

The “Right to Roam” in England and Wales

Access to Open Countryside

In 2005, after over a hundred years of campaigning, walkers finally were given a new right of access to most areas of open country in England and Wales: mountain, moor, heath, down and common land. The right gives walkers the freedom to roam over wide areas of land, using any path or even walking off the path if they wish. An option for owners of other types of land such as woodland and riverside permanently to dedicate their land as access land has been used to secure legal access for land owned by the Forestry Commission. This factsheet outlines the new arrangements and rights for public access.

Different arrangements apply in Scotland, where new legislation gives a statutory right of access to almost all land so long as visitors behave responsibly by following the Scottish Outdoor Access Code. For more information contact Ramblers Scotland or Scottish Natural Heritage (see Useful contacts below).

Where does the new right apply?

The new right was introduced by Part I of the Countryside and Rights of Way Act (CRoW), which was originally passed in November 2000. There was a long process of **mapping** the land where the right applies, which was carried out by the former in England, and the Countryside Council for Wales. The Countryside Agency has now been replaced by Natural England.

Open country is defined in CRoW as mountain, moor, heath and down. However, CRoW does not contain definitions of these land types and so, prior to beginning the mapping process, the former Countryside Agency and Council for Wales produced a **mapping methodology**, which included the definitions used to decide what is, and what isn't, mountain, moor, heath and down.

The maps include all land which the former Countryside Agency and Council for Wales considered to be wholly or predominantly mountain, moor, heath or down.

Natural England and Council for Wales can modify the boundaries of areas of open country on the maps if this will make them more obvious to landowners and users on the ground. They also could exclude areas under 5 hectares if they consider that they serve no useful purpose.

All registered common land is also included – that is, land registered under the Commons Registration Act 1965. Open country and registered common land together are known as **access land**.

Currently the rights of access under CRoW applies to around 1.4 million hectares or 3.4 million acres with some of the largest increase in land open for public enjoyment in some of England's best walking areas .

National Park	Public open land before CRow	Public open land after CRow
Lake District	46%	59%
Yorkshire Dales	4%	64%
Exmoor	13%	26%
Peak District	35%	72%
Dartmoor	47%	50%
North York Moors	18%	34%
Northumberland	19%	85%

The best way to find out where access land is located is to check an Ordnance Survey Explorer series map as they have all been reissued to show new access land in yellow wash. When out walking you may come across the access symbol which is used to show when you are about to enter an area of open access.



You might also see a sign indicating the end of wider access (below). This should only be used where the boundary between access land and non-access land is unclear. It applies only to wider access, not for example to rights of way that continue beyond the sign.



What new rights do I have?

CRow only provides a right of access on foot. In the words of the Act itself, “any person is entitled...to enter and remain on access land for the purposes of open air recreation”.

Schedule 2 of CRow provides a lengthy list of activities not covered by the new right, including using a vehicle (except an invalid carriage) or boat, lighting fires, intentionally disturbing or damaging wildlife and plants, feeding livestock, bathing in non-tidal water, hunting, shooting, fishing, using metal detectors, failing to shut gates when required, disrupting the activity of others, camping, playing organised games or undertaking commercial activities.

Any person undertaking any of these activities without permission on access land will be regarded as being a trespasser on that land, and any other access land under the same ownership, for a period of 72 hours.

However, some land may have existing rights of access (see below) that may include the right to take part in some of the activities that are not allowed under CRow, such as canoeing, riding a horse or camping.

It is also possible for a landowner to make a **dedication** (see below) to remove or relax any of the restrictions contained in Schedule 2, though any relaxation is likely to be limited to allowing such activities as canoeing, riding a horse or camping.

What about closures and restrictions?

Landowners can restrict or prevent access for up to 28 days a year without special permission, and can apply for additional restrictions for purposes such as land management, conservation and fire prevention. These closures apply only to the wider right of access -- where, for example, land closed under the 28-day rule is crossed by a footpath that is a public right of way, you still have a right to use the footpath.

In addition to this, the legislation allows further exclusions or restrictions on the grounds of nature and heritage conservation, for the purpose of fire prevention, to avoid danger to the public and for land management reasons. Landowners may not apply for restrictions on grounds of nature

conservation: such restrictions are determined by Natural England and Council for Wales, with advice from appropriate authorities like English Heritage.

It is unlikely that you will encounter many closures and restrictions when you are out walking, as they will only apply on a small proportion of access land. However, if you are planning a special trip to a particular area it would be advisable to check on Natural England's Countryside Access website or the Council for Wales website (see links at end of fact sheet), where you are able to view upcoming or longer term restrictions on a map. If you are out walking and encounter a notice detailing a restriction and you want to check that it is valid you should phone Natural England or Council for Wales.

If a restriction will last for 6 months or more, Landowners must apply to Natural England, Council for Wales or the national park authority in National Parks. Long term closures and restrictions are referred to the relevant local access forum (see below) for comment and advice, though not for a decision.

The authority should make the determination on the principle of the least restrictive option. This may mean, for example, that where a restriction is necessary on the grounds of nature conservation, access may be allowed on a linear basis to that area of land for the period necessary, rather than being closed altogether. If an application is refused the landowner can appeal to the Planning Inspectorate.

It is also possible for access to be restricted in an emergency or for reasons of defence or national security.

What is 'excepted' land?

One of the principles of CRoW is that some land, although it may qualify as either open country or registered common land, is not subject to the right of access. This is because there are a number of categories of 'excepted' land.

Schedule 1 of CRoW has a long list of categories of 'excepted' land, including land within 20 metres of a dwelling or a building housing livestock; land used for parks, gardens, railways, golf courses, aerodromes, telecommunications, livestock pens and training racehorses; and land subject to military byelaws. 'Excepted' land is *not* shown on OS maps.

The Countryside Code: Respect, Protect, Enjoy

A new Countryside Code has been introduced with advice on countryside access for both visitors and land managers. Although there is no legal obligation for visitors to follow the Code, we encourage everyone to do so, as this will enable those who live and work in the countryside, as well as others who wish to enjoy it, to do so without interference. The main points of the code for visitors are:

- Be safe - plan ahead and follow any signs
- Leave gates and property as you find them
- Protect plants and animals, and take your litter home
- Keep dogs under close control
- Consider other people

The full text of the code including advice for land managers is available from Natural England or Council for Wales and is included on their websites.

Dedication

CRoW allows landowners to 'dedicate' any type of land permanently and irrevocably for public access on foot. Even areas of land where the public already enjoy *de facto* access can be dedicated. Landowners may also use the dedication process to extend the right of access to other users such as horse riders or cyclists

The first dedication ever was by Ramblers member Dennis Nisbet, who dedicated a

wood in his ownership in Shropshire. The Forestry Commission has also dedicated most of its freehold forests for access in perpetuity.

Dedicated land is subject to the same provisions as other access land, including the restrictions on the land managers' liability. Further information about dedication can be obtained from DEFRA's website.

Land managers' obligations

Under the legislation there are also some obligations that land managers must comply with. These are principally concerned with ensuring that the public are free to enjoy the new right of access.

It is therefore an offence for a landowner or land manager to erect or maintain false or misleading notices on, near, or on the way to, access land.

In addition, of course, landowners are legally required to ensure that all rights of way on their land are clear – for more details ask for our Basics of Footpath Law factsheet (FS7) or see our website.

CRoW also has a significant effect on the level of liability owed by landowners to those walking on their land, reducing it to that owed to a trespasser. The Occupiers' Liability Act 1984 was amended by CRoW so that there is no duty owed by the owner or occupier of access land to anyone injured by any natural feature (or any river, stream, ditch or pond, whether or not a natural feature) or by improperly using any wall, fence or gate.

Landowners are, of course, still liable for any injuries where they have either intended to create the risk or have been reckless in allowing that risk to be created. For example, a farmer who allows an animal likely to attack visitors to roam freely where the public has access may be liable if any injury occurs.

Access authorities

Rights of access under CRoW are managed by access authorities: either the county, unitary, or metropolitan borough council or, in national parks, the national park authorities.

Access authorities can **make byelaws**, where necessary, to preserve order, to prevent damage and to avoid undue interference with the enjoyment of the land by others. Byelaws should be used only as a last resort where all other reasonable means to resolve a conflict concerning management of access can be seen to have failed. Natural England or Council for Wales and the local access forum must be consulted.

Authorities can **appoint wardens** to give advice and to secure compliance with byelaws, or with any other restriction or exclusion, again in consultation with the local access forum.

They can **erect and maintain notices** indicating the boundaries of access land and excepted land, and notifying the public of exclusions and restrictions, although they should consult the owner or occupier of the land where reasonably practicable before they do this. Land managers may also put up such signs they consider necessary, provided these are not misleading.

Access authorities are expected to make full use of these powers in a planned way and to identify resources to do so, develop a planned approach to signage, take advice from any local access forums in their area and develop partnerships with landowners and occupiers affected by their plans. The provision of signage should be the minimum necessary to make clear to the public the boundaries of access land and the availability of the access rights, and should not be so numerous as to detract from the character of the landscape.

Access authorities also have a range of powers relating to **means of access** such as gaps, gates, stiles and bridges. They can agree with an owner or occupier to open up, improve, repair and maintain existing means of access and to construct new ones. They should aim to provide sufficient means of access to enable reasonable public use of the new rights and should consult any local access forum and principal landowners or occupiers affected by their plans as appropriate.

You should contact the access authority if you encounter problems with signing, misleading notices, means of access and similar matters.

Local access forums

Access authorities outside the Inner London boroughs have a duty to establish local access forums made up of representatives of users, landowners, and other local interests, such as conservation, tourism and business. They are statutory advisory bodies on improving public access to land in their areas for all types of open-air recreation.

Forums influence how local authorities carry out the provisions of the Act. Authorities are obliged to take a forum's views into account when taking decisions on a number of issues such as long term restrictions, appointing wardens, making byelaws and rights of way improvement plans.

If you are interested in the work of your local forum you should contact the access authority. A list of forums is on the Ramblers website.

Existing rights of access

A number of provisions predating CRow already give an effective freedom to roam on certain areas of land, and these are not affected by the new arrangements. They include the following:

De Jure (by law or right)

Some parliamentary Acts give a right to walk over certain areas of land, including

- The 1925 Law of Property Act (s193) which covers common land in what was at the time urban districts
- Three Commons Acts covering some other areas of common land
- Around 20 Acts giving access to specific places such as Dartmoor, The New Forest, The Malverns, Helvellyn, Haweswater and Elan Valley.

'Voluntary' Access

This is usually a misnomer. Often, there is either a law compelling or encouraging landowners to allow access in particular cases, or a financial incentive to do so. Examples include

- Access to much of the land owned by, water companies and the National Trust, who are all obliged by law to allow access to some degree
- Some land covered by agri-environment schemes, where landowners receive a cash payment in return for managing the land for conservation and providing limited access.
- The 'conditionally exempt land and buildings scheme' which gives exemption from Inheritance Tax to landowners who allow access to their land, without imposing an obligation on them to publicise that the land is open to the public. However it is listed on Inland Revenue's website.
- Voluntary access agreements with local or National Park authorities: many of the private individual landowners who have made these in areas such as part of the Peak Park and Forest of Bowland did so knowing that there was a possibility of a compulsory access order being imposed if they unreasonably withheld their consent.

Genuine 'altruistic' access

There are few examples of landowners who grant access over their land on a genuinely altruistic basis. Some public bodies, charities or conservation organisations do so, including the RSPB, the Woodland Trust and some local and national park authorities, but very few private landowners do.

De facto access

In some places the landowner has tolerated access. Walkers may have assumed they had a right to roam, because they have always done so, but in fact the landowner could turn them off at any time. Examples include Bodmin Moor, and many of Britain's beaches (see below). There have been cases of landowners withdrawing their tolerance.

Review of CRoW Maps

The maps produced under the CRoW act have to be reviewed at least every ten years

to check that the land designated as mountain, moor, heath and down hasn't changed. With the first maps being finalised in 2004 this process is due to start soon.

Details of how this process will take place can be found on Natural England's website.

Useful contacts

Natural England 0845 600 3078

www.naturalengland.org.uk

Countryside access helpline: 0845 100 3298

www.countrysideaccess.gov.uk

DEFRA 08459 33 55 77

www.defra.gov.uk

Inland Revenue www.inlandrevenue.gov.uk

Forestry Commission 08453 67 37 87

www.forestry.gov.uk

Countryside Council for Wales 08451 306 229

www.ccw.gov.uk

Ordnance Survey 08456 05 05 05

www.ordnancesurvey.co.uk

Scottish Natural Heritage 01463 725 000

www.snh.org.uk

For the latest information on our work to improve access for walkers, see our website or contact one of our main offices listed below.

*For more information on all aspects of walking in Britain, please visit our website or contact **The Ramblers Walking Information Service** at our London office by post, phone, fax or email.*

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