

CCPR – working for sustainable access for all

The meeting of the CCPR access focus group held on 23 May 2007 laid the basis for a broad CCPR statement on sustainable access. It also suggested a range of actions CCPR might like to deliver on this.

Since the meeting CCPR has revised its overarching statement and explored the opportunities for action, taking external advice as appropriate. These opportunities for action are presented to the access focus group for consideration.

Views are specifically sought on:

1. The feasibility of each action
2. The priority CCPR should assign to it
3. Suitable delivery partners

Priority Areas

1. Mapping Section 15 land

Intro

Section 15 (s15) of the Countryside and Rights of Way Act 2000 (CRoW) lists four categories of land to which the public enjoyed rights of access prior to the enactment of CRoW.

Section 15 states that land is to be treated as being accessible to the public apart from this Act at any time if, but only if, at that time –

- (a) section 193 of the Law of Property Act 1925 (rights of the public over commons and waste lands) applies to it,
- (b) by virtue of a local or private Act, or a scheme made under Part 1 of the Commons Act 1899 (as read with subsection (2)), members of the public have a rights of access to it at all times for the purposes of open-air recreation (however described),
- (c) an access agreement or access order under Part V of the National Parks and Access to the Countryside Act 1949 is in force with respect to it, or
- (d) the public have access to it under subsection (1) of section 19 of the Ancient Monuments and Archaeological Areas Act 1979 (public access to monuments under public control) or would have access to it under that subsection but for any provision of subsections (2) to (9) of that section.

And where a local or private Act or a scheme made under Part I of the Commons Act 1899 confers on the inhabitants of a particular district or neighbourhood (however described) a right of access to any land for the purposes of open-air recreation (however described), the right of access exercisable by those inhabitants in relation to that land is by virtue of this subsection exercisable by members of the public generally.

Issues regarding mapping section 15 land

- Insufficient funding for Natural England
- many s15 areas are not accurately mapped and some are not mapped at all;
- the rights of access vary from area to area;
- there are few legal precedents that allow the exact meaning of the rights conferred to be made clear;
- the area of s15 land will change over time, either as unmapped or poorly mapped areas are mapped more

Role for CCPR

- **Priority Action: support Natural England in its intention to make s15 land data (showing the extent of the land area covered and the public rights available) easily-accessible to the public;**
- CCPR will try to work with government agencies and departments to ensure that data of relevance to our members is made as freely available as possible
- take part in any consultation undertaken as part of the process;
- highlight the problems associated with users obtaining misleading information over the Open Access website that is not misleading;
- encourage Countryside Council for Wales to adopt a similar approach to NE with regard to mapping s15 land;
- as the data emerge, make its members aware of this so that new opportunities for higher rights are used where they exist and can be exercised;
- make sure provision is made (by NE and CCW) for future updates;
- support members' actions and assist where possible

2. Rights of Way Improvement Plans

Intro

The duty on local highway authorities to prepare a Rights of Way Improvement Plan (RoWIP) was introduced by CRow Section 60. Among other things, RoWIPs, must include:

- An assessment of local rights of way and whether they meet present or future demands of the public
- The opportunities provided by local rights of way for exercise and other forms of open-air recreation and enjoyment of the authority's area.
- The accessibility of local rights of way to blind, partially sighted or those with mobility problems.

This duty falls on all local highway authorities but not:

- national park authorities (although they can work with the LHAs for their park or actually prepare one under an agreement with the LHA);

- authorities that are rated as “excellent” on their Comprehensive Performance Review. In practice, excellent authorities are preparing RoWIPs;
- Inner London Boroughs (see CRoW s62) – although they can do one if they want (in practice, none are likely to).

The deadline for completion was 21st November 2007 in England and 1st November in Wales.

There is no obligation to implement RoWIPs.

Progress

When the statutory guidance was published, the clock started to tick and LHAs had five years to complete their plans. However, progress has been slow, despite efforts by the Countryside Agency and CCW to provide assistance. The latest information available to Asken on the state of play in England and Wales is as follows:

England

- information has been found for 123 RoWIPs (the data appear to be as at mid 2007), although this includes some RoWIPs that are to be published jointly by a group of authorities and some authorities who are producing several RoWIPs;
- 25 have completed their RoWIPs in full (or expected to by now);
- 37 have gone out to public consultation;
- many of the lagging authorities are unitary authorities.

Wales

- 23 authorities are preparing RoWIPs (22 unitary authorities plus Brecon Beacons NPA)

of these:

- 5 have completed their RoWIPs
- 10 have consulted the public over their RoWIPs but not yet completed them;
- 8 have not even consulted the public over their RoWIPs are some way from completion.

Role for CCPR

- **Key priority: lobbying at national level for additional funding to assist with RoWIP implementation;**
- inputting into the reviews by offering to act as a consultee in the evaluation process, seeking opportunities to enhance higher rights access;
- encouraging and helping members of CCPR constituent bodies to become members of local access forum, support them through the provision of information which they can use to help promote RoWIP implementation;
- talking to key funding bodies to ensure they are receptive to bids for funds for projects linked to RoWIP implementation;

- campaign for inclusivity for all legitimate users

3. CRoW map reviews

The CRoW Act requires a review of the maps no longer than every 10 years. This means by 2013 at the latest.

Role for CCPR

- **Key priority: engage with Natural England to positively influence mapping methodology**
- make a positive input into the map review process.

4. Discovering lost ways

Intro

The Discovering Lost Ways (DLW) project arose from the Countryside and Rights of Way Act 2000. It is a national project aiming to increase and improve the rights of way network available for people to access and enjoy the natural environment.

Every surveying authority in England – usually the county council – must maintain a definitive map of public rights of way. The definitive map and statement forms the legal record of public rights of way (that is, footpaths, bridleways and byways).

Provisions in the Countryside and Rights of Way Act set a deadline of 1 January 2026, after which it will not be possible to apply for footpaths and bridleways, or higher rights, to be added to the definitive map on the basis of historical documentary evidence (historical is classed as pre-1949).

Natural England has been tasked with leading on DLWs.

Issues

Not a single new right of way has been added since the project started.

Role for CCPR

- **Key priority: encourage Natural England to make greater progress with DLWs**
- encourage DEFRA to repeal the 2026 deadline for lost ways.

Other important access issues for member

1. Section 16 dedications

An owner or lessee may designate land as CRoW land.

Role for CCPR

- Encourage members and individuals to dedicate land under CRoW Section 16.

- Lobby Government, agencies eg Ministry of Defence, Forestry Commission to dedicate land under section 16

2. Rolling Path Agreements

Current legislation means that the route of paths is fixed. The route of paths is therefore unresponsive to changes that may occur, for example, as a result of changes in topography.

Role for CCPR

Support Rolling Path Agreements which are responsive to landscape changes. This will avoid unnecessary bureaucratic procedures required to change the route of paths.

3. Section 151

Intro

"Land used for the getting of minerals by surface working (including quarries)" is excepted under Schedule 1, Part 1, paragraph 5 of the CroW Act. There is no definition or cross reference in the CROW Act of what is meant by this, and so far no relevant case law.

In this absence, and according to the Health and Safety Executive, applying the definition of "quarry" in Reg 3 of the Quarries Regulations 1999 is reasonable. Therefore, any land which is part of an active quarry operation is excepted, and no new access right is given.

However, once a quarry site which has been mapped as open country is abandoned, it ceases to be excepted land and the new access right will apply once again.

While a landowner may apply for restrictions to abandoned quarry land, the Access Authority will only give a restriction where informal techniques are inadequate (or unavailable) to manage the risk. In many instances, risks at abandoned quarry sites are similar to natural features encountered in open countryside and will be obvious to visitors. Sometimes signs may be advisable to warn of hidden dangers, or physical barriers may be necessary.

Specifically, under the Environmental Protection Act the local authority have enforcement powers for the Mines and Quarries Act 1954, Section 151. Section 151 (1)(c) relates to a quarry (whether being worked or not) which:

(1) is not provided with an efficient and properly maintained barrier so designed and constructed as to prevent a person from accidentally falling into the quarry; and

(2) by reason of its accessibility from a highway or place of public resort constitutes a danger to members of the public.

The local authority can declare the unfenced quarry a statutory nuisance and are empowered to take remedial measures themselves and recover the cost from the quarry owner.

Issues

The landowner may be liable if an injury occurs on an abandoned quarry on their

land or may be required by the local authority to meet the cost of making quarry areas safe.

During the legislative process leading to CRoW, the Department for the Environment, Food and Rural Appairs (Defra) were given a power to regulate to make access land NOT a place of public resort, but decided not to use it. This means that abandoned mineral sites on access land that were not ALREADY places of public resort will become so on commencement of the rights.

Natural England must review its maps within ten years of publication. Land being progressively restored after mineral extraction may be mapped as open country at review, if the land character has changed sufficiently for it to qualify.

Role for CCPR

- CCPR to call for quarried land to be returned to public access
- Seek to ensure that access is not compromised by cost of making quarries safe

4. Section 35

Intro

Section 35 of the CRoW Act sets out the circumstances in which an access authority may enter into an agreement with an owner or occupier where they consider that an existing means of access needs to be opened up, improved, repaired or maintained, or a new means of access needs to be constructed.

They may also make an agreement with an owner or occupier which imposes a restriction on the destruction, removal, stopping-up or alteration of an existing means of access, or on doing anything which would impede public access.

Issues

Section 35 provides important provision to maintain and enhance access to CRoW land. There is little link up between the creation of access points created via Section 35 and mapping/other sources of access information for recreationalists.

Role for CCPR

CCPR will work for improving availability of information of enhanced access resulting from Section 35.

5. AONB Management Plans

Areas of Outstanding Natural Beauty (AONBs) now have management plans and most have policies/plans re access and recreation.

Role for CCPR

- to work with Natural England and DEFRA to ensure the value of sport and recreation and members' interests are taken fully into account and are successfully represented in AONB Management Plans.
- to inform local partners of relevant consultations

6. Local Access Fora

Intro

England's 81 Local Access Fora (LAFs) are statutorily prescribed bodies, introduced by s94 and s95 of the Countryside and Rights of Way (CRoW) Act 2000.

Their main function is to advise their appointing authority, ie either a local highway authority (LHA) or a national park authority (NPA) for their area, as to the improvement of public access to land in that area for the purposes of open-air recreation and the enjoyment of the area.

Issues

There is concern that the overarching national countryside access forum has not met for sometime and this makes a coordinated and consistent approach to access more difficult.

Role for CCPR

Lobby Natural England for regular meetings of National Association of Local Access Fora and promote through CCPR channels.

Encourage members to join and engage effectively with Local Access Fora.

7. Best of Both Worlds

Intro

Best of Both Worlds website helps increase opportunities for outdoor sports and recreation, and at the same time commits to protecting the sensitive environments in which they take place.

The aim is that enthusiasts and participants can enjoy and appreciate their pursuits in the outdoors whilst allowing land managers and owners to make decisions to benefit the land they look after.

Role for CCPR

- continue to support, promote and develop the Best of Both Worlds website, working closely with Natural England and Countryside Council for Wales.

8. Water Framework Directive

Intro

The Water Framework Directive (WFD) is the most substantial piece of EC water legislation to date and is designed to improve and integrate the way water bodies are managed throughout Europe. It came into force on 22 December 2000, and was put into UK law (transposed) in 2003. Member States must aim to reach good chemical and ecological status in inland and coastal waters by 2015.

It will help us, as the lead authority for implementation in England and Wales, to:

- improve inland and coastal waters and protect them, especially from diffuse pollution in urban and rural areas, through better land management;
- drive wiser, sustainable use of water as a natural resource;
- create better habitats for wildlife that lives in and around water;
- create a better quality of life for everyone.

D Carter, January 2008