

Zone 1/02,
Temple Quay House,
2 The Square,
Bristol BS1 6EB

Telephone 0117 372 6274

Email recreation.access@defra.gsi.gov.uk

Website www.defra.gov.uk



Our ref: CROW 44

To: All LAF Secretaries and Members in England

28 May 2009

Re: Secretary of State's Guidance on Local Access Forums in England

Dear LAF Secretary/Member,

I am writing to inform you that the LAF Guidance has been modified to reflect a few technical changes and recent developments, as outlined below. Please can Secretaries ensure this notification is circulated to all members of their Forum.

As this is not a comprehensive review of the Guidance we have decided against re-issuing it in hard copy at this time. However, an updated electronic version is available on the Defra website at www.defra.gov.uk/wildlife-countryside/access/crow/local-access-forums.htm. This letter can also be inserted into the front of existing hard copies to ensure readers are aware of the amendments.

Access to Water

To take account of the House of Lords judgement in the 'AG v Brotherton' case, the section on access to water (paragraph 24, p34) has been amended to read:

"24. While access to "land" includes access to "**land** covered with water", this is not the same as a right to access the water for a purpose other than to access the land which the water covers. Further, access under Part I of the CROW Act does not extend to access using "a vessel or sailboard on any non-tidal water" (see paragraph 1(b) of Schedule 2); and a public right of way is not the same as a public right of navigation. LAFs should not, therefore, advise on access over or in water or on recreational activities involving access over or in water, [unless the primary purpose of such access is to access the land beneath, and, in respect of access land under Part I of the CROW Act, unless such access does not involve the use of a vessel or sailboard on any non-tidal water. LAFs can of course advise on other access issues which may be of interest to those who pursue recreational activities in or on the water e.g. advice on access to land at the water's edge.]"

A number of water-related activities (such as canoeing and surfing) were also mentioned at several points throughout the Guidance. All such references have been removed.

Contact details

Due to team restructuring the central Defra contact point for queries relating to this guidance, plus open access and Rights of Way queries, is now:

The Recreation and Access Team,
Zone 1/02,
Temple Quay House,
2 The Square,
Bristol BS1 6EB
Email: recreation.access@defra.gsi.gov.uk

Natural England's LAF Co-ordinator contact details remain unchanged.

Rights of Way Improvement Plans

In light of the introduction of the Comprehensive Area Assessment, we have updated the section on ROWIPs. Paragraph 5, on p30, has therefore been amended to read:

“5. Local highway authorities are required (under sections 60 and 61 of the CROW Act) to review the adequacy of their rights of way network, and to prepare and publish plans which contain an assessment of whether local rights of way meet the present and likely future needs of the public; the opportunities provided for exercise and open air recreation and the enjoyment of the authority's area; and access to local rights of way by blind, partially sighted persons and others with impaired mobility. These plans are known as Rights of Way Improvement Plans (RoWIPs). The legislation requires all unitary, county and metropolitan councils and outer London boroughs to complete plans with the exception of those whose overall performance had been rated as “excellent” in previous years by the Audit Commission¹. Those authorities had the freedom to choose whether or not to complete a plan and this freedom was extended to “4 star” authorities under a new rating system. However, none of the authorities who had this freedom chose to exercise it, and with the replacement, in 2009, of the Comprehensive Performance Appraisal with the Comprehensive Area Assessment, this freedom is now withdrawn.”

Paragraphs 6 to 9, which also relate to RoWIPs, remain unchanged.

Discovering Lost Ways Project

Natural England recently reviewed the DLW project, which resulted in a new approach being taken to recording public rights on the definitive map. Paragraph 11, on p31, has therefore been amended to read:

¹ This freedom was introduced by the Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005.

“11. The Discovering Lost Ways project was set up by Natural England to research and facilitate the recording of public rights that would be lost if not claimed or recorded on the definitive map by the cut-off date of 1 January 2026. However, the project was wound up following a review of the project by Natural England in 2007/08, which concluded that, given the existing legislative framework and other constraints, the objective could not be achieved within a foreseeable timeframe. Natural England set up a Stakeholder Working Group, which is tasked with exploring possible ways in which the process of recording of public rights could be improved with a view to making completion of the definitive map and statement more achievable. The Group has been asked to work towards outlining a package of strategic reforms that would be acceptable to all rights of way stakeholders. It is expected that any such proposals would be produced by the end of 2009.”

Web links

Due to the recent re-organisation of both Defra and Natural England’s websites, the majority of the web links listed in the Guidance were no longer correct. Such links have now been updated.

We recommend using the updated electronic version of the Guidance (available at www.defra.gov.uk/wildlife-countryside/access/crow/local-access-forums.htm) to access these new links as necessary.

If you have any queries regarding the modified guidance, please contact the Recreation and Access Team at the address overleaf.

Yours sincerely,

Ruth Sanders

Recreation and Access Team