs of provision:** The cost of provision is an additional constraint on the supply of public access. Landowners incur costs when converting land from one use to another, for example developing or maintaining a footpath or trail. If this cost is not recoverable either via a subsidy or by charging subsequent users of the access, then there is no incentive to provide the good.

Millward (1996) found that there is a strong sense amongst farmers that increased public access will have an adverse rather than neutral or positive effect on their businesses. There is genuine concern that greater public access will lead to adverse outcomes such as higher insurance premiums, greater exposure to public liability, threats to crops and livestock, increased workloads and devalued land.

State legislatures in the US have passed recreational use statutes designed to encourage landowners to open up their lands to the public. These statutes provide private landowners immunity from lawsuits over accidental injury to recreational users while on a landowner's property (Copeland, 1998). Most state recreational use statutes insulate landowners from liability if access is granted without a charge. However, there are an increasing number of states such as Wisconsin, West Virginia, Maine, Michigan and Nebraska allowing landowners to charge a fee and retain the liability protection (Wright 1989; Wright et al., 2002). Today, some 50 states in the US have adopted recreational use statutes that are intended to encourage landowners to make their lands available for public recreational use by providing greater liability protection to the landowner. However,

liability issues or at least perceived liability still continues to be a major concern to landowners in the US (Henderson and Dunn, 2007). This has resonance for the situation in Ireland.

- 3. Supplier preferences:** Simply because incentives are available to landowners does not necessarily mean that they will be induced to increase public access to their land. It is widely documented that land managers regularly encountered problems with public access such as dogs not being kept under control, vandalism, theft, arson, litter, gates being left open, 'prying', and the compromising of conservation work. Thus in order to increase access, landowners need to be favourably disposed towards increasing access in principle and sufficiently enough to outweigh these potential problems (NFO System Three, 2001). Millward (1996) also notes that various studies in the US have investigated the reasons why landowners prohibit access to their land. Farmers stress the problems of property damage and livestock protection. Legal liability for injury to trespassers is also indicated as a serious concern for all property owners.

These findings are replicated by Mulder et al. (2006) who found the majority (57%) of the farmers in their study stated that they would be unwilling to increase public access to their land, even if there was sufficient financial incentive. This suggests that access is not solely a financial or price issue. An analysis of the main problems that farmers in the study encountered showed that litter (84%), unauthorized access / trespass (84%) and dogs not being under control (78%) were reported by a large majority of farmers. These types of problems tend to be caused by a lack of consideration and lack of awareness of how to behave in the countryside, rather than as acts of malice. The same argument is probably true of a set of similar problems which occurred less frequently such as gates being

blocked by vehicles (57%), gates being left open (62%) and invasion of privacy (40%).

There are some incidents reported by farmers that can only be explained as acts of malice such as illegal dumping of waste (80%), vandalism (62%), people starting fires (28%) and unauthorized camping (14%).

6. Increasing public access to farmland in Ireland for walking – A discussion.

The demand for recreation has increased significantly in Ireland as well as other developed countries and this trend is expected to continue into the future. It is clear that access to the Irish countryside for walking is not as readily available as in other countries. This is potentially a serious constraint on the development of recreation and nature based tourism in Ireland as our main competitors (across Europe) generally have no such constraints. Special interest activity tourism is recognised and targeted as a key development area by the Irish Tourism authorities (Tourism Policy Review Group, 2003). Walking is by far the biggest tourism activity engaged in by overseas visitors in 2006 at 335,000¹⁰ (Failte Ireland, 2007a). Failte Ireland estimate that of this number, 104,000 were specialist overseas walking visitors (Failte Ireland, 2007b). These are defined as individuals who cited walking as a primary reason for visiting Ireland. Total expenditure by overseas visitors engaging in walking / hiking activities in Ireland was estimated at €228 million in 2006. Clearly this is the most significant single outdoor tourist activity in Ireland both in terms of volume and value.

Across Europe and other developed countries public access provision for walking in the countryside is frequently enshrined in legislation or custom or both. Where neither legislation nor custom prevail provision is often achieved through specifically designated areas (recreation areas and national parks) or by voluntary access arrangements. Neither custom

¹⁰ Golf being the next closest at 169,000

nor legislation applies in the case of Ireland. To improve public access provision a right to roam legislative approach similar to Scotland is favoured by some (Keep Ireland Open). A legislative framework “Access to the Countryside Bill” was recently proposed by a member of the opposition in Dail Eireann, Deputy Ruari Quinn (Quinn, 2007). The Bill proposes a right of access to land in excess of 150 metres above sea level and any open and uncultivated land, including moors, heaths and downs. It also suggests amendments to the Occupier Liability Act where persons would enter land entirely at their own risk. This Bill met with vociferous opposition from the farm organisations who are vehemently opposed to any proposals that might lead to a diminution of property rights. When legislative proposals for a full right to roam in England and Wales were originally tabled landowners organisations robustly opposed compulsion through legislation. The relevant landowners’ bodies (The Countryside Landowners Association, The National Farmers Union) strongly advocated a voluntary approach (Barclay, 1999). In the teeth of opposition from landowners (and from the Prime Minister Tony Blair himself, who backed their calls for setting up voluntary arrangements instead of a public right) the more diluted “access land” model was eventually passed under the Countryside and Rights of Way Act 2000. When the right to roam was introduced in Scotland, landowner opposition was not nearly as vociferous as a more open access tradition was prevalent, particularly in the highlands of Scotland¹¹. Landowners concerns were generally confined to some of the finer detail (BBC, 2004).

Comhairle na Tuaithe initiated a legal review to examine whether public access could be implemented by means of legislation without redress to the Irish constitution. A report on the finding of this review is reported not to have ruled out this option (Owens et al., 2007). The legislative approach is not favoured by government and the mainstream political

¹¹ The new law also gave crofters (small-scale tenant farmers who have lived in the Highlands for generations) the right to collectively purchase sections of the estates they live on, whether or not the landowner wants to sell. This was considerable more contentious than the right to roam provision.

establishment. The Minister for Community, Rural and Gaeltacht Affairs, Eamon O’Cuiv dismissed Deputy Quinn’s Bill as “simplistic” and said there was very little support for it in the countryside stating that “Laws that don’t have a general consensus are unenforceable” (Corkery, 2007). Interference with property rights is unlikely given the history of land tenure in Ireland. In a parliamentary debate Minister O’Cuiv is quoted as saying “I have repeatedly made clear my view that a local community-based approach is the best way forward where issues of access to the countryside arise” (O’Cuiv 2007, pg 26).

In the absence of compulsion through legislation the supply of public access is dependent on supply side factors such as cost of provision, monetary incentives and landowner goodwill. If a landowner is ideologically opposed to the provision of improved public access, financial incentives, however significant may not be sufficient to encourage entry into the market. If landowners incur costs from a change in land use by developing or maintaining a footpath or trail then these costs must be recoverable. This forms the basis of a recently launched scheme “walkways management scheme” agreed by stakeholders in Comhairle na Tuaithe where landowners would be compensated for walkway development and ongoing maintenance¹². This scheme is in an embryonic stage and may have more relevance to existing walkways and its’ success in attracting new walking routes remains to be seen. Farmers may also experience increased costs in relation to their farm business such as higher insurance premiums and threats to crops and livestock. A definitive change in to the Occupiers Liability Act to “an enter at your own risk” or ‘volenti non fit injura’ situation would dissipate liability concerns. Threats to crops and livestock are perhaps a less straight forward issue to tackle. A

¹² Under the scheme, landowners will receive payments for the development, maintenance and enhancement of approved marked ways and looped walking routes that pass through their land. Participation in the scheme will be optional and access granted by permission of the landholder. The scheme will allow landowners to work an agreed number of hours, on an annual basis, on the section of walkway that passes through their land. They will be paid an hourly rate of €14.50 for this work and all materials will be supplied. Farmers will be eligible for payments of up to €2,900 a year. Some €4 million has been provided for the scheme in 2008. The four trails selected for the pilot are the Bluestack Way in Donegal, Sheep’s Head Way in west Cork, Suck Valley Way in Roscommon and Galway and Eamonn a’ Chnoic Loop Walk in Tipperary.

countryside code¹³ has been agreed by Comhairle na Tuaithe which sets down guidelines and a code of conduct in this area but implementation is ubiquitous and hence difficult to guarantee.

The price of a commodity influences supply. Unless through commercial or altruistic motives, landowners rarely, if ever, volunteer public access as it does not lead to an increase in income. Introduction of incentives or a pricing mechanism can trigger a supply response as seen in the Woodland Welcome scheme in the UK. While it can be argued that there are considerable direct payments (now consolidated in the Single Farm Payment) which Irish (and European) farmers already receive from the taxpayer in return for acting as “custodians of the countryside” these payments relate to farm production activities and under Council Regulation (EC) No 1782/2003 a requirement to maintain land in good agricultural and environmental condition. With the CAP health check proposing to transfer funds from the guaranteed budget of Pillar 1 to rural development measure in Pillar 2 through increased modulation, delivery of public goods through agriculture is now at the forefront of the policy agenda. Public exchequer support linked to the production of public goods continues therefore to be eminently more agreeable to policymakers and taxpayers than the situation that existed theretofore. Incentives re-introduced through REPS or some comparable vehicle has the potential to improve the public access supply situation in the Irish countryside and add considerable dynamics and value to the rural economy.

¹³ Countryside Code agreed by Comhairle na Tuaithe is based on the leave no trace principles of outdoor ethics. It contains 7 main headings: plan ahead and prepare, be respectful of others, respect farm animals and wildlife, keep to durable ground, leave what you find, disposal of waste properly and minimise the effects of fire. (<http://www.pobail.ie/en/RuralDevelopment/ComhairlenaTuaithe/file,8590,en.pdf>)

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