

Guidance given by the Secretary of State for Environment, Food and Rural Affairs for Local Access Forums under section 94(6)(c) of the Countryside and Rights of Way Act 2000

Introduction

1. The Countryside and Rights of Way Act 2000 (“the CROW Act”)¹ places a duty on each local highway authority and National Park authority (“appointing authorities”) to establish advisory bodies known as local access forums. Requirements for their establishment, operation and membership are set out in The Local Access Forums (England) Regulations 2002². The Regulations, which came into force on 7 August 2002, are backed up by a circular letter to appointing authorities of 26 July 2002.³
2. Under section 94(6)(c) of the Act, forums must - in carrying out their functions - have regard to guidance given from time to time by the Secretary of State for Environment, Food and Rural Affairs. This document provides initial statutory guidance to local access forums which are established in England.⁴

The roles and responsibilities of local access forums

General role

3. Local access forums will have a wide role in advising upon strategic access and recreation issues generally. This is likely to become a major part of a forum’s work programme once the immediate tasks of implementing Part I of the CROW Act have been completed within its area. Each forum will act as a statutory adviser to local highway and National Park authorities and to other bodies having duties under Part I of the CROW Act on the improvement of public access to land in their area for the purpose of open-air recreation and the enjoyment of the area. Such bodies must have regard to any relevant advice given to them by a forum. The CROW Act (and where appropriate, regulations made under the CROW Act) requires forums to be consulted on:-

- draft maps, prepared by the Countryside Agency, showing open country and registered common land;
- any byelaws to be made by the access authority⁵ affecting access land;

¹ Copies of the Act and accompanying explanatory notes may be obtained from The Stationery Office or viewed at their website (<http://www.legislation.hmso.gov.uk/acts/acts/2000/20000037.htm>).

² SI 2002 No.1836

³ <http://defraweb/wildlife-countryside/consult/localaccess/Circletternbcc.pdf>

⁴ The guidance will be revised, where necessary, as further regulations are made under the CROW Act, in particular those relating to the giving and review of directions excluding or restricting access. The CROW Act provides for local access forums to be consulted on proposals for long term directions (see paragraphs 14 to 20 below) and the Department for Environment, Food and Rural Affairs has consulted on proposals for, amongst other things, extending that advisory role. The Department is currently considering the responses which have been received to the Consultation paper on *Proposals for Regulations on the Exclusion or Restriction of Access to Open Countryside and Registered Common Land under the Countryside and Rights of Way Act 2000*.

⁵ Defined in section 1 of the CROW Act as the local highway authority, or in national parks, the National Park authority.

- the appointment of access wardens on land where the new right of access applies;
- directions proposed to be given by the Countryside Agency, National Park authorities or the Forestry Commission on dedicated woodland (“relevant authorities”) which would restrict or exclude long-term access from access land, and the review of such directions; and
- rights of way improvement plans prepared by the local highway authority under Part II of the CROW Act.

Responsibilities

4. Under section 94(6) of the CROW Act a local access forum is required, in providing advice, to have regard to:-

- the needs of land management;
- the desirability of conserving the natural beauty of the area for which it is established, including the flora, fauna and geological and physiographical features of the area; and
- guidance, including this document, given from time to time by the Secretary of State.

5. The regulations require appointing authorities to ensure a reasonable balance on each local access forum between the number of members representing differing interests. Forum members should respect local circumstances and the needs of integrated land management, environmental, social, economic and educational interests, whilst operating within the CROW Act and regulations made under the CROW Act, and having regard to the statutory guidance. Local access forum members will be expected to demonstrate a commitment and an inclusive approach to the improvement of recreational access to the countryside, engaging in constructive debate and seeking consensus wherever possible.

Commenting on draft maps of open country and registered common land

6. The Countryside Agency is producing maps of all open country (land which appears to them to consist wholly or predominantly of mountain, moor, heath and downland and which is not registered common land) and all registered common land, so that everyone will be clear where they will be able to exercise the right of access under section 2 of the CROW Act. Each local access forum will be consulted on the draft map for its area when it is issued for public consultation.

7. The Countryside Agency has produced guidance on procedures it will follow for mapping open country and registered common land, and the consultation process. These are available from its website.⁶

8. Mapping and public consultation is being rolled out in eight areas across England, between 2001 and 2004. Where mapping starts in a new area where a local access forum has been established, the Countryside Agency will undertake to attend a meeting of the

⁶ <http://www.countryside.gov.uk/access/mapping>

forum to explain the mapping process, the forum's role and the timetable. The Agency will invite the forum to submit useful data or other information that will help with drawing up the draft maps, and ask for advice about suitable locations for mapping publicity and road shows.

9. The Countryside Agency is required by The Access to the Countryside (Maps in Draft Form) (England) Regulations 2001⁷ to provide one reduced scale draft map to each local access forum for the particular area covered by the map. These will be issued to the secretary of the forum at the commencement of the formal consultation on the draft map in its area. The Agency will also provide the forum with copies of their standard consultation response sheet, area publicity leaflets and other relevant information.

10. Local access forums should seek to achieve a consensus when providing comments on the draft maps. Forums should decide for themselves the best way of facilitating this, for example, more than one forum meeting may be needed before they are able to comment. It is expected that the forum's most useful comments will relate specifically to individual parcels of land and be submitted on the Countryside Agency's standard consultation response sheets. Forums with large areas of open country may wish instead to provide comments on more general issues, including for example, specific areas where there is general concern over a particular issue, areas where the forum has evidence the map does not conform with the mapping methodology, and feedback on regional publicity and the location of draft maps.

11. A local access forum member who has comments that do not necessarily reflect the forum's views is free to submit individual comments to the Countryside Agency in the same way as any other member of the public.

Commenting on access authority's proposals for byelaws for access land

12. An access authority may make byelaws under section 17 of the Act to preserve order, to prevent damage on access land in their area, and to avoid undue interference with the enjoyment of the land by others. Before making any such byelaws, which may relate to all the access land or only to particular land in the area of the authority, they will be required under the CROW Act to consult any local access forum for the area to which the byelaw may relate (as well as the Countryside Agency). As a general rule, the Secretary of State believes that the powers in section 17 should be used only as a last resort when other means of resolving any conflicts have proved unsuccessful. The CROW Act contains other measures to minimize the impact of access on land where this is necessary: for example certain authorities have powers to make directions excluding or restricting access (see paragraphs 14 to 20 below).

Commenting on access authority's proposals to appoint wardens for access land

13. An access authority and any district council which is not an access authority, will be able to appoint wardens under section 18 of the CROW Act in respect of access land, so as to give advice both to access users and land owners, and to secure compliance with byelaws, restrictions or exclusions. An access authority or district council is required

⁷ SI 2001 No.3301.

under the CROW Act to consult a local access forum both before first appointing wardens and thereafter from time to time. The appointment of wardens by the access authority should complement any current wardening work. Forums should advise on preventing the duplication of wardening efforts and on complementary working between existing ranger staff and the new wardens.

Commenting on directions in relation to long term exclusions and restrictions

14. The new rights of access are subject to limitations, but access can be managed by occupiers on an informal basis. The owner (as defined in section 45(1) of the CROW Act) will also be able to restrict or exclude access, for any reason, without approval for up to 28 days per year on any area of access land (subject to the provisions in section 22 of the CROW Act).

15. In addition, people with a legal interest in access land (as defined in section 45(1) of the CROW Act) will be able to apply to the relevant authority to exclude or restrict public access on the grounds of land management, exceptional fire risk or danger to the public. Relevant authorities may also make directions for the purpose of fire prevention or avoiding danger to the public without an application being received.

16. When necessary the relevant authority may also restrict or exclude access for nature conservation or heritage preservation reasons, having regard to any advice from English Nature or English Heritage. Land managers will not be able to apply for restrictions on conservation or heritage grounds. Restrictions for the purpose of defence or national security will be determined by the Secretary of State and notified to the relevant authority for the area affected.

17. Access may be restricted or excluded in a variety of ways. For example, access may be permitted only on linear routes, the public may be required to use a specified entry point or may only be allowed on the land if they do not take dogs with them, or access may be excluded completely. The relevant authorities should impose the least restrictive option appropriate to the circumstances, having regard to guidance issued by the Countryside Agency and approved by the Secretary of State under section 33 of the CROW Act.

18. Before giving a direction restricting or excluding access indefinitely, or for a period which exceeds or may exceed 6 months, relevant authorities are required to consult the local access forum for the area concerned. Under the Department's proposals for regulations, the Secretary of State will also be required to consult the local access forum before making such long-term restrictions. Relevant authorities (and the Secretary of State in the case of directions given for defence or national security purposes) are required to review long-term restrictions at least every five years. Under the proposed regulations, they will also be required to consult local access forums on such reviews.

Providing advice on long-term restrictions

19. The relevant authority will ask the local access forum for advice on:

- the need for the proposed restriction - could the issue could be managed by

- informal means? (eg. posting of notices asking the public to avoid an area);
- the extent of the proposed restriction, including, for example, the length of time access is restricted, the area affected, the type of restriction (eg. access restricted to linear routes rather than complete exclusion), and any conditions attached (eg. the amount of advance notice required before the restriction comes into force);
- other options which would be less restrictive to public access; and
- any other modification that would improve public access for open-air recreation.

20. Relevant authorities should provide the local access forum with a copy of the application for a direction (where one has been made) and sufficient information about the nature and purpose of the direction to enable the forum to consider the case and reach a view on its merits. Relevant authorities should notify the forum of the date by which any comments should be received. A relevant authority may proceed with processing the application if the forum has not commented by this date but in any case should notify the forum of its decision.

Commenting on rights of way improvement plans

21. Local highway authorities are required under sections 60 and 61 of the CROW Act to review the adequacy of their rights of way network, and prepare and publish plans which contain the authority's assessment of whether local rights of way meet the present and likely future needs of the public; the opportunities provided for exercise and open air recreation and the enjoyment of the areas; and access to local rights of way by blind, partially sighted persons and others with mobility problems.

22. Local access forums should aim to adopt a strategic approach to their work on rights of way. The forums might for example:

- comment on any opportunities for access to open countryside especially where new linear routes may be desirable;
- assist local highway authorities in setting priorities for implementing their plans; and
- comment on published draft plans.

23. Local highway authorities are expected to involve local access forums in the preparation of their rights of way improvement plans from the outset. They are also expected to prepare progress reports for forums as the plans are prepared, published, implemented and reviewed.

24. Guidance to local highway authorities on rights of way improvement plans will be issued by the Secretary of State under section 61(4) of the CROW Act.

Other areas of advice

Advice relating to Part I of the CROW Act

25. Local access forums may comment on any aspect of the management of local access undertaken by different bodies. For example they might:

- assess the processes and decisions of the relevant authorities for its area against the Countryside Agency's published guidance on the restrictions system, and review, in the light of local experience, whether in its view the national guidance requires any improvement;
- advise the relevant authority on any restrictions on land in its area which the forum believes are unnecessary or should be varied;
- advise the relevant authority on how public access to land in its area should be managed so as to reduce the impact of access on agriculture, conservation or land management, or to reduce the risk to public safety;
- advise on the means by which information to the public on local access restrictions and opportunities should be provided;
- make representations to the Planning Inspectorate during the course of any appeal brought by a person with a legal interest in the land; and
- advise the Secretary of State for Defence on any proposed restrictions on access on military training lands.

Advice on other recreation and access issues

26. The new access arrangements provide authorities with the opportunity to evaluate recreation and access provision across an area. It will be important that the use of access land is integrated with existing provision to give opportunities to as wide a range of people as possible. For example, local access forums may be requested to provide advice on:

- strategies or plans incorporating recreation and access which set rights of way and open access in a broad context, integrating provision for access, all forms of open air recreation to land and water, and transport, tourism, health and public information;
- the extent to which fair provision is made for all current and potential users, and reflects the needs of local people and businesses; and
- the co-ordinated use of resources to provide and manage integrated recreation and access, and the dissemination of information to interested groups and the wider public.

Working arrangements for local access forums

Election of chair and vice-chair

27. The regulations require the members of a local access forum to elect someone from amongst their number to chair their meetings. They must also elect a vice-chair to preside at meetings in the absence of the chair. In the interests of balance, we would normally expect the chair and the vice-chair to be drawn from members representing different categories of interest, and the regulations require a forum to take such steps, so far as practicable, to ensure this balance is achieved in the election of the chair and vice-chair. In view of the role of a forum in providing advice to the appointing authority, we would not expect any forum member who is also a member of that authority to offer himself or herself as chair or vice-chair. To achieve this balance, forums might consider

it best to appoint the chair first, and to consider requiring both posts to be filled afresh in the event that a new chair needs to be appointed.

28. The regulations require elections for chair and vice-chair to take place at the first formal meeting of the forum. No procedures for voting are prescribed in the regulations. These are matters for the forum to decide, but they make wish to seek the appointing authority's advice on voting procedures that it might adopt.

29. The decision on how long the chair and vice-chair may hold their offices is for the local access forum to take at the time of the election, but it will be constrained by the period for which the person concerned has been appointed to the forum.

Secretary

30. The secretary of the local access forum will be employed by the appointing authority. The Regulations do not prescribe the secretary's duties but the secretary will be expected to take a leading and proactive role in their overall responsibility for the administration of the forum including:

- organising and advertising meetings;
- preparing and circulating the agenda, and commissioning and distributing papers in advance of meetings;
- preparing an outline work programme for the forum;
- assisting the chairman in conducting the meetings so as to comply with statutory requirements and guidance;
- writing the draft minutes of meetings;
- publicising the proceedings of meetings and related papers;
- producing draft annual reports on the work of the forum;
- liaising between the forum and the appointing authority, including any responsibilities agreed with the appointing authority for the management of the financial expenditure of the forum;
- liaising between the forum and neighbouring forums; and
- communicating the forum's advice to the appointing authority and other bodies to which the forum may give advice, and reporting back to the forum any response from, or action taken by, the recipient.

Meeting arrangements

31. The regulations require that local access forums should meet at least twice a year but a forum may meet more frequently if it considers this necessary. This will depend on the amount of business before a forum. During the early stages of implementing Parts I and II of the CROW Act, it is expected that the forum's workload is likely to require more than two meetings a year.

32. Local access forum members should also agree at each meeting the draft agenda for the next meeting and the publicity required. Urgent items should be added to the agenda between meetings of the forum with the agreement of the chair and vice-chair. The chair should work with the secretary to ensure each meeting is arranged well in

advance and is advertised and open to the public, and, in liaison with the forum's appointing authority, make known where the minutes, agendas and reports are available for public inspection. The timing of meetings should be varied to include evenings or weekends as the forum thinks appropriate, and the locations of meetings also varied to enable a larger number of people to attend at least one meeting without having to travel too far.

Annual work programme

33. The forum should endeavour to agree an annual work programme taking account of its work priorities. For example, the programme should take account of the mapping timetable for the area, and, in some cases, forums might find it useful to consult the various bodies mentioned in paragraph 3 above as to when they are likely to require advice from the forum during the year. The work programme, which will be agreed with forum members, should be available for inspection to the public.

Training

34. The work programme should also take into account any training which local access forum members believe would help them to fulfill their advisory role more effectively. Members should take responsibility in considering what training they may require and discuss with the appointing authority ways of meeting those needs, for example in terms of developing their skills and improving their technical knowledge.

Annual report

35. The regulations require every local access forum to produce an annual report on its work. Forum members should agree the annual report, prepared in draft by the secretary and published by the forum's appointing authority. The report need not be published as a separate document but may, if the authority wishes, form part of another document (for instance a newsletter or information pack) that the authority would normally produce in the course of its business. We would expect the authority to respond positively to the forum's annual report and to say what actions they have taken on the advice and recommendations of the forum.

Reporting of advice

36. The secretary should ensure that there are clear lines of communication in place with each decision making authority and that the forum receives feedback on the extent to which its advice has been acted upon. In the case of joint forums, their advice should be reported to all the appointing authorities concerned.

Observers

37. The chair, with the agreement of the vice-chair, may invite observers to participate in meetings of a local access forum. Observers might be drawn from, for example, officers of the appointing authority and of other authorities in the area, and officials from the Countryside Agency and other statutory bodies, for example, English Heritage, English Nature, the Environment Agency, Defence Estates (where there are

significant military training estates in the forum's area) and Sport England.

Networking and providing information

38. Local access forum members are expected to improve liaison between known interest groups and others who are not normally consulted on countryside recreation activities, but who may wish to have an input into decision-making processes. They should take advantage of any existing arrangements, as well as making new ones, to put forward the views of, and provide information to those interest groups and others which are not represented on the forum as well as those which are. In doing so, members should bear in mind that they have been appointed to act as representatives of particular interests but not particular organisations. This is an important distinction which they should remember whenever carrying out their duties as a local access forum member.

39. Local access forums might wish to consider producing a regular newsletter or setting up a website to communicate and engage with the wider public so that, in particular, socially excluded or disadvantaged groups are able to obtain information on the work of the forum. Forums might also wish to consider hosting an annual event or meeting which could be a further opportunity to provide more information on their work. Where possible, such activities should be planned in accordance with the annual work programme.

Cross boundary liaison

40. Local access forums should take steps to establish close cross boundary links with neighbouring forums to ensure that issues of common concern or about adjacent parcels of land which may be of the same landscape type are considered in a consistent way. Links may be established, for example, by the appointment of a representative from each forum to attend each other's meetings as observers or the formation of a joint working group. Such liaison arrangements may be particularly important where English and Welsh forums share a common boundary which is straddled by open country or registered common land. This is because separate decision making bodies will be involved in both the mapping process and in every case where directions restricting or excluding access are proposed.

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