

GUIDANCE TO CROW RELEVANT AUTHORITIES: PUBLIC CONSULTATION ON PROPOSED AMENDMENTS.

The purpose of the consultation

Natural England has a duty to provide guidance to the relevant authorities that administer restrictions on open access rights in England. We want to update our guidance, building on experience of administering restrictions since March 2004.

In 2007 we completed a first phase review of the guidance to relevant authorities. During the review we identified areas that we intended to consult on at a future date. This paper outlines our current position on those areas. The proposed amendments to the existing guidance are marked in red.

Before recommending amendments to the Secretary of State, we want to give interested people a chance to comment on them. Our proposals are set out in full in this paper.

The consultation lasts for 12 weeks, starting on 12 May 2009 and finishing on 04 August 2009.

Making a response

If you want to comment on any of the proposals, please send an email by 04 August 2009 at the latest to ben.nichols@naturalengland.org.uk. Alternatively, if you do not have access to an e-mail account, you can send your response by post to Ben Nichols, John Dower House, Crescent Place, Cheltenham, Gloucestershire, GL51 7NL.

The proposals are numbered. It will help us if you order and number your comments in the same way as far as possible.

We would prefer a single response from each interested organisation.

The corresponding sections of the existing guidance to relevant authorities can be found on the guidance pages of our open access website www.openaccess.gov.uk

If you have questions about the consultation process, please contact Ben Nichols on 0300 060 0406.

If you want to learn more about the open access rights first, try our countryside access website www.countrysideaccess.gov.uk

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1. Bulls kept on access land

Issue

Criteria set 9 – Bulls kept on access land – is inconsistent with national rights of way legislation for managing risk to the public from dairy bulls. We also believe that the guidance could provide further advice on how to establish the likely level of risk posed by beef bulls.

Proposal

We propose to:

- bring the criteria set up to date with HSE information sheet - 'Cattle and public access in England and Wales';
- provide more detailed guidance on risks from bulls, for example enabling relevant authorities to assess the temperaments and circumstances of individual bulls;
- explain clearly that relevant authorities should where necessary to prevent danger to the public exclude them from CROW access land where a dairy bull is being kept (this is consistent with the law which prevents keepers from putting dairy bulls in fields with public rights of way).

Proposed amendment to existing text in the guidance is marked in red:

Criteria set 9 (Chapter 2.5):

Bulls kept on access land

Scope

This criteria set assesses the case for restricting access to protect the public where bulls are present on access land.

Criteria set 10 considers risks from other types of cattle.

Overview

Bulls¹ are not likely to be encountered often on access land – but where they are kept there, they may endanger visitors. **Employers are required under health and safety legislation to assess such risks, and take such steps as are reasonably practicable to reduce them to an acceptable level. There is also a relevant duty of care under the Animals Act 1971.**

¹ A bull is an uncastrated male. Castrated males are known as bullocks or steers. Risks to the public from steers are considered separately - see 'Other cattle on access land'

Dairy bulls² are normally housed away from areas with public access, but may be run with cattle on CROW access land for three to six weeks each year. The time when this happens varies according to when calves are required.

Section 59 of the Wildlife and Countryside Act 1981 bans bulls of recognised dairy breeds from fields crossed by public rights of way. This law does not apply in open areas such as moorland; however, bulls of dairy breeds are very unlikely to be kept in such circumstances.

Bulls of breeds used for rearing beef are generally less aggressive than dairy breeds, but individual temperament also varies significantly. The relevant authority should therefore question the handler and vet in order to build up a profile of each individual animal's temperament. Their subjective assessments can be a useful guide, but should be compared with the other factors below in assessing the likely risk to visitors:

ASSESSMENT CRITERIA

Step 5. Is it necessary to do anything?

- It is advisable wherever bulls are kept on CROW access land to use signs to warn visitors of their presence. Signs should also advise visitors to keep their distance from the bull, to move slowly following field boundaries where possible and to keep their dogs on leads as required under Schedule 2, paragraph 5 of CROW.
- Risks to the public from bulls vary according to a wide range of factors which relevant authorities should weigh carefully before reaching a decision:
 - the degree of enclosure (they may feel more threatened in confined areas and are more likely to exhibit territorial behaviours);
 - their age (bulls under ten months of age are not normally aggressive);
 - their breed (dairy breeds tend to be most aggressive)³;
 - the temperament of the particular bull;
 - whether the bull is running with other cattle (which tends to reduce aggressiveness);
 - Whether the bull is handled frequently or used to the presence of other people in their territory; and
 - The pattern of public use, in particular whether the routes which people are known to use or are likely to follow would bring them into proximity with the bull.

² Recognised dairy breeds include Ayrshire, Friesian, Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry.

³ The Wildlife and Countryside Act 1981 prohibits the keeping of dairy bulls in fields crossed by public rights of way. Bulls of other breeds are also banned from such fields unless accompanied by cows or heifers. In this context the term 'fields' does not include areas such as open fell or moorland.

- When considering a bull's temperament, the relevant authority should ask the handler or vet the following questions in order to build up a profile of the animal:
 - their overall assessment of the degree of danger posed by the cattle to the public
 - Whether the animals have a history of aggression towards the public or the handler and if so under what circumstances those attacks occurred
 - Whether members of the public are likely to find themselves in similar circumstances to the situation that led to previous attacks
 - Whether the bull is handled frequently or if it is used to the presence of other people in its enclosure
 - Whether the handler would consider splitting the bull from the main herd and housing it elsewhere
 - Whether the handler culls aggressive animals
- The correct solution for any particular case may be informal management (eg warning notices), relocating animals or a restriction.

Step 6. Is statutory restriction necessary?

- Where it considers that informal management is inadequate to address the danger posed by a bull, it should next explore with the applicant the scope for relocating the bull to land with no access rights. Restrictions should only be considered in cases where relocation is not practicable.
- Restriction will normally be necessary where a dairy bull, whether alone or running with cows, or a lone beef bull is kept on an enclosed area of CROW access land and where no suitable alternative grazing is available.
- Restriction may be necessary where a beef bull is running with cows, if the relevant authority concludes from its assessment that warning signs are inadequate to address the risk from the particular bull in question and that suitable alternative grazing is not available.

Step 7. What is the lowest level of restriction necessary?

- Where restriction is justified, it is likely to take the form of complete exclusion of the CROW rights from the enclosure containing the bull(s). **The presence or absence of dogs is unlikely to be a significant factor.**
- Since the relevant authority has no powers to restrict access along public rights of way, restrictions **to prevent danger from beef bulls are less** likely to be effective in areas crossed by them. They are also less likely to be necessary on large open areas of access land. **The relevant authority should only give a direction to restrict access in circumstances where it believes that confining access to public rights of way would help prevent danger to the public.**

Step 8

If appropriate, return to Step 8 (“Give a direction?”) of the explanatory notes for Determination Chart 2.5.

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2. Dogs in the presence of cattle that are calving or that have calves at foot

Issue

Experience shows that the existing guidance, in emphasising the size of the grazing area, has over-simplified the basis for decisions.

Proposal

Since the commencement of CROW access rights, we have strengthened our experience and understanding of the issues in certain areas. This proposal draws on this experience, along with advice from the Health and Safety Executive, to expand the criteria for considering the need for restrictions to prevent danger from cattle.

Risks from cattle can be significantly reduced if people behave judiciously around them. There is no widespread public understanding of what this means in practice, but we believe this can be addressed locally by providing information for visitors at grazing sites and through other sensible access management measures. We propose to amend the guidance at step 5 by introducing new criteria that help the relevant authority to understand how such techniques may be employed.

We propose to amend the guidance at step 6 by introducing new criteria that allow for greater flexibility in decision making according to local circumstances and a more precautionary approach overall.

It is important to understand the character of individual animals or herds of cattle in order to assess the risk of injury to the public. The existing guidance provides limited help to relevant authorities assessing the character of cattle on access land; consequently it has been difficult for them to apply this criterion consistently and decisions have had to rely on subjective assessments by keepers and vets. The proposal therefore strengthens the criteria set by including questions that can be asked of the keeper/vet to assess the animal temperament in a more consistent and objective way.

Proposed amendment to existing text in the guidance is marked in red:

Criteria set 10 (Chapter 2.5): Other cattle kept on access land

Scope

This criteria set assesses the case for restrictions to manage risks from or disturbance to cattle on access land.

Risks from bulls are considered separately in Criteria Set 9.

Overview

Public safety

Cattle normally tolerate people well, particularly when they have become used to encountering them. However because of their size they can present a significant threat of injury or even death if they feel threatened or, in particular, if they are protecting their young.

On access land, this latter threat only normally applies to suckler cows, which may calve on extensive pasture and have their young at foot for a period after birth⁴. The risks are significantly greater for visitors with dogs.

Steers⁵ and heifers⁶ (which are naturally boisterous) may sometimes appear aggressive to visitors, but this rarely results in injury.

Employers are required under Health and Safety legislation to assess such risks and take such steps as are reasonably practicable to reduce them to an acceptable level. There is also a relevant duty of care under the Animals Act 1971.

Disturbance by the public

Heavily pregnant cattle may abort or give birth prematurely if chased by dogs. It is an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock. CROW does not entitle visitors to take a dog into the vicinity of livestock unless on a short lead [Schedule 2, paragraph 5] (though in relation to safety considerations, keeping hold of a dog's lead when attacked by cattle may increase the risk of serious injury or even death).

ASSESSMENT CRITERIA

Step 5. Is it necessary to do anything?

- Intervention is only likely to be necessary when cattle are calving or have calves at foot in fields on access land.
- **To prevent cattle and visitors from coming into close proximity, the relevant authority should consider informal management techniques. Depending on local circumstances this might be to:**
 - 1. Relocate cattle watering or feeding stations away from routes or areas frequented by the public, provided this can be achieved without unreasonable cost or inconvenience to the applicant.**
 - 2. Position signs and access points to steer visitors away from areas favoured by cattle.**
- **Where cattle are present on CROW access land, signs should be placed at entry points to remind visitors of the requirements to keep their dogs on leads in the**

⁴ Suckler cows are normally part of beef enterprises. The young of dairy cows are normally separated from the mother at birth and housed, or kept on land near the dairy that is unlikely to be access land.

⁵ a young castrated male, usually raised for beef.

⁶ A young cow, especially one that has not yet given birth to a calf.

vicinity of livestock. Where cattle calve or have calves at foot, visitors should be advised for their own safety to steer clear of the animals and to unclip the dog's lead if they are chased by cattle.

Step 6. Is statutory restriction necessary?

- Cattle will naturally avoid visitors when calving, and it is reasonable to expect visitors to avoid cattle provided steps have been taken to alert them to the risks. Restrictions are therefore unlikely to be necessary on large open areas of access land.
- The national requirement for people to keep their dogs on leads in the vicinity of livestock may not be an adequate precaution in small enclosures where suckler cows are calving or have calves at foot, particularly if the stocking density is high. In these circumstances the relevant authority may consider complete exclusion of dogs from the enclosure if necessary.
- It may be necessary to exclude dogs from an area where cattle are calving or have calves at foot, where local circumstances make it difficult for visitors and cattle to maintain a safe distance from one another. Such circumstances will include:
 - Small enclosures where close proximity is unavoidable.
 - Areas where the topography or vegetation makes it difficult for people or cattle to be aware of each other's presence and so keep at a safe distance
 - Areas where the established or predicted patterns of access coincide with places favoured by the cattle, such as watering or feeding stations which cannot be placed in less sensitive areas.
- Restrictions may occasionally be necessary on the basis of a herd's temperament, or on the basis of an individual animal's temperament. Quite often there is more temperament variation within breeds than between them, so it is not possible to specify whether a restriction is necessary on the basis of breed alone. The relevant authority should therefore question the handler and vet in order to build up a profile of each individual animal's temperament, comparing their subjective assessments with the other factors above to arrive at a balanced overall assessment of the likely risk to visitors. The relevant authority should ask the vet and/or the handler:
 - What their assessment of the degree of danger posed by the cattle to the public is;
 - Whether the animals have a history of aggression towards the public or the handler and if so under what circumstances those attacks occurred;
 - Whether it is the herd or the individual that has aggressive tendencies;
 - Whether members of the public are likely to find themselves in similar circumstances to the situation that led to previous attacks;
 - Whether the cattle are handled frequently or are used to the presence of other people in their enclosure;

- Whether the handler would consider splitting the animals from the main herd and housing them elsewhere;
- Whether the handler culls aggressive animals.

Step 7. What is the lowest level of restriction necessary?

- Where restriction is justified, this will usually be to exclude people with dogs while cattle are calving or have calves at foot. The maternal instinct in cattle decreases over time, so it is unlikely that a restriction of over three months will be necessary. However the relevant authority may consider granting a longer restriction if it receives compelling justification from the applicant.
- The relevant authority should only exclude dogs where it is satisfied that this will reduce danger to visitors significantly in the context of any residual access afforded by public rights of way. It should also consider the extent to which the herd is used to the presence of other people and dogs within its enclosure, and whether it is favourable to exclude people with dogs to routes that avoid areas frequented by cattle.
- Under some farming systems, cattle will be housed for part of the year, so it will be necessary to establish the periods in which the cattle will be grazed on access land, in order to determine the period when the restriction is necessary. An outline direction may be appropriate where the grazing period varies from year to year. An outline direction should carefully specify the circumstances when the restriction will be necessary and may limit the number of days in each year when access may be restricted for the purpose.
- Restrictions are unlikely to be necessary where the cattle are pregnant but not yet calving, as they are generally more docile during pregnancy. It is the maternal instinct that occurs at calving that could cause the cattle to become more aggressive.
- Cattle are usually provoked by aggressive or boisterous behaviour in dogs, but relevant authorities should not rule out the possibility that the presence of a dog may provoke them, even if it is under close control. It is therefore unlikely to be appropriate to exempt people with assistance dogs from directions for this purpose

Step 8

If appropriate, return to Step 8 (“Give a direction?”) of the explanatory notes for Determination Chart 2.5.

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3. Managing risks from motor rallies

Issue

There is currently no specific text in the Relevant Authority Guidance which sets out how relevant authorities should deal with applications for public access restrictions when motor rallies are scheduled on the land.

This is an important issue as it is estimated that 90% of staged rallies in England and Wales take place on Forestry Commission land (The Forestry Commission has dedicated its entire freehold estate).

Supplementary information

1. Criteria set 20 already allows for temporary closure of the land for 'one off' events for which an entry charge is made. Therefore any rallies for which an entrance fee is made are already afforded suitable protection by the guidance.
2. There are many different types of rallies. Some may be more dangerous to the public than others (e.g. through speed or size of the vehicle).
3. Rallies are always well marshalled and thoroughly organised⁷.
4. Quite often crossing points such as footpaths will be left open, however there will be a marshal posted at the appropriate point.

Proposal

For high-speed or other dangerous motor activities (such as larger vehicles that are likely to roll over), the relevant authority should have regard to appropriate risk assessments (usually the Forestry Commission and the Motor Sport Association are responsible for this) when determining the extent of the restriction.

Informal access management techniques should be used wherever possible to minimize risk and to reduce the extent of the restriction required. These could include the provision of car parking near safe areas of the track or through provision of signage well in advance of the event.

Where a restriction is necessary, it will usually only be necessary to restrict access to the track and to a small 'buffer zone' around the track. The remaining access land should be left open. Signage is essential to ensure that the extent of restriction is clear to the public. This will be complimented by extensive marshalling of the site on race day. Marshals are supplied by the rally organiser.

⁷ See Motor Sport Association: 2009 Competitors and Officials Yearbook – Specific Regulations for Rallying

Proposed amendment to existing text in the guidance is marked in red:

Criteria set 20 (Chapter 2.5):
Recreational activities, events and other temporary land uses

Scope

This criteria set assesses the need to restrict access for a variety of recreational activities, events and other temporary uses organised or sanctioned by the occupier of access land, including:

- sports events and practice;
- special events such as agricultural shows and music festivals;
- private or corporate functions or team-building exercises; and
- location hire for special purposes such as film-making.

Recreational activities involving shooting are assessed separately in Sets 16 and 18. Permanent and seasonal charges to enter access land are considered at Set 21.

ASSESSMENT CRITERIA

Step 5. Is it necessary to do anything?

- Visitors exercising CROW access rights will usually take account of how other people are using access land, and special intervention will often be unnecessary.
- Informal access management techniques may be used to help accommodate CROW access alongside other temporary uses of the land.
- Informal recreation may need to be separated from dangerous activities such as motor sports – particularly in woodland or other environments where it is less easy to see vehicles, bikes or horses approaching and step out of their path.
- Risks confined to small areas can be managed using signs, tape or temporary barriers or employing stewards to steer visitors away from areas of risk.
- Some temporary uses of access land could be disrupted by CROW visitors in other ways - eg commercial filming, private functions or special events for which an entry charge is made. Again signs, barriers or stewards may be used to steer visitors away from areas being used for these purposes: such techniques are most likely to be effective where an alternative route can be made available for the public to use.

Step 6. Is statutory restriction necessary?

- Restrictions are most likely to be necessary:
 - to manage risks from high speed activities such as car rallies and motorcross;

- to manage risks from other dangerous motor activities, such as slower, larger vehicles that are prone to rolling over;
 - where there is a charge for entry to an event; or
 - when land is being used for a private function.
- Such restrictions are only likely to be effective if accompanied by practical measures appropriate to the circumstances.
 - Restrictions are unlikely to be necessary for lower order risks such as for cycling and horse riding.

Step 7. What is the lowest level of restriction necessary?

- Exclude the public from the area affected by the risk, charge or function.
- For motor sports), the relevant authority should have regard to appropriate risk assessments⁸ when determining the extent of any exclusion that is necessary. It will usually only be necessary to exclude the public from the track and a small buffer zone around the track.
- Leave residual routes or areas unrestricted if it is practicable to do so. Remember that public rights of way will be unaffected.

Step 8

If appropriate, return to Step 8 (“Give a direction?”) of the explanatory notes for Determination Chart 2.5.

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⁸ The Motor Sport Association (MSA) are the governing body and require a risk assessment to take place before granting permission to undertake rally events

4. The effect on decisions of other rights of access

Issue

There are some categories of open access right or arrangement that may exist in parallel with CROW rights. For example:

- Open access under a permanent management agreement under section 39 of the Wildlife and Countryside Act 1981.
- Access required under a binding contract with the state, e.g. as part of a countryside stewardship agreement or conditional exemption from inheritance tax.
- Access allowed where land has been registered as a village green.

At present relevant authorities are not allowed to refuse an application for a CROW restriction on the basis that it will have no actual effect on the ground (as these other parallel rights remain in force).

The current approved version of the guidance explains how relevant authorities should consider cases for fire prevention directions where 'parallel' rights exist alongside CROW access rights, which are not subject to the Chapter II provisions:

Paragraph 2.4.29 (which relates to fire prevention restrictions): "The relevant authority may receive an application to restrict CROW access on land that it knows is also subject to 'parallel' open access rights, or comparable formal arrangements, including open access conditions in written agreements relating to grant aid or tax relief. In this situation, the authority should explain that giving a direction may not be effective unless the applicant is also able to restrict the parallel open access arrangements. If the applicant decides to proceed with the application then the relevant authority must nevertheless consider this on its merits, without reference to whether or not any scope exists to restrict the parallel right of access. If the relevant authority decides to give a direction then the covering letter should explain that the parallel access arrangements will be unaffected by the CROW restriction."

Proposal

There is no compelling reason why the relevant authority should be required to give a direction if it knows that it will have no practical effect on the ground. Giving such a direction could often be misleading or counterproductive. We also believe that this issue is generic to the consideration of any case, regardless of the grounds. Therefore, where 'parallel' open access rights exist alongside CROW rights and would continue in force, unrestricted, on the affected land, we propose that the relevant authority will be likely to conclude on this ground alone that it is not necessary to give a direction.

Proposed amendment to existing text:

We recommend that the text below should replace paragraph 2.4.29 (as approved in July 2004) and appear again verbatim:

- Between 2.2.27 and 2.2.28 (nature conservation- step 7: Is a statutory restriction necessary?)

- Between 2.3.17 and 2.3.18 (heritage preservation- step 5: Is it necessary to do anything?)
- Between 2.5.49 and 2.5.50 (land management and public safety- steps 5-7).

“Where, through investigation the relevant authority is satisfied that ‘parallel’ open access rights exist alongside CROW rights and would continue in force, unrestricted, on the affected land, the relevant authority will be likely to conclude on this ground alone that it is not necessary to give a direction⁹”.

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⁹ Linear rights are not ‘parallel’ to CROW rights in this sense, because the extent of CROW access rights will by their nature be greater than the extent of linear rights in any given circumstance. Since the relevant authority has no powers to restrict access along public rights of way, the authority should consider separately whether restrictions will be ineffective in areas crossed by them.

5. Woodland storm damage and risks from use of forestry machinery

Issue

This proposal considers two issues both relating to public safety in woodlands.

1. Storm damage

Section 16 of the CROW Act 2000 gives landowners and long leaseholders the opportunity to voluntarily dedicate land for public access. A dedication lasts in perpetuity or, where relevant, for the duration of a long lease. As the Forestry Commission has dedicated its freehold estate, the vast majority of dedicated land is woodland.

When considering a restriction on dedicated land, relevant authorities must have regard to this guidance in the same way that it would on 'undedicated' CROW access land.

The CROW Act does not give the relevant authority power to restrict access because of danger to the public from natural features of the landscape, such as decaying, fallen or dangerous trees, and storms or other extreme conditions. The relevant authority's power to restrict CROW access rights for public safety reasons is limited to avoiding danger to the public from anything done, or proposed to be done, on access land or on adjacent land.

The Forestry Commission raised this issue as it felt that Section 3 of Health and Safety at Work Act gave it a duty to protect the public from risks to their health and safety. The Forestry Commission stated that following a storm, it needs to prohibit public access to its dedicated woodland, as soon as is reasonably practicable, if it considers the public to be at risk from storm damaged trees.

2. Forestry machinery

The guidance currently states that restrictions will not normally be necessary to manage lower order risks such as timber loading and small scale harvesting. However, there are risks associated with tree felling and surgery (including clear up operations) where mechanical harvesters and chainsaws are used due to the risks of chain shot (where the chain breaks and can fly off up to large distances) and from tree extraction (where a winch and cable can often be used to extract timber from woodland).

In 2006, the Countryside Agency and the Forestry Commission reviewed existing guidance on tree felling and extraction and agreed that it would be helpful for relevant authorities to have a more detailed understanding of some risks arising commonly from the use of specialist harvesting and extraction machinery.

Proposal

Following a major wind blow event CROW restrictions may not be used to prevent danger to the public except where necessary to allow clear up operations to take place. Appropriate signage and access management techniques should instead be used to inform people of the risks from fallen and damaged trees and to direct them away from areas of potential danger. A public safety direction under s25(1)(b) of CROW would be the most appropriate way to exclude access for the clear up phase.

Where mechanised felling or tree surgery takes place, visitors are at risk of injury both from the falling trees or limbs and from flying pieces of the cutting chain (known as 'chainshot'), should it break while in use. To prevent danger from chainshot, operators should maintain a safety zone around the area of work to ensure that the public do not come within 200 metres (for mechanical harvesters) or two tree lengths (for motorised manual chainsaws) while the machinery is in use. Relevant authorities should take account of these safety zones in determining the extent of any statutory restriction necessary for this purpose.

On steep sites, it may be necessary to winch the whole felled tree to a trackside using a mechanical winch, before it can be processed and stacked for removal. Visitors are at risk of severe injury from the winch cable as it tenses and moves and from the moving load.

In order to strengthen the guidance we have suggested proposed amendments to Criteria set 1.2 – Risks arising from tree felling, processing and extraction . We propose to rename Criteria Set 1.2 – Risks arising from forestry operations.

Proposed amendment to existing text in the guidance is marked in red:

Criteria set 1.2 (Chapter 2.5): **Risks arising from forestry operations**

Scope

This criteria set assesses risks arising during:

- tree felling;
- tree surgery;
- timber/tree extraction;
- secondary timber processing.
- timber loading/haulage (whilst harvesting is in progress).
- **repair and clear up following a storm event.**

Risks from other forestry and woodland operations are assessed separately, alongside the risks from similar activities in other work situations.

ASSESSMENT CRITERIA

Step 5. Is it necessary to do anything?

- In the immediate aftermath of a storm, the land manager may consider using informal access management techniques such as warning signs or temporary barriers to manage the danger to the public from storm-damaged woodland.
- Where work is taking place, access management will usually be necessary if visitors are likely to be present in an area of risk.
- It is necessary to manage the risk from flying pieces of the cutting chain (known as 'chainshot'), should a chainsaw or mechanical harvester break while in use. To prevent danger from chainshot, operators should maintain a safety zone around the area of work to ensure that the public do not come within 200 metres (for mechanical harvesters) or two tree lengths (for motorised manual chainsaws) while the machinery is in use. These safety zones are also sufficient to manage other associated risks, such as danger from falling trees.
- On steep sites, it may be necessary to winch whole felled trees to a trackside using a mechanical winch before they can be processed and stacked for removal. It will be necessary to manage the risk of severe injury from the winch cable as it tenses and moves and from the moving load.
- Safety signs and temporary barriers may be used to warn of the danger and deter visitors from entering the site. The precise location of signage will depend on local circumstances. On smaller sites where access would be significantly limited, signs should be placed at the site's access points. However, on larger sites, where a smaller proportion of the site would be affected, this may not prove effective and signs could be placed at the boundaries of the affected areas.
- Banksmen or lookouts may be used to stop visitors from entering the area of risk. Alternatively, the operator may be able to check for approaching visitors while working, and stop the operation temporarily if they enter the area of risk - although where visitor levels are high, this may disrupt the work significantly.

It will be helpful if a safe alternative route is available onto which people can be directed - for example along the field edge or through adjacent land.

- Other access management techniques could include closing car parks, picnic areas and other amenities not subject to the statutory right of access.

Step 6. Is statutory restriction necessary?

- Restrictions cannot be used to manage risks arising from storm damage, such as danger from falling trees and branches, but may be necessary to manage risks arising from clear up operations.
- Restrictions may be necessary to help manage severe risks from forestry operations, such as those arising from large-scale tree harvesting.

- Restrictions will not usually be necessary to manage lower order risks. For example:
 - Although timber loading and haulage may continue for some time after felling, extraction and processing has ceased, the risks from these operations are usually intermittent and short-term, and informal techniques will usually be the most effective means to manage this risk.
 - For tree surgery, take down of single trees and other small-scale operations, informal techniques will again usually be adequate to manage the risks.
- Restrictions may in some instances be necessary to manage risks from such small-scale operations if visitor levels are likely to be substantial, and practical means are not available to manage the passage of visitors safely through the site while the work is taking place.

Step 7. What is the lowest level of restriction necessary?

- Any restrictions should be limited so far as is reasonably practicable to the actual area of risk, taking account of any risk assessment that has been conducted and of the practicability or otherwise of identifying in advance the precise areas that will be affected by the operations. **For example, where an exclusion is necessary to manage risk from chainshot, the extent of the exclusion should be related to the operational safety zone (see step 5).**
- Large-scale tree harvesting involves a series of related operations taking place at different times and in different areas of a work site during a specified period, so it will not usually be practicable to specify the exact time and place where risks will arise. In circumstances like these, define the boundaries of the work site inside which risks may arise, and exclude the public from the site as necessary.
- Leave residual routes or areas open to the public if it is safe and practicable to do so. Remember that public rights of way will be unaffected.
- **In determining the period and extent of any restriction for this purpose, relevant authorities should take account of the operator's risk assessment¹⁰.**

Step 8

If appropriate, return to Step 8 (“Give a direction?”) of the explanatory notes for Determination Chart 2.5.

¹⁰ Published guidance on risks from timber felling, processing and extraction is available at www.hse.gov.uk/pubns/forindex.htm.

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6. The effect on decisions of other licences, agreements and consents over CROW access land

Issue

In general, licences, agreements and consents that rely on a restriction or exclusion of public access are inconsistent with the CROW access rights. There may be situations where CROW access may compromise these existing licences, agreements or consents.

Proposal

If the relevant authority receives an application for restriction, it should (a) consider whether it believes that the terms in the licences are necessary and, (b) if in their opinion the terms are unnecessary, the authority should attempt to negotiate with the person or organisation who set the licence to make necessary amendments.

If in the opinion of the relevant authority either (a) it is impossible to make amendment to the licence; or (b) informal management will not adequately solve the problem; and following a review of the licence the terms relating to access appear appropriate in all the circumstances it should award a restriction.

Proposed amendment to existing text in the guidance is marked in red:

Text to be inserted into Chapter 2.5: Considering the case for a land management or public safety direction.

Taking into account other licences or agreements

2.5.11 The relevant authority may receive an application to restrict CROW access rights because they are inconsistent with the terms of a licence, agreement, contract, covenant or consent relating to other (normally commercial) activities, if the terms require the public to be excluded from an area of access land or restricted in particular ways. In such situations, the relevant authority should pay particular attention to any loss of income that might potentially result, were the applicant unable to comply with the terms.

2.5.12 CROW section 12(1) makes clear that such licences, etc. do not take legal prevalence over CROW access rights. The relevant authority must therefore decide whether it is necessary to restrict or exclude CROW access rights to enable the applicant to carry out his activities in compliance with its terms. It should request a copy of the relevant documentation from the applicant to inform its decision, if it has not already been supplied in support their application.

2.5.12 The relevant authority should first investigate the scope for informal management to enable the applicant to comply with the terms, having regard to the detailed guidance given in the criteria sets.

2.5.13 If informal management would not enable compliance, the relevant authority should discuss the terms of the licence etc. with both parties. If it concludes from these discussions that the terms would restrict public access to the land unnecessarily, it may attempt to negotiate an amendment to them. Where negotiations are unsuccessful, the authority should consider whether statutory restriction is necessary to enable the applicant to comply.

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7. Interpretation of the least restrictive principle

Issue

This amendment is designed to avoid an unduly complex regime of overlapping restrictions which could be unclear to the public and impractical to manage.

It explores how the relevant authority might use its discretion to interpret the least restrictive principle to avoid these outcomes, when there is sufficient benefit to the public and/or the land manager to do so.

The Government's policy is that where some form of intervention is required to prevent conflict, the approach selected by the relevant authority should be the least restrictive option that will address the need and can be implemented without significant cost falling on the land manager.

Proposal

When deciding the period and nature of a restriction, the relevant authority should adopt the least restrictive option that is consistent with the following three principles:

1. **The solution should provide clarity for the public in knowing their right of access to the land.** The solution should minimise any unnecessary confusion through the implementation of sensible patterns of access.
2. **The solution should be practical, for the land manager to manage.** The solution should seek to minimise any unnecessary complication of patterns of access.

For instance, where a parcel of access land is subjected to a variety of different types or levels of public access restriction for a specific period, the relevant authority may consider a single direction imposing one 'blanket' restriction- so long as it is no more restrictive than the most restrictive of the options that it is seeking to replace.

3. The relevant authority should consider whether there is sufficient **benefit to the public and/or the land manager** to warrant such a departure from the least restrictive principle.

The relevant authority may reject any option where in its view:

- the nature or timing of access rights would be difficult for the public to understand; or
- the pattern of restrictions and exclusions would be difficult for the land manager to implement;

provided that it is satisfied that there is no significant public benefit from that option relative to other, simpler solutions under consideration.

Theoretical examples:

1. A relevant authority considers that a dog exclusion is necessary from 01 August to 01 February. The national dog restriction prescribed in Schedule 2 of CROW limits dogs to short leads at all times between 01 March and 31 July. The relevant authority may consider that it would cause unnecessary confusion to have one month in a year where dogs are not confined to their leads. In this instance it may consider increasing the length of the restriction to provide consistency of access rights throughout the year. Annexed to this proposal is an example of where this situation has occurred.

2. There is a complete exclusion of access between dawn and midday because the land is excepted land used for training racehorses. Also, for the duration of the period, a public safety restriction keeping people to a defined route has been awarded in the late afternoon for 4 hours every day for clay pigeon shooting. Applying to the land, there is also a national restriction keeping dogs to leads (as the period is within 01 March and 31 July). The relevant authority may decide that it is simply not realistic to expect the public to understand the different levels of restriction applying at any given time, nor is practical for the applicant to easily manage the situation. Therefore, the authority may consider that the most sensible option would be to allow public access at all time in the afternoons, so long as they kept their dog on a lead and kept to the designated paths. This is not the least restrictive option, however, it is the most practical option which enables the land owner to manage the restriction and it provides clarity for the public about what their rights are.

Proposed amendment to existing text in the guidance is marked in red:

Chapter 1.1 Options for managing CROW access

'Least restrictive option' (RAG page 12)

1.1.6 The Government's policy is that where some form of intervention is required to prevent any such conflict, the approach selected should be the **least restrictive option** that will address the need and can be implemented without significant cost falling on the land manager.

1.1.7 However, the relevant authority should have regard to the following, complementary principles in deciding what level of restriction is most appropriate in each circumstance:

- The solution should, as far as possible, provide **clarity** for the public in knowing their right of access to the land.
- The solution should be **practical**, for the land manager to manage.

1.1.8 The relevant authority should weigh the above principles against the public benefit that would be achieved by a more rigid interpretation of the least restrictive principle.

1.1.9. The relevant authority may reject any option where in its view:

- the nature or timing of access rights would be difficult for the public to understand; or
- the pattern of restrictions and exclusions would be difficult for the land manager to implement;

provided that it is satisfied that there is no significant public benefit from that option relative to other, simpler solutions under consideration.

Forms of statutory restriction (RAG page 13)

1.1.12 In a case where access management solutions are not implemented, or cannot alone resolve concerns about potential impacts from access, consideration may need to be given to some form of statutory restriction of the CROW access rights. In such a case, the relevant authority should consider the need for a restriction on its merits, in all the circumstances of the case.

1.1.13 CROW s21(3) lists the different forms a restriction may take. This may be by suspending CROW rights completely, or by confining them to:

- people using specified routes or ways;
- people entering the land at specified places;
- people who do not take dogs onto the land¹¹; or
- people who satisfy any other specific conditions.

1.1.14 In this guidance, the term ‘restriction’ is used to describe any form of exclusion or restriction of CROW access rights. CROW restrictions do not affect other access rights, permissions or traditions.

1.1.15 Wherever a restriction is appropriate, relevant authorities should promote use of the least form of restriction that meets the need (see also paragraphs 1.1.6-1.1.9).

Part 2: Considering the case for a direction (Page 24 RAG)

Giving parallel directions

2.1.19 In some circumstances, there may be proposals for two or more different CROW restrictions at the same time, over the same land, for different purposes. There is nothing to stop a relevant authority giving a direction that affects land already subject to another direction, so long as the new restriction is necessary to the extent specified, and the relevant authority has power to give a direction on these

¹¹ Exemptions may be made for people with guide dogs or other assistance dogs under some circumstances, provided that they have training appropriate to the circumstances they are likely to encounter on the land.(12)

grounds (see also paragraph 1.1.7). This might be proposed, for example, where two of the legal interests in the same piece of land both seek directions for their own purposes, or where a direction for safety purposes is sought over land already subject to a nature conservation direction. In such cases a second restriction will only be necessary if the effect is greater than the existing one, taking into account the extent, nature and period of both. For example, a second restriction would not be necessary on land already subject to an indefinite exclusion, since it would not affect existing access rights.

2.1.20 Where on receipt of an application the relevant authority concludes that a direction is not necessary because of the effect of an existing direction, it should refuse the application. It should make the applicant aware if the existing direction will be reviewed, either in its decision letter or at least six months prior to the review¹². In this way the applicant will have sufficient time to resubmit the application and receive a decision if the circumstances still apply at the time of the review.

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¹² The Secretary of State for Defence may review directions for defence or national security without regard to this guidance. However, the Defence Estates have separately undertaken to provide the relevant authority and the land owner (where known) with six months notice of its intention to review any such direction.

8. Use of informal management

Proposal

This proposal relates to the following scenarios:

- Where the relevant authority believes that the use of an informal management solution would avoid the need for a restriction, it can suggest this.
- The land manager is unable/unwilling to implement an informal management solution. However, the access authority is willing to carry out informal management on the applicant's behalf that would address the need for a restriction.

We would like to add to the guidance two new principles for relevant authorities to consider in these circumstances:

(1) Safety precautions are inextricable from certain activities. Where a land manager proposes to restrict CROW access for such an activity, the relevant authority may decline the application on the basis that both (1) the access management is sufficient to solve the problem and (2) the access management would occur regardless of whether a restriction was in place.

(2) Other forms of access management can be so basic or easy to implement that it is unreasonable for a land manager to refuse to undertake them, because they do not place an unreasonable burden on his time or resources. Where the relevant authority is satisfied that the land manager could reasonably be expected to undertake a particular access management measure but he refuses to do so, it may refuse the application on those grounds.

In reality, there will be little change to current practice as a result of these proposals. The proposals do not suggest that the landowner should be significantly penalised financially or otherwise by open access rights over his land. They address circumstances where minimal or no extra effort could solve the problem, i.e. the production of temporary signs (which can easily be handwritten or produced on a personal computer). The proposal simply formalises current practice.

Theoretical Examples

1. When undertaking controlled heather burning, for safety reasons the land manager must always ensure that someone is on site to monitor the burning. As the presence of a person on-site during the burning is an absolute necessity, it is also reasonable to expect that person to be able to warn any approaching visitors of the danger

2. A disused chalk pit has a steep, almost vertical, face about 15 metres high, with areas of overhang and possible subsidence. The relevant authority concludes that the steep crumbling slopes present a hazard to the public but reasons that the problem could be solved by the erection of clear signs. The relevant authority has made the access authority aware of the problem, who have offered to pay for and implement the management solutions that negate the need for a restriction. The landowner has accepted this offer. In this circumstance the relevant authority should

reject the application as unnecessary, though it may need to review its decision if for any reason the access authority is unable to honour the agreement.

3. A land manager is operating a large vehicle on CROW access land for 2 days in the year. The vehicle poses a public safety issue, however, the relevant authority feels that that danger can be avoided by the landowner placing temporary signs at the entrance to the field. It would be reasonable for the landowner to produce these signs as there would be minimal burden (financial or otherwise). The signs could be produced on a PC, handwritten, or even painted on a board.

When operating the machinery, it is essential that the operator takes account of the possibility that people might be present, whether or not there is a statutory right of access at the time (this is necessary to comply with the requirements of Health and Safety at Work legislation). In this case, the relevant authority may consider it to be reasonable for the land manager to keep a look out for approaching members of the public and to temporarily halt the operation if necessary. When making this assessment, the relevant authority should have regard to the levels and patterns of use on the land and should consider the frequency to which the work operation may be interrupted.

Proposed amendment to existing text in the guidance is marked in red:

Taking account of scope for informal management solutions

2.1.21 The relevant authority should normally conclude that a statutory restriction is unnecessary if informal management solutions are available which would meet the need. However, where appropriate informal management solutions cannot reasonably be implemented in practice, or where a solution such as fencing would have a significant detrimental effect on landscape character or on the operation or effectiveness of a land management activity, a statutory restriction may be the preferred option. In making this assessment, the relevant authority should take into account the views of the land manager.

Page 30-31 RAG- Wildlife Directions

Step 6: Will it be possible to implement informal management solutions that satisfy these concerns?

2.2.21 There may well be scope for positive access management to avoid any need for statutory restrictions. Examples of this approach include:

- using codes, leaflets, notices, etc to urge people to use access land in particular ways;
- managing paths or vegetation to encourage people to keep to particular routes or areas; or

- siting car parks, entry points etc to minimise pressure on sensitive areas.

2.2.22 Whether such approaches will be sufficient to resolve the concerns about nature conservation will depend on:

- the sensitivity of the feature to anticipated changes; and
- whether such measures can in practice be implemented.

2.2.23 **The relevant authority may conclude that a statutory restriction is unnecessary where it considers that putting in place simple management solutions would eliminate the need for a restriction. However, it must first have regard to paragraph 2.1.21.**

2.2.24 The answer to this question may need to be reviewed at a later date if circumstances and/or the information available change. This may in some cases lead to a different conclusion as to whether legal restrictions are necessary

Page 37 RAG- Heritage Directions

2.3.14 Where there may be potential cause for concern, the relevant authority should consider any potential impact from the CROW access rights on the heritage interest of the site. Any existing public use of the site should be taken into account. For example, if there is a dense network of rights of way and/or a pattern of other open access (whether by right or by tradition), this should be taken into account in deciding whether the CROW access rights are likely to lead to any significant change on the ground.

2.3.15 There may well be scope for access management techniques to avoid any need for statutory restrictions. Examples of this approach include:

- using codes, leaflets, notices etc to urge people to use access land in particular ways;
- managing paths or vegetation to encourage people to keep to particular routes or areas; or
- siting car parks, entry points etc to minimise pressure on sensitive areas.

2.3.16 Whether such approaches will be sufficient to resolve the concerns about heritage features will depend on:

- the sensitivity of the feature to anticipated changes; and
- whether such measures can in practice be implemented.

2.3.17 **The relevant authority may conclude that a statutory restriction is unnecessary where it considers that putting in place simple management solutions would eliminate the need for a restriction. However, it must first have regard to paragraph 2.1.21.**

Page 45 RAG- Fire Directions

2.4.24 Informal techniques may be used to help manage the risk of fire starting or spreading. Access authorities have specific powers on access land, and the relevant authority may wish to discuss access management solutions with them. Signs at main entry points may be used to warn of fire danger and encourage visitors to take special care, unless local advice suggests that this would be counter-productive by encouraging arson. Increasing the presence of wardens or rangers can help to identify fire outbreaks quickly and raise awareness of fire danger. Wardens and rangers may also help to deter deliberate fire setting, or reckless or careless acts.

2.4.25 **The relevant authority may reject an application for a statutory restriction as unnecessary where it considers that putting in place simple management solutions would eliminate the need for a restriction. However, it must first have regard to paragraph 2.1.21**

Page 51 RAG- Land Management/ Public Safety Directions

Taking account of scope for informal management solutions

2.5.8 There may often be scope for using positive access management techniques to resolve the concerns to which an application relates, and thereby avoid any need for statutory restrictions. Examples of this approach include:

- planning the timing and location of operations that do not coexist well with access in a way that minimises any potential conflict;
- providing visitor information at main entry points;
- managing paths and vegetation to avoid pressure on sensitive areas;
- seeking visitors' co-operation while works etc are underway; and
- siting any facilities (such as gates, stiles, parking areas) with care.

2.5.9 The relevant authority should suggest where appropriate that applicants could consider using such alternative approaches, which are usually simpler and more convenient to implement than restrictions. Whether such approaches will be sufficient to resolve the concerns that underlie an application will depend on:

- the seriousness of the potential conflict that the application seeks to avoid;
- whether such measures can in practice be implemented on the ground; and
- whether undertaking them would impose any significant burden or cost on the land manager.

2.5.10 **The relevant authority should consider the following principles in deciding whether an informal approach would impose a significant cost or burden on the land manager:**

- Some activities cannot take place without carrying out simple informal measures that may negate the need for a restriction. For example, machine operators normally check if other people are present when they are working and may be able to stop work temporarily to avert danger (see criteria set 1.1). Where the activity and the access management measures are inextricably linked in this way, the relevant authority may consider a restriction to be unnecessary, having regard first to the more detailed guidance in the criteria sets on the use of access management techniques in the circumstance.
- If there are costs in terms either of time or resources from an informal management solution, the relevant authority should consider whether it is reasonable to expect the applicant to bear them: for instance, it may be reasonable to expect the applicant to meet small costs to create and erect temporary signs that are designed to last for a short period of time, whereas it may be unreasonable for the land manager to pay for permanent signs because that would involve a greater financial outlay.
- The access authority or another third party may agree to finance, install or undertake access management works that would eliminate the need for a formal restriction. The relevant authority should normally conclude from this offer that restriction is unnecessary, provided it is satisfied that the solution would have no significant detrimental effect on landscape character, or on other land management objectives.
- The applicant may refuse such an offer of help. The relevant authority should then consider whether such a refusal is reasonable, taking into account the considerations in the paragraph above. Access authorities have powers to manage CROW access rights in certain respects without the agreement of the occupier (see Annex C).

2.5.11 The relevant authority may reject an application for a statutory restriction as unnecessary where it considers that putting in place simple management solutions would eliminate the need for a restriction. However, where suitable management solutions cannot reasonably be implemented in practice and an application is made for a restriction, the sole issue for the relevant authority is whether a restriction is actually necessary.

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9. Managing risks from mines

Issue

It has been suggested that up to twenty percent of the land area of England and Wales may have been subject to some mining, with the number of abandoned mine entrance possibly totalling somewhere in the order of 300,000. Areas of the country particularly affected by metal mining include Cornwall, Devon, the Peak District, Shropshire, Cumbria, the Mendips, North and Mid Wales. All of these areas have a large amount of access land.

Mine openings, both vertical shafts and shallow horizontal or inclined adits, are the most significant cause of ground collapse. Since many are concealed, with no sign at the surface of anything untoward, a significant number of early shafts are unrecorded and unsuspected.

Mine openings pose risks, ranging from collapse and subsidence, to accidental entry. The most common cause of death or injury in abandoned mines are related to vertical openings or deteriorating structures. People who enter mineshafts are at risk from hazards such as sudden collapses, becoming lost, sudden drops, flooded shafts and 'bad air'¹³.

Local authorities have had duties in respect of abandoned mine workings for some 50 years under the Mines and Quarries Act 1954. However, as the CROW Act allows much greater public access to areas where mining may have previously occurred, many untreated abandoned mine workings can be found on access land, and often there is little prospect of these workings being dealt with as a statutory nuisance.

We believe that the Criteria Set 2 – Risks arising from mineral workings – needs amending for the following reasons. Firstly, experience (mainly in the Yorkshire Dales National Park but also in Cornwall and elsewhere) has enabled us to develop a more rigorous approach to assessing risks to the public from abandoned shafts. Secondly, crown holes and fissures associated with abandoned workings are a very real issue and were not anticipated in the existing guidance.

Proposal

We propose to insert text into Criteria Set 2 (chapter 2.5) - Risks arising from mineral workings – which gives general principles to help the relevant authority decide (a) the level of risk posed by an abandoned mineral working and (b) suitable access management to mitigate the risk.

Proposed amendment to existing text in the guidance is marked in red:

Criteria set 2 (Chapter 2.5): **Risks arising from mineral workings**

¹³ Minerals and decaying timber sometimes cause a build up of gases or a lack of oxygen. A lit match may cause a flammable gas like methane to explode. 'Bad air may also cause people to become tired and dizzy.

Scope

This criteria set assesses the case for restrictions in order to manage risks to the public from the presence on access land of mineral workings including mines, quarries, tips and land used for commercial peat extraction. Annex O outlines the current law on mineral workings.

Overview

Active workings

Owners/operators of active workings have statutory obligations to assess risks to the public arising from them, and to take any necessary steps to prevent or adequately control these risks. The mine owner or quarry operator is also required under Mines and Quarries legislation to ensure that any tip associated with the workings does not constitute a danger to the public.

All active workings (including commercial peat workings¹⁴), and all associated buildings and infrastructure (including active tips), are likely to be excepted land under CROW Schedule 1 paragraphs 2, 5 and 6, and therefore not subject to CROW access rights or restrictions.

Abandoned workings

Coal mines of any age, and non-coal mines last worked since 1872: the landowner or person entitled to work the mine (in the case of coal mines, the Coal Authority) has a statutory duty to physically secure entrances to the mine.

Abandoned quarries of any age, and non-coal mines last worked before 1872: there is no comparable statutory responsibility for public safety in respect of these workings. If the local enforcing authority (usually the district council) considers the workings a statutory nuisance, it has powers to serve, on the person entitled to work the mine or quarry, notice to undertake remedial works. It also has power to undertake remedial works itself and recover the costs¹⁵.

Annex O has more background detail on these legal issues. This criteria set offers advice on use of the CROW restrictions system in this context, not on compliance with the wider statutory duties of the owner or operator.

ASSESSMENT CRITERIA

Step 5. Is it necessary to do anything?

- If open access is new to the land or to land nearby, it may trigger a review by the owner or operator (or person entitled to work the mine or quarry) of any risks to the public from active or abandoned workings.

¹⁴ Land merely subject to rights of common to take peat is not excepted land for this reason.

¹⁵ The Secretary of State has power under CROW section 42 to disapply this provision where it is applied for the first time by the land becoming CROW access land.

- It may be necessary to erect signs and/or barriers at the boundary of active workings to deter people from straying into a work area.
- The relevant authority should discuss with the landowner the possibility of undertaking informal access management to mitigate the risk. The relevant authority could also draw the landowner's attention to his/her statutory responsibilities (see annex O).

Abandoned workings

- Abandoned mineral workings can provide valuable recreational opportunities - in particular to climbers for whom an element of risk may be part of the enjoyment of their sport – and may have significant heritage or nature conservation value. The relevant authority should take careful account of any recreational, heritage or nature conservation interests as part of its consideration of restrictions at abandoned workings. It should investigate the scope for managed access before considering restrictions, working closely with the land manager, access authority (if different), relevant advisory bodies and recreational interest groups.
- Where a hazard is visible and its nature obvious to anyone approaching it, **action is unlikely to be necessary**. However, action may be necessary where hazards are known to exist that may not be readily apparent to visitors. Such situations could include overgrown and unsecured mine entrances, unstable tips, or disused quarries with steep, crumbling slopes above vertical drops. **Precautions may also need to be taken where the deterioration of the roof of a mine has left the land susceptible to the appearance of crownholes.**
- Where the hazard is not visible to a person approaching it, but its nature is nonetheless in keeping with other, natural landscape features nearby – as, for example, an abandoned quarry in a landscape of rugged hills or cliffs – it is reasonable to expect visitors to be prepared for it and no action should be necessary to manage the risk.
- Where the hazard is out of character with the surroundings – as, for example, a steep quarry set in rolling downs – **the relevant authority should consider:**
 - The extent and effectiveness of existing access management measures;
 - The ease to which the public, and in particular unaccompanied children, can access the site. Remote sites are likely to attract people who are willing to accept a greater degree of risk than those people who use sites which are close to car parks, settlements, public transport routes and access infrastructure;
 - The location of openings. Even where the locations of entrances and openings are obvious, they may occasionally pose a significant risk to the public if they are located on a popular route. Conversely, an opening situated in a place where people are very unlikely to go (such as in dense vegetation) may not pose a significant risk even if it is concealed, provided that people have been warned about the danger of leaving the path.
- Where the relevant authority considers the risk to be:

- Minimal, low key measures such as signage may be sufficient. For instance, where the opening or entrance is located in areas that are not regularly accessed by the public either because of the low popularity of the site as a recreational resource or because the site is difficult to reach.
- Moderate, low key measures may be supplemented with strategic placement of access entry points or points of interest such as benches to steer the public away from the risk. Informal promotion of linear routes away from the danger may also be considered. For instance, these measures may be appropriate in circumstances where an opening is readily apparent to the visitor but is located close to a popular entrance point to the site;
- High, it may consider that remediation works such as fencing or - in the case of abandoned mine shafts – treatment of the entrance through the installation of caps, plugs or grills is necessary to prevent danger to the public. Biodiversity and landscape concerns will have to be considered in the design of any remedial works. For instance, where unaccompanied children are known to visit the land, impenetrable physical barriers may be needed, even if the hazard is an obvious one.

Step 6. Is statutory restriction necessary?

- Restrictions are not available on excepted land, such as all active mineral workings and all buildings and structures, whether in use or abandoned.
- For abandoned workings, restrictions will not normally be necessary unless:
 - the danger is significant and not readily apparent to the visitor; **and**
 - access management measures are not being taken to reduce the risk, or prove insufficient to reduce it to an acceptable level; **and**
 - physically securing the hazard would place a significant cost on the occupier, or have an unacceptable effect on the landscape or on features of heritage or nature conservation value.
- Where the relevant authority is assessing the risk from mine subsidence, including fissures or crown holes¹⁶, a restriction may be necessary if:
 - There is visible evidence on the land surface; or
 - On conducting an inspection of the mine, a qualified inspector reports that the condition of the roof has deteriorated to the extent that they believe it is likely to develop on the land surface; or
 - A qualified inspector reports that they are unable to make an underground inspection of the mine and that, taking into consideration what is known about the character and condition of the mine, they believe that it is likely that it will develop in the future; or
 - The owner or applicant is unwilling to incur the costs of inspections and, taking into consideration what is known about the character and condition

¹⁶ An opening into a mine working, not being a shaft or adit, formed when workings or stopes have been close to the surface and have collapsed from below.

of the mine, a qualified inspector believes it is likely that it will develop in the future.

- Temporary restrictions may be necessary as a short term measure where an incident such as fresh subsidence exposes the public suddenly to substantial risk. In this situation, the relevant authority should liaise with the enforcing authority (usually the district council) about the longer term solution.

Step 7. What is the lowest level of restriction necessary?

- Any restrictions that prove necessary will normally take the form of complete exclusions, and may need to be long term (though subject to reassessment if circumstances change).
- They should be limited so far as is reasonably practicable to the immediate area(s) of risk. What is reasonably practicable in this respect will to some extent turn on the number of dangerous abandoned workings within an area of access land, and its overall size.
- The presence of public rights of way (since they are not subject to CROW restrictions) may also have an influence on the relevant authority's determination.
- Where an exclusion is extensive, leave residual routes or areas open to the public if it is safe and practicable to do so.

Step 8

If appropriate, return to Step 8 ("Give a direction?") of the explanatory notes for Determination Chart 2.5.

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10. Dormant Quarries

Issue

Quarried land may be left dormant for a significant time between periods when it is worked. Schedule 1(5) to the Countryside and Rights of Way (CROW) Act 2000 states that “Land used for the getting of minerals by surface working (including quarrying)” is excepted land. Excepted land cannot be restricted under CROW chapter II, therefore it is important to determine whether a dormant quarry is ‘excepted’.

Government has no official role in defining (or deciding) what qualifies as excepted land. The CROW Act sets out the categories of excepted land but ultimately only the courts can decide, if called upon, whether land is excepted or not. The categories of excepted land are intended to be easily understood and readily identifiable on the ground by both walkers and land managers.

We have considered whether additional guidance in the relevant authority guidance is necessary to help establish whether dormant quarries should be considered excepted for the purposes of Schedule 1(5).

Proposal

We do not believe that it is necessary for the relevant authority guidance to explore the issue of whether a quarry is dormant because:

- The Environment Act defines a “dormant” quarry in Schedule 13 for the purposes of the periodic review of mineral planning permissions. No planning permission relating to a dormant site can have effect to authorise the carrying out of minerals development unless an application has been made to the minerals planning authority to determine the conditions that the relevant planning permissions relating to that site are to be subject. In the absence of such a determination the site will not be active and it would not be appropriate to consider a dormant site as defined under the Environment Act to be “excepted” for the purposes of Schedule 1, paragraph 5 of the CROW Act, in these circumstances the relevant authority can give consideration to whether it is necessary to formally restrict access.
- There is no definition of a dormant quarry in the Quarry Regulations. The Regulations require notification to be made by the quarry operator to the HSE of (a) the beginning of operations for the purpose of opening a quarry and (b) the abandonment of or ceasing of operations at a quarry. It is therefore clear that under the Regulations a site is either active or abandoned. There is no grey area in between.
- It follows that where notification of abandonment or ceasing of operations has been made to the HSE, the operator is within his rights to apply to the relevant authority to exclude or restrict access.

Proposed amendment to existing text in the guidance is marked in red:

Annex O of the RAG sets out the legislation affecting public safety at mineral workings. We propose inserting the following bullet point into the 'Quarry Active-requirements under legislation' section of table O.1 :

- The operator must notify the Health and Safety Executive when operations, begin, cease, or are abandoned at the quarry¹⁷.

We propose inserting the following bullet point into the 'Quarry Any Age (Abandoned)- status under CROW' section of table O.1 :

- A dormant quarry as defined under Schedule 13 to the Environment Act 1995 is unlikely to be considered excepted land as without current planning permissions it cannot be considered to be active.

We propose inserting the following sentence into Criteria Set 2- Risks arising from mineral workings – Active workings section as follows (proposed new text in red):

Overview

Active workings

Owners/operators of active workings have statutory obligations to assess risks to the public arising from them, and to take any necessary steps to prevent or adequately control these risks. The mine owner or quarry operator is also required under Mines and Quarries legislation to ensure that any tip associated with the workings does not constitute a danger to the public.

All active workings (including commercial peat workings¹⁸), and all associated buildings and infrastructure (including active tips), are likely to be excepted land under CROW Schedule 1 paragraphs 2, 5 and 6, and therefore not subject to CROW access rights or restrictions. Dormant quarries (see annex O) are unlikely to be considered excepted land as they are not in active use.

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¹⁷ Quarry Regulations 1999, regulations 4(2) and 45.

¹⁸ Land merely subject to rights of common to take peat is not excepted land for this reason.

11. Criteria for assessing the levels and patterns of public use on CROW access land

Issue

The relevant authority's decision about whether to give a direction and the period, nature or extent of any restrictions under a direction should be informed by an understanding of existing and predicted patterns and levels of use. Experience shows that if the relevant authority is well informed in this regard the issue can often be resolved at the outset without need for a restriction. This access assessment is often the most important factor in its decision, yet in our view the statutory guidance offers very limited assistance in making an assessment.

Access assessment procedures often include predictive use tools which take into account features of the land to predict future levels and patterns of use. There are a variety of access assessment procedures available to aid the relevant authority's decision. However, predictive use tools should not be used in isolation when building a picture of the likely future levels and patterns of use. Information about existing levels and patterns of use such as observation, anecdotal evidence and monitoring can be just as important.

Proposal

In considering the case for a direction to restrict access on CROW access land, the relevant authority will often need to assess the current access use and behaviour of visitors on the site and how use is predicted to change in response to the creation of new access rights.

Making an assessment of likely future levels and patterns of use is an important part of the relevant authority's determination. Not least, because when developing proposals to manage sites or land with public access it is crucial to understand the spatial and temporal relationship between access, recreation and areas of potential concern e.g. nature conservation features, land management practices and public safety issues.

We propose to insert the text below into 'Chapter 2.1- Context for the Relevant Authority's Consideration of the Case'. The proposal avoids naming the assessment tools that should be used, because best practice changes over time. Instead it includes a series of factors to consider in the decision making process and supports this with suggested methods to assist the relevant authority in reaching a decision.

Proposed amendment to existing text in the guidance is marked in red:

Chapter 2.1 Context for the relevant authority's consideration of a case

Taking into account levels and patterns of use

2.1.14 The relevant authority usually needs to assess both the current and the predicted, levels and patterns of use on the land when considering the case for a

direction. The following factors may have a marked impact on the current and future levels and patterns of use of CROW access land:

- Existing or potential access routes on the land such as rights of way, desire lines and informal routes.
- The location of entry points and their proximity to car parks, lay-bys or bus stops.
- The proximity of the land to a local population.
- Landscape features.
 - Attractions such as waterfalls, summits, viewpoints
 - Deterrents such as blanket bogs, steep slopes, uneven or difficult terrain.
- Whether the land, or a particular route or routes on it, is actively promoted.
- Whether there are public access arrangements on neighbouring areas of land.
- The existence of public amenities on or near the site such as information centres, cafes, toilets, information boards.
- Existing and future site management, such as the state of repair of gates and stiles.
- What people do whilst they are on the land e.g. walk the dog.
- When they do it (times of day, days of the week, seasons).

In determining the current levels and patterns of use and in predicting the likely future levels and patterns of use, the relevant authority could also have regard to the following:

- Any results of visitor monitoring on the land, or on neighbouring or similar land.
- Access assessment techniques and associated guidance.
- Advice from local experts (such as local stakeholder groups, LAFs, access authority, wildlife trust etc.) who have a good knowledge of the site.
- The knowledge of the occupier and/or the land manager.

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12. Unexploded ordnance

Issue

There is currently no criteria set for assessing the risk of unexploded ordnance in the relevant authority guidance. Although there have only previously been four CROW restriction applications involving unexploded ordnance in England and Wales, the issue could potentially effect a significant proportion of access land.

The relevant authority has a statutory duty to determine a case within six weeks. MOD records of ordnance clearance are often incomplete, widely dispersed and difficult to retrieve quickly. However, these records are sometimes vital in the decision making process.

Proposal

The relevant authority should consider formally restricting access if the presence of unexploded ordnance is alleged or a suspicious object is found.

Where the relevant authority receives an application for restriction on the grounds of danger to the public because of the alleged existence of unexploded ordnance, and where it considers that the immediate risk to public safety is so great that informal management will not on its own suffice, the relevant authority may put in place a direction that excludes the public from the affected CROW land on public safety grounds, if in all the circumstances it believes that it is necessary as a precautionary measure whilst determining the application. The experience of access authorities shows that this provision will only be required in exceptional circumstances.

To make its decision, the relevant authority will normally require advice from specialist departments (i.e. Police, MOD) or from commercial ordnance companies. These organisations can give advice but ultimately it must be the relevant authority's decision.

The relevant authority has statutory deadlines against which it must decide a case. This is six weeks for all applications, except where the relevant authority proposes to give a long term restriction, where the case must be determined within four months of receipt. Experience has shown that it is not always possible to complete the required archive search within the statutory six-week deadline. However, Defence Estates are aware of the statutory deadlines and that has confirmed that it would strive to meet these deadlines wherever possible.

There are three circumstances under which the relevant authority should consider a formal restriction of CROW access:

1. As a temporary measure whilst the relevant authority investigates an application it has received which alleges the existence of unexploded ordnance on the land.
 - Where the relevant authority receives an application for restriction on the grounds of danger to the public because of the alleged existence of

unexploded ordnance, and where it considers that the immediate risk to public safety is so great that informal management will not on its own suffice, the relevant authority may put in place a direction that excludes the public from the affected CROW land on public safety grounds, if in all the circumstances it believes that it is necessary as a precautionary measure whilst determining the application.

- The relevant authority may require the applicant to provide evidence upon which their application is based. If the applicant cannot prove the existence of unexploded ordnance, he/she should be required to provide evidence that details the cause for his/her genuine concern. This could include archive records, newspaper clippings, details of previous findings, testimony from a trusted source such as previous occupier/parish council etc. If the applicant cannot provide any substantive evidence to support the application within two weeks of receipt, the relevant authority should consider:
 - whether it needs any more information before reaching a decision; and
 - if it does, whether the temporary exclusion is necessary in the interim, given the known circumstances of the case.

This provision should guard against landowners exploiting the restrictions process by using unsubstantiated assertions about the existence of unexploded ordnance.

- Similarly, there may be a period between verbal notification to the relevant authority of alleged unexploded ordnance and the receipt of an application. A temporary exclusion may be put in place by the relevant authority during this period without an application being received. The direction may be revoked if after a reasonable period the relevant authority has not received an application supported by substantive evidence. Again, it would need to consider:
 - whether it needs any more information before reaching a decision; and
 - if it does, whether the temporary exclusion is necessary in the interim, given the known circumstances of the case.

2. When a suspicious object is found on CROW access land sparking fears that the public's safety will be put at risk if access is to continue. Current policy is that the local police should be informed. If the discovery is brought to the attention of the relevant authority (through representation by a third party rather than by application by a person with a legal interest in the land), it may consider preparing a direction for public safety reasons, without having received an application. The police will normally cordon off the affected area and contact MOD's EOD (Explosive Ordnance Disposal) team who will deal with the unexploded ordnance as they see fit. If the relevant authority becomes aware of the discovery it should discuss the need for a short term restriction to CROW access with the police.

3. A specialist organisation (i.e. MOD, EOD, commercial ordnance company) gives evidence which, in the opinion of the relevant authority, verifies the report that the public's safety is at risk from unexploded ordnance.

In making its decision, the relevant authority should also consider other factors such as:

- Advice from the Police
- An archive research report provided by Defence Estates or commercial testing companies
- Advice offered by Defence Estates or the Explosive Ordnance Division about the nature of the risk posed by the unexploded ordnance
- Land management, for example grazing of livestock or ploughing
- History of levels and patterns of public use
- The outcome of any similar previous incidents on the land

We propose to create a new criteria set called “Risks arising from unexploded ordnance”. The proposal is explained in more detail below:

Risks arising from unexploded ordnance

Scope

This criteria set assesses the case for restrictions in order to manage risk from the alleged presence of unexploded ordnance on access land.

Overview

It is thought that military training has taken place over a third of the UK's rural land mass. The majority of this training took place during WW2 when the allies needed space to prepare for the invasion of France in June 1944. A proportion of the land would have been used for live firing but this was not always properly documented. Commercial ordnance companies also used areas of land for test firing ammunition.

The majority of the requisitioned land used in WW2 was returned to the original landowners after the war. Some land was purchased by MOD and has since been sold back into private ownership. The MOD disposes of land as either 'cleared', or 'bought with risk'.

Whilst some types of small arms ammunition, such as shotgun cartridges pose little threat to public safety, ordnance such as mortar bombs that did not explode when fired or were dumped by troops after exercises can still pose a risk of detonation many decades after it was used or discarded.

Existing duties and liabilities apply. See section 2.5.22- 2.5.25.

ASSESSMENT CRITERIA

Step 5. Is it necessary to do anything?

- Because of the danger of serious injury or death, intervention is likely to be necessary where there is a verified risk from unexploded ordnance.
- If a member of the public reports a suspicious object to the relevant authority, it should advise that person to contact the police if they have not already done so. The police, if they consider the discovery to be significant, will normally contact Explosive Ordnance Disposal (EOD) who will deal with the item on site or remove it for disposal. At the same time the relevant authority should discuss the need for the management of CROW access with the police.
- Where the presence of unexploded ordnance is alleged, the relevant authority should consider whether a temporary arrangement is necessary to prevent danger to the public whilst the risk is assessed. It should also refer the issue immediately to Head of Access and Recreation at Defence Estates¹⁹ and/or to the company responsible for undertaking the live firing, who should arrange an archive search (the results of which should be summarised in a report) to:
 - Determine whether it has records of any live firing in the past on the land in question;
 - establish the type of firing that has occurred; and
 - determine whether any action has been taken in the meantime to mitigate the risks from the unexploded ordnance
- The relevant authority may require an applicant to provide further evidence upon which their application is based. If the applicant cannot prove the existence of unexploded ordnance, he/she should be required to provide evidence that details the cause for his/her genuine concern. This could include archive records, newspaper clippings, details of previous findings, testimony from a trusted source etc.

Step 6. Is a statutory restriction necessary?

- Restrictions will only be necessary in exceptional circumstances.
- Where the relevant authority receives a report alleging the existence of unexploded ordnance (whether by way of a formal application or otherwise) and where it considers that the immediate risk to public safety is so great that informal management will not on its own suffice, the relevant authority may put in place a direction that excludes the public from the affected CROW land on public safety grounds if in all the circumstances it believes that it is necessary as a precautionary measure whilst following up the report.
- If after a reasonable period, no substantive evidence is received to support a report of unexploded ordnance, the relevant authority should consider:
 - whether it needs any more information before reaching a decision; and
 - if it does, whether the temporary exclusion (if any) is necessary in the interim, given the known circumstances of the case.

¹⁹ Defence Estates is aware of the statutory deadlines and has confirmed that MOD will strive to meet the deadlines wherever possible. If the archive search will take longer than the statutory period allowed, the relevant authority should seek agreement with the applicant to extend the decision deadline.

- In determining the case, the relevant authority should also consider other factors such as:
 - Advice from the Police
 - The archive research report provided by Defence Estates or commercial testing companies. Their report gives some guidelines as to the level of risk posed from unexploded ordnance on the site and should carry significant weight in the formation of the relevant authority's decision.
 - Any advice offered by Defence Estates or the Explosive Ordnance Division about the nature of the risk posed by the unexploded ordnance.
 - Whether past activities such as grazing of livestock or ploughing have occurred without incident in the past.
 - Where there is a history of public access without any previously reported injury or damage.
 - The outcome of any similar previous incidents on the land. Restrictions may not be necessary where previously discovered unexploded ordnance on the land has been found to pose no threat to public safety.

Step 7. What is the lowest level of restriction necessary?

- Exclude the public from the affected CROW land on public safety grounds if in all the circumstances it believes that it is necessary as a precautionary measure until the case has been determined.
- Exclude people from any area where there is a significant confirmed danger until it has been neutralised or removed.
- Leave residual routes or areas open to the public if it is safe and practicable to do so.

Step 8. Give a direction

If appropriate, return to step 8 ("Give a direction?") of the explanatory notes for Determination Chart 2.5.

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13. The scope of directions for land management purposes

Issue

Relevant authorities require guidance on the appropriate use of land management directions under section 24 of the Countryside and Rights of Way (CROW) Act 2000. This has arisen from applications to restrict access to allow for private recreation, both for commercial and non-commercial purposes, in circumstances where the use of discretionary powers under CROW section 22 would seem more appropriate. Relevant authorities have also asked whether it is legitimate to restrict access to allow an activity that the authority knows to be unlawful – for example, in breach of planning restrictions.

Paragraphs 2.5.32 and I.1.3 of the guidance describe the scope to give directions for land management purposes.

Proposal

We believe that the following scenarios are good examples of where (following advice from the enforcing authority) we feel that it would be sensible for the relevant authority to turn down an application:

- An application to restrict access is received on the grounds that the land owner will be grazing a dairy bull on CROW land which has a public right of way running through it.
- An application for a year-long land management restriction is made detailing an activity that is covered by the Town and Country Planning (General Permitted Development) Order. The Order sets temporary periods (often 14 or 28 days) where the landowner can undertake certain activities without appropriate permissions or licences. The relevant authority becomes aware that the applicant does not have the appropriate permissions/licence required for the stipulated period.

We propose supplementary guidance in chapter 2.5 to clarify the scope to give directions for land management purposes and whether it may include directions in connection with activities known to be unlawful.

Proposed text marked in red:

The scope of directions for land management purposes

2.5.11 Sometimes it may not be clear on what grounds an application is made, even if the landowner specifies it in the application. As part of its determination process the relevant authority will have to make this decision.

2.5.12 Where an application is made solely on fire prevention grounds, the relevant authority need not normally consider a direction for public safety or land

management purposes. For all other applications, whether the applicant specifies public safety grounds, land management grounds or both, the relevant authority should normally consider whether a restriction is necessary to prevent danger to the public or for land management purposes, or for both public safety and land management purposes.

Use of land management directions for commercial activities

2.5.13 The relevant authority may give a direction for land management purposes in relation to any commercial activity on the land. It must first be satisfied that:

- there is evidence to show that access would significantly disrupt the activity and that it is therefore necessary to give a direction; and
- no informal access management solution is available that will meet the need.

2.5.14 The criteria sets provide guidance on assessing disruption to land management activities from those exercising CROW rights and on the appropriate use of both informal access management and statutory restrictions to reduce any disruption.

2.5.15 Where an application fails on these two criteria, the relevant authority may nevertheless decide that a land management direction is necessary to protect income, if it concludes that the presence of people exercising CROW rights on the land will deter customers paying for use of the land. It may not restrict access solely on the basis of customers' preference for exclusive use of the land, or speculation by the applicant about the response of customers to the general right of access over the land. There must be reliable evidence that income will be lost (or has been lost) because of the existence of CROW access rights.

Use of land management directions for non-commercial activities

2.5.16 The relevant authority may also give a land management direction in relation to any non-commercial activity. This includes:

- any activity that forms part of a plan for the conservation of natural or heritage features on the land; and
- any recreational activities (including sporting activities) that have no commercial purpose and where it is necessary to exclude or restrict access to the public.

2.5.17 Before a direction can be given for this purpose there must be evidence to show that access would significantly disrupt the activity and that no suitable informal access management solution is available that would meet the need. This is the sole over-arching criterion for consideration in relation to land management directions for non-commercial activities.

2.5.18 The criteria sets provide guidance on assessing disruption to land management activities from those exercising CROW rights and on the appropriate use of both informal access management and statutory restrictions to reduce any disruption.

2.5.19 There is no scope under section 24 to restrict public access simply in order to allow private or exclusive use of the land by the occupier or others there with his permission, unless income is affected (see the section on commercial activities above). However, the owner (or, if the land is let, the tenant) is entitled to notify discretionary restrictions under section 22 for private enjoyment if he wishes. Should the relevant authority receive an application that fails the criteria for a land management or public safety direction, it may explain to the applicant the discretionary powers that are available to the entitled person for other purposes.

Unlawful activities

2.5.20 It is not the responsibility of the relevant authority to check that every activity included in an application is lawful, but where it believes that an activity on CROW access land is unlawful it should refer the matter to the enforcing authority.

2.5.21 Where it is necessary to restrict access to prevent danger to the public from an activity, the relevant authority should give a public safety direction, whether or not the activity is lawful, since there would be no public benefit from allowing the CROW access rights to continue unrestricted. However, upon receipt of advice from the enforcing authority, the relevant authority may choose not to give a direction to restrict access for land management purposes in relation to an activity it knows to be unlawful. It may do this even in circumstances where there is evidence that access would significantly disrupt the activity.

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14. Notification of decisions

Issue

Where the relevant authority makes a decision in relation to an application under section 24 or 25 of CROW, it has a duty to notify the applicant of the decision which it has taken in respect of the application. Where it has given such a direction, it must supply a copy of the direction to (i) the applicant, and (ii) the access authority for the area to which the direction relates.

Where the relevant authority has given a direction under section 25 without an application being received or a direction under section 26 (where there is no power of application), it must notify (i) the owner of the land, if it is reasonably practicable to do so, (ii) the access authority for the area in which the land is situated, and (iii) Natural England (for section 26 directions only). Where the decision arises from a representation made to the relevant authority, the relevant authority should notify its decision to the person who made the application, as a matter of good practice.

Where the relevant authority has made a direction following consultation with the local access forum, it must notify the forum of its decision by supplying it with a copy of the direction.

CROW and the Regulations do not fully specify what information must go into a direction, but it is clear from established best practice that there are several ways in which the RAG can be improved. It is also clear that the accompanying 'decision letter' is an important tool in communicating details of the decision as it enables relevant authorities to give a clear explanation of its decision. There is currently no guidance in the RAG about the information that a decision letter might include.

Proposal

Clarification over the content of direction notices is required, in particular:

- The reasons for producing a direction notice.
- Bring the RAG up-to-date with current practice with regard to indefinite circumstances.

For outline directions

- The permitted notice period for notifying restrictions
- The number or length of restrictions that may be notified
- The period during which restrictions may take effect
- The lifetime of the direction
- Cancellation of restrictions previously notified
- Information specific to fire directions
- Details of permitted notice periods

Decision letters

Details of supplementary information that can be given to fully explain the reason for the relevant authority's decision.

Proposed amendment to existing text in the guidance is marked in red:

Annex L: Notification of decisions

L.1.1 Where the relevant authority makes a decision in relation to an application under section 24 or 25 of CROW, it has a duty to notify the applicant of the decision which it has taken in respect of the application. Where it has given such a direction, it must supply a copy of the direction to (i) the applicant, and (ii) the access authority for the area to which the direction relates.

L.1.2 The relevant authority may choose to ring the applicant first to explain its decision, but the decision must always be put in writing – either a letter or e-mail, depending on the applicant’s stated preference – accompanied where a direction has been given by a direction notice and, if it is a full direction, a site notice.

L.1.3 Where the relevant authority has given a direction under section 25 without an application being received or a direction under section 26 (where there is no power of application), it must notify (i) the owner of the land, if it is reasonably practicable to do so, (ii) the access authority for the area in which the land is situated, and (iii) Natural England (for section 26 directions only). Where the decision arises from a representation made to the relevant authority, the relevant authority should notify its decision to the person who made the representation, as a matter of good practice.

L.1.4 Where the relevant authority has made a direction following consultation with the local access forum, it must notify the forum of its decision by supplying it with a copy of the direction.

Content of a direction

L.2.1 CROW and the Regulations do not fully specify what information must go into a direction. Relevant authorities should include sufficient information to make clear the effect of the direction, including:

- a clear description of the land affected, or a map depicting it;
- the period of time during which access may be restricted under the terms of the direction (see L.4.1 below);
- the date(s) on which, and if appropriate the times at which, restriction(s) will take effect, if these are known when the direction is given;
- details of any dates, days or times within specified restriction periods when it is known in advance that no restrictions will be necessary;
- the section(s) of the Act under which the direction is made (with further explanatory text i.e. for the purpose of land management);
- the specific purpose of the direction, e.g. to prevent disturbance to cattle with calves
- the nature of the restriction (e.g. exclusion of dogs; restriction to linear routes);
- any conditions attached to the direction in order to ensure that access will only be restricted to the extent necessary for the purpose(s) in question; and
- a statement of why the restriction is necessary.

L.2.2 It may not always be practical to distinguish on maps the exact boundaries of small areas of excepted land (or section 15 land) that fall within a larger restricted area, or to describe them in the notice. Directions should in any case be subject to a standard saving that the restriction does not apply to any such land (see annex A – A.5) that falls within the area covered by the direction.

L.2.3 Where the relevant authority has given an outline direction, this should also specify:

- The first and last dates and times when a restriction may take effect; or
- (for long term circumstances) a period each year, during which restrictions may be notified;
- the maximum number and/or duration of restrictions of which the dates and times may be notified later (including the maximum number of consecutive days allowed and the maximum number of days allowed in each year);
- any conditions which must be met in order to ensure that restriction under the direction will only be possible to the extent necessary for the purpose specified (see paragraphs 1.2.2 and 1.2.6);
- how the dates and times of restrictions may be notified (e.g. by post, by email, or by telephone), and by whom (for land management restrictions, this must be the applicant or his agent);
- the notice period to be given: normally any notification must be received by the relevant authority at least five working days before the restriction in question is due to begin, but the direction may instead set a different (ie shorter or longer) period if the relevant authority considers this appropriate (see L.2.4);
- The date of issue and an 'expiry date' after which no further notifications may be made under the direction, if the need for restrictions is temporary or of unknown duration (see guidance on length of directions in paragraphs L4.1 to 4.4 below);
- Where restrictions are effective for only part of a day, the direction should explain that this will be treated as a full day in calculating any remaining allowance;
- How to withdraw notifications if due to changes in circumstance the restriction becomes unnecessary (see L.2.7 below);
- That the relevant authority may vary or revoke the direction on receipt of evidence that demonstrates that the circumstances have changed (see Annex M);
- Where the Fire Severity Index can be viewed or obtained (for fire prevention directions only).

L.2.4 In setting any alternative notice period for notifications of dates and times of restriction under an outline direction, the relevant authority should have regard to what is reasonably practicable in all the circumstances.

L.2.5 An outline direction should specify the period of notice that must be given to the relevant authority before a restriction can take effect and the person or persons who may notify it. It is important that notice of a restriction is published on the website as early as possible. This will increase the chance that members of the public can take account of it when planning their visit and minimise the need for on-site management of the restriction by the land manager. The relevant authority

should discuss these considerations with the applicant before specifying the notice period in the direction.

L.2.6 Outline directions on fire prevention grounds should also specify:

- Who is entitled to notify restrictions under the direction;
- That notifications may be made by telephone²⁰, by email, by post or online; and
- That all restrictions notified will have immediate effect for the purposes of Regulation 7, when conditions are exceptional in one or more of the specified Fire Severity Index grid squares.

Withdrawal of outline restrictions previously notified

L.2.7 If any restriction is notified but then becomes unnecessary – e.g. because weather conditions change and a planned operation cannot proceed – the relevant authority may permit the specified person to withdraw it and retain any remaining allowance for notification at a later date, in accordance with the conditions of the direction.

L.2.8 An outline direction should explain this provision and specify:

- The notice period that must be given before the restriction was due to commence;
- How the withdrawal should be notified.

L.2.9 Normally the relevant authority should specify a notice period of at least two working days before the restriction is due to take effect, but may specify a shorter notice period having regard to the circumstances of the case. However, a notification cannot be cancelled retrospectively.

Explaining the decision to the applicant

L.3.1 When writing to notify the applicant of its decision, the relevant authority should supplement the information given in a direction notice with a fuller explanation of its decision addressing the following points:

- All the concerns raised by the applicant are addressed.
- The decision date is included, as this date determines the timetable for reviews and appeals.
- In instances where it has given a direction that is less restrictive than the applicant asked for, it has fully explained the reason for this;
- In instances where the relevant authority believes that no direction is necessary, it has explained fully the reasons for its decision.

²⁰ The direction should make clear that telephone notification of dates will only be acceptable if the relevant authority is satisfied as to the caller's identity and as to the details being notified. This will normally only be the case after those details have been supplied initially in writing and registered by or on behalf of the authority.

- Where access management is necessary to avoid the need for a restriction, it has explained what needs to be done, by whom and by when. If interim arrangements are necessary, the letter should explain these too. It may also be necessary to explain what to do in the event that the work is delayed;
- Where appropriate, suggestions for further access management are included. The relevant authority may also wish to explain the value of site notices if a restriction is necessary.
- The applicant knows to contact the relevant authority if circumstances change, if new evidence arises, or if a different restriction is needed;
- It has explained, if necessary, that it could not formally consider any land management concerns unless they were included in the original application or subsequently put in writing.

Length of directions

Indefinite circumstances

~~L.2.1 If the relevant authority considers that the circumstances that make a direction necessary are likely to last indefinitely, the relevant authority should give a direction to restrict access until further notice or for part of each year until further notice. It must then schedule a review not later than the fifth anniversary of the date on which the direction was given (see Annex M). Indefinite directions are most likely to be necessary for the purposes of nature conservation or heritage preservation.~~

L.4.1 If the relevant authority considers that the circumstances that make a direction necessary are likely to last indefinitely, the relevant authority should normally give a direction for not longer than 6 years. [It must then schedule a review not later than the fifth anniversary of the date on which the direction was given (see Annex M).] The relevant authority may in certain circumstances choose to give a direction indefinitely, although this will usually only be necessary to prevent fire.

Circumstances of unknown duration

L.4.2 If the relevant authority does not know how long the circumstances that make a direction necessary will last, but considers that the circumstances are unlikely to last indefinitely, it should normally give a direction for six years, or part of each year for six years. It must then schedule a review not later than the fifth anniversary of the date on which the direction was given (see Annex M).

L.4.3 If on review it concludes that the circumstances that gave rise to the direction have not changed, it should vary the existing direction so as to restrict access for the next six years, or for part of every year for the next six years, and schedule a further review. Long-term directions are most likely to be necessary in connection with year-round and seasonal activities, such as shooting or grazing.

Temporary circumstances

L.4.4 If the circumstances that make a direction necessary are known to be temporary and the relevant authority can predict with reasonable confidence how long they will last, it should give a direction to restrict access for the expected duration of the circumstances. Short-term directions are most likely to be necessary in connection with a one-off event (or a series of one-off events), such as tree harvesting or civil engineering work.

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