

An overview of **Access Legislation** in Northern Ireland

Caro-Lynne Ferris, Executive Director
Outdoor Recreation Northern Ireland



ENGAGING WITH THE OUTDOORS

DURING COVID-19 LOCKDOWN IN NORTHERN IRELAND



Trends in outdoor recreation

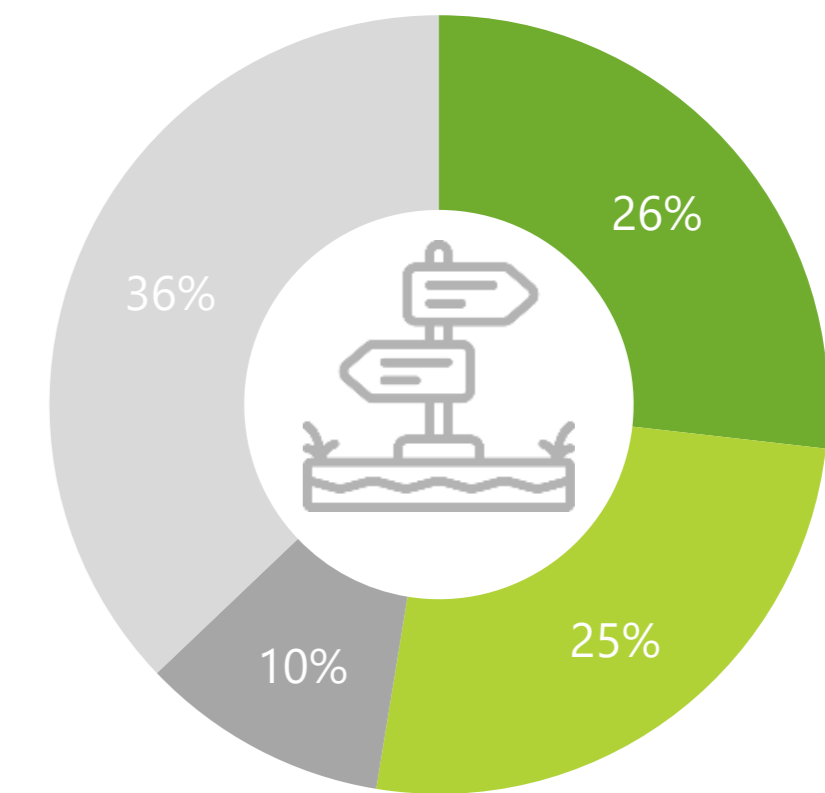
MORE PEOPLE ARE GETTING OUTDOORS → FEELING THE MENTAL & PHYSICAL BENEFITS



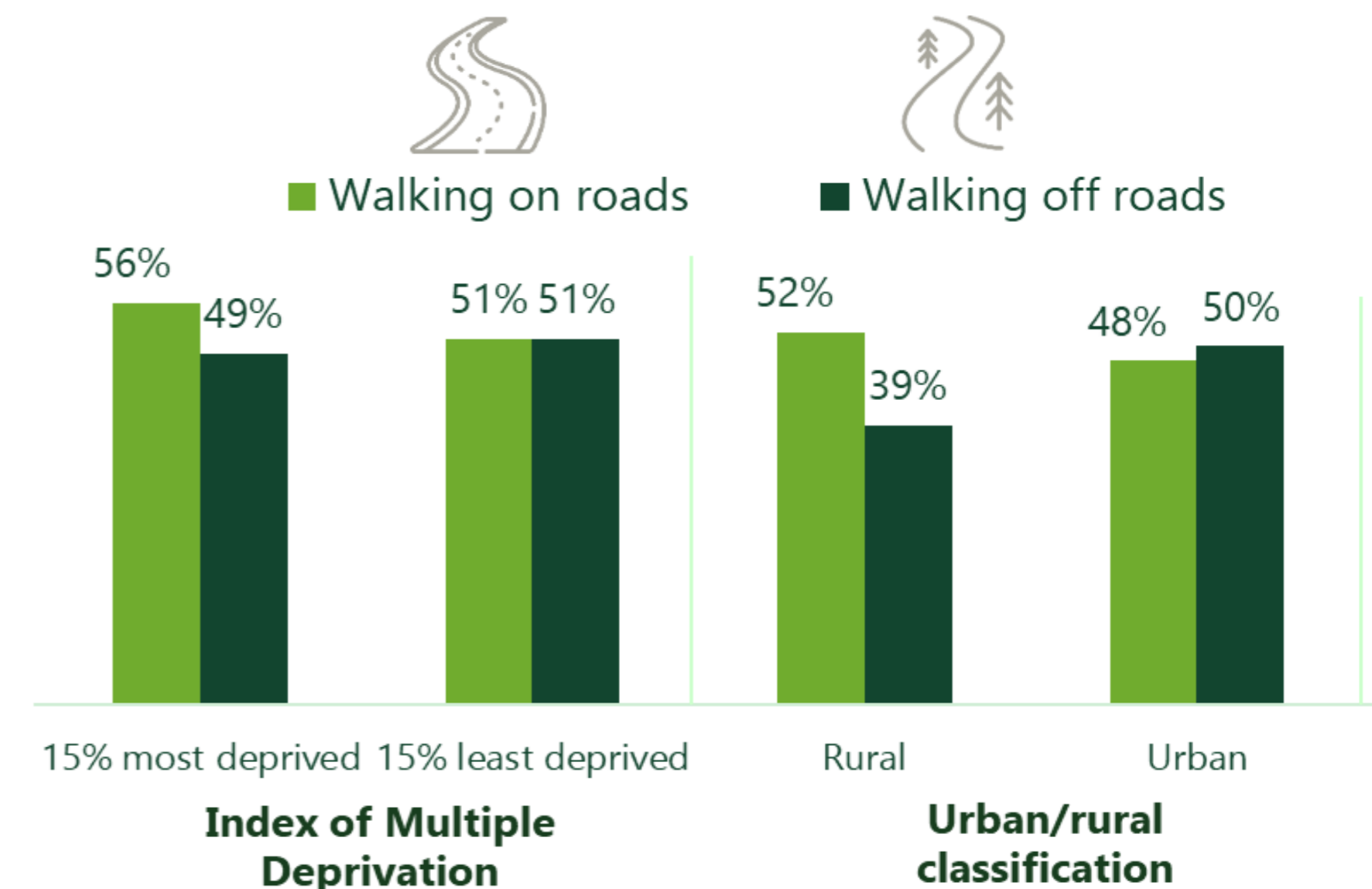
GOING FORWARD WE NEED TO REMOVE THE BARRIERS ←



Nearly a half of people do not live within easy walking distance to local trails



Legend: Strongly agree (dark green), Agree (light green), Neither agree nor disagree (grey), Disagree (light grey)



*63% of respondents report going outdoors for exercise every day during lockdown, much higher proportion than the 28% reported in the last annual household survey (CHS 2017/18)

Scotland

The Land Reform (Scotland) Act (2003)– creates a right of *responsible access* to most undeveloped and uncultivated land for recreation, education and some commercial purposes.

England and Wales

- Countryside and Rights of Way Act (2000) (CROW) enacted which give public access to:
 - land mapped as open country by Natural England (mountain, moor, heath or down)
 - any land more than 600m above sea level where no map exists
 - registered common land (under the Commons Registration Act 1965)
 - land designated by the owner as access land.

England has c. 1million hectares of open access land – 2/3 rds opened up to the public under the CROW Act.

- The Marine Coastal Access Act – has opened up a coastal route around England and Wales



Current Access Legislation within GB



1. Forestry Act (NI) 2010 – public has a statutory access on foot to all forests.
2. Water and Sewerage Service (NI) Order 2006 – NIW obliged to have ‘regard to the desirability of public access to its land’.
3. Conservation and Amenity Lands (NI) Order 1985– allows DAERA to:
 - Designate lands as a National Park or Areas of Outstanding Natural Beauty including promotion of public enjoyment of the area and the provision and maintenance of public access
 - Create Nature Reserves – many open for public access
 - Acquire land for access provision.

Publicly Accessible Land

Current Legislation governing access to private land

Open country = land consisting of wholly or predominantly of mountain, moor, heath, hill, woodland, cliff, foreshore, marsh, bog or waterway.

Access to the Countryside (NI) Order 1983

- The Order designates the Councils as the guarantors and facilitators of access.

Legislation gives Council's power to :

- Enter into public path creation agreements with landowners to **create** public rights along **linear routes** (discretionary)
- **Designate** new open access areas in areas of **open country** for open air recreation by Order or by Agreement (discretionary)
- **Acquire** areas of open country for the provision of recreational access
- For both Agreement and Orders – compensation can be made to the landowners concerned e.g if the value of their land depreciates as a result of an Access Order



Part 2 of the 1983 Order

Councils shall

- Assert, protect and keep open and free from obstruction any Public Rights of Way (PROW)



What is a Public Right of Way (PROW)

- A highway which any member of the public may use as a right – not a privilege granted by the landowner
- May be created specifically by the landowner (express dedication) or through ‘deemed dedication’ – landowner knows that a path has been used by walkers over a period of time (often 20years)
- May be limited to certain users - three types of PROW
 - walkers only (footpath)
 - walkers and horse riders (bridleway) and
 - carriageway (walkers, cyclists, horse riders, horse drawn vehicles & motor vehicles)
- Is a legal entity and remain unless the path is extinguished or diverted by due legal process
- Must be respected by the occupier and landowner
- 123 miles of PROW in NI v 118,000 miles in England
- Duty of Care on the landowner is limited



Order allows Councils to secure Permissive Access

- Most common way of increasing access in NI on private land – through permission with landowners
- Permissive Path is not a PROW
- Permissive Path – when landowners allow access for walking, cycling or horse riding
- Permissive Path Agreement – creation of linear access on any terms agreed by the Council and the Landowner
- Usually exist for a limited period e.g. 10 or 21 or 25 years
- Can be closed at certain times of the year e.g. to protect bird nesting sites
- All is agreed between landowner and Council at time of creating the PPA
- Under PPA the Council usually takes on the liability of the Permissive Path
- Council usually takes on management and maintenance of the Permissive Path.

Education and Youth Service (NI) Order 1986



Duty of Care to recreational users

Visitor = someone who has been expressly or impliedly invited onto the land by the Occupier



Any occupier of land has a 'duty of care' to people who come onto it.

Level of responsibility determined by:

Occupiers Liability Act (1957) – governs an occupiers' duty of care to a **VISITOR**

Occupiers Liability Act (1987) – determines whether a duty of care is owed towards non visitors i.e **TRESSPASSERS**

Users of Permissive Paths are visitors therefore:

the duty of care owed by the landowner is – to take care to see that the visitor will be reasonably safe for the purpose for which he or she is visiting their land

The same applies for when people cross land without the owners' express permission – but where he does not object to them doing so ('tacit consent')

De facto Access – Mournie Farmers

Duty of care to a walker on a PROW is less than that of a walker on a Permissive Path.

Duty of care to a trespasser is lower than that owed to a visitor.

Duty of Care to recreational users

SportNI 2011 study - The Impact of the Current Occupier's Liability Legislation

Findings - No successful liability claims were identified in the previous 20 years that related to an injury arising from the **informal recreational use of the natural environment**



SportNI revisited the study in 2017 – Review of Occupiers' Liability Claims with respect to Outdoor Recreation in NI.

Claims made throughout the period but **none went to court**

- Pattern of rural land ownership – small size of land holdings
- On-going concerns and perceptions over Occupier's Liability - perception that if you allow recreational users onto your land = a higher risk of potential liability claims

Access Legislation was last reviewed 21 years ago (1999)

- Strong opposition to any proposed statutory freedom for 'right to roam' over unenclosed, uncultivated land like that now in place in Scotland and England
- Landowners perceived that increased access = increased liability
= DOE discounted the proposal.

Why is NI different ?

