

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

EXPLANATORY NOTES

INTRODUCTION

Part I: Access to the Countryside

Summary

5. Part I of the Act is intended to give greater freedom for people to explore open countryside. It contains provisions to introduce a new statutory right of access for open-air recreation to mountain, moor, heath, down and registered common land. It also includes a power to extend the right to coastal land by order, and enables landowners voluntarily to dedicate irrevocably any land to public access.
6. There will be restrictions on the new right — for example, the Act includes provisions for landowners to exclude or restrict access for any reason for up to 28 days a year, and to exclude dogs on grouse moors and in small fields during lambing time, without seeking permission. Landowners will also be able to seek further exclusions or restrictions on access for reasons of land management, fire prevention and to avoid danger to the public. The Countryside Agency (in Wales, the Countryside Council for Wales — together referred to as the countryside bodies) and in national parks, the National Park authorities, will be able to give directions for these purposes and, in addition, will be able to direct the exclusion or restriction of access on grounds of nature and heritage conservation. The Act also includes provisions for further restrictions on dogs on access land.

Background

7. There is a long history of people desiring to have greater access to open countryside. Since the turn of the last century some reforms have been made, for example the Law of Property Act 1925 gave people the right of access for air and exercise to metropolitan and urban district commons, including large areas in the Lake District and South Wales. In 1949, the National Parks and Access to the Countryside Act provided for the creation of public access to open country by agreement or order: some 50,000 hectares of access are thought to have been secured under this Act. Despite such measures, it is estimated that there are still around 500,000 hectares of open countryside in England and Wales where access is not permitted and a further 600,000 hectares where public access occurs on an informal or *de facto* basis¹.
8. In February 1998 the Government issued a consultation paper, *Access to the Open Countryside in England and Wales*², which invited views on how best to secure more

¹ Source: *Appraisal of Options on Access to the Open Countryside of England and Wales*, published by DETR March 1999 (Full Report): Price £45 ISBN 1 85112 158 5. Available from DETR Publication Sale Centre, Goldthorpe Industrial Estate, Goldthorpe, Rotherham, S63 9DL. Tel. 01709 891318, Fax. 01709 881673. A summary document is available free of charge from: DETR Free literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>

² Published by the Department of the Environment, Transport and the Regions and the Welsh Office, February 1998. Available free of charge from: DETR Free Literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>

and better access to open countryside. The paper sought views on both statutory and voluntary approaches to achieving greater access, and estimated that the total extent of mountain, moor, heath, down and registered common land was some 1.2 to 1.8 million hectares or around 10% of the land area of England and Wales. The consultation paper set out key criteria against which the approaches would be judged — extent, quality and permanence of access, together with cost, clarity and certainty, and monitoring and enforcement.

9. The consultation paper attracted over 2,000 responses from a wide range of organisations and individuals, including recreational users, landowners and local authorities. Of these, a large majority supported the introduction of a statutory right of access. The Government undertook an analysis of the responses and consulted further, including with other Government departments, relevant statutory agencies, and organisations representing landowners, recreational users and conservation interests.
10. In the light of the results of consultation and of a study of the costs and benefits of different approaches for securing greater public access, the Government decided to legislate to create a new statutory right of area access as part of a wider package to improve public access to the countryside. Ministers announced the decision to Parliament on 8 March 1999³. The Government also published its conclusions in *The Government's Framework for Action: Access to the Countryside in England & Wales*⁴ outlining a package of measures for improving public access to the countryside. It also issued an *Analysis of Responses on Access to the Open Countryside of England and Wales*⁵ and, separately, an *Appraisal of Options on Access to the Open Countryside of England and Wales*⁶.
11. When the Government's *Framework* document was published in March 1999, the Government asked the countryside bodies and the Forestry Commission to report later in 1999 on access to other types of open countryside, such as woods, coastal land and riverside⁷. The Countryside Agency recommended in October 1999 that the statutory right of access should be extended to coastal land such as beaches and cliffs. This recommendation is reflected in the inclusion in the Act of a power to extend the statutory right to coastal land by order.

Commentary on sections

Sections 1 to 3 and Schedules 1 and 2: General

12. *Section 1* sets out the categories of access land to which the public are to acquire a right of access. Land which is wholly or predominantly mountain, moor, heath or down is defined as "open country". Open country will qualify as access land if it has been shown on a map of open country issued by the countryside bodies. The countryside bodies will be responsible for deciding the extent of any mountain, moor, heath and down. However, land is not to be regarded as mountain, moor, heath or down if it is improved or semi-improved grassland. Land over 600 metres above sea level and registered common land immediately qualifies as access land without any requirement for mapping by the countryside bodies, but the bodies will in due course also include these categories of land on their maps. Access land will also include land which under section 16 is irrevocably dedicated by the owner to public access.

³ Hansard, House of Commons Debates. Cols. 22-33.

⁴ Published by DETR March 1999. Available free of charge from: DETR Free Literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>

⁵ Published by DETR February 1999 (Full Report): Price £10 ISBN 1 85112 159 5. Available from DETR Publication Sale Centre, Goldthorpe Industrial Estate, Goldthorpe, Rotherham, S63 9DL. Tel. 01709 891318, Fax. 01709 881673. A summary document is available free of charge from: DETR Free literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>

⁶ See footnote 1 for full reference.

⁷ These recommendations can be viewed on the internet, via the DETR website at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>

13. *Subsection (1)* of section 1 provides that “excepted land” (defined in subsection (2) and Schedule 1) is not treated as access land, even where it appears on maps of open country and registered common land. Land of the descriptions set out in Part I of *Schedule 1* — such as land on which there are buildings, golf courses or parks, and land within 20 metres of a dwelling — is to be regarded as excepted land, to which there is no right of access whilst it remains of that description. *Paragraph 15* of Schedule 1 requires that, in order to qualify as excepted land, any necessary planning permissions must have been granted or any development must have been otherwise treated as lawful for the purposes of planning legislation. *Paragraph 1* provides that land will qualify as excepted where the soil has been disturbed within the past year by ploughing, drilling or similar agricultural or forestry operations for the purposes of planting or sowing crops or trees. Land over which there are byelaws in force made by the Secretary of State for Defence for the purposes of military training or national defence will also count as “excepted land”: the new statutory right will not apply, but any existing access provided for in the byelaws (where applicable) will continue.
14. Subsection (1) also provides, by reference to section 15(1), that land to which there is an existing statutory right of access for recreation — such as under section 193 of the Law of Property Act 1925 (metropolitan, urban and certain other commons) or under an access agreement or order made under Part V of the National Parks and Access to the Countryside Act 1949 — will not be regarded as access land for the purposes of the legislation. The new statutory right will not apply to such land, but the existing right of access will continue.
15. *Subsection (3)* defines registered common land as land which has been registered as such under the Commons Registration Act 1965, and whose registration has become final under that Act. The 1965 Act provided for the registration of all rights of common, as well as land subject to rights of common (and caused any rights of common which were not registered in due time to be incapable of being exercised). A right of common is “a right, which one or more persons may have, to take or use some portion of that which another man’s soil naturally produces”⁸. *Subsections (3)(b) and (4)* provide that, where land has been removed from the register of common land in pursuance of an application for that purpose made after the date of Royal Assent, it will continue to be treated for the purposes of Part I (but not otherwise) as registered common land. However, this special provision does not apply to land which is removed from the register under various statutory powers of acquisition or exchange.
16. *Section 2* gives people a right of entry onto access land (defined in section 1) for the purposes of open-air recreation, provided that they enter without breaking any wall, fence or gate, and that they do not contravene any of the restrictions set out in Schedule 2 or imposed under Chapter II. By virtue of *subsection (3)*, the right does not apply where entry is prohibited in or under any other public legislation. *Schedule 2* restricts activities and behaviour which may be undertaken in pursuance of the right of access. In particular, *paragraph 1(a)–(c)* excludes the use of any vehicle (including bicycles) or craft (on water), and horse-riding. *Paragraph 1(d)* provides that the commission of any criminal offence (which includes transgression of a byelaw) on access land will amount to a breach of the restrictions. Schedule 2 also includes specific restrictions for the control of dogs, including a requirement for dogs to be kept on short leads during the designated period, and in the vicinity of livestock. By virtue of section 2(4), people who break any of these restrictions will lose their right of access to land in the same ownership as that on which the breach occurred, for a period of 72 hours, and may be treated as trespassers by the owner of the land. Breach of a restriction will not in itself constitute a criminal offence, although some of the activities set out in Schedule 2 may constitute criminal offences under other legislation.
17. *Paragraph 3* of Schedule 2 enables the Secretary of State (or the National Assembly for Wales) to amend by regulations the list of restrictions in paragraphs 1 and 2 (but

⁸ Halsbury’s Laws of England (4th ed.), vol 6, page 197.

not the restrictions relating to the control of dogs). By virtue of *paragraph 7*, any of the restrictions in Schedule 2 may be lifted or relaxed by the relevant authority with the consent of the owner, so that the public may exercise wider rights than those normally permitted. This provision might be used to allow people, for example, to exercise the right of access on horseback, or without keeping dogs on leads during March to July.

18. *Section 3* enables the Secretary of State (in England) or the National Assembly for Wales (in Wales) by order to extend the statutory right of access to all or any part of the foreshore and land adjacent to the foreshore. In making such an order, the Secretary of State (or the National Assembly for Wales) may modify the application of this Part of the Act in so far as it applies to access to the foreshore.

Sections 4 to 11 and Schedule 3: Maps

19. *Sections 4* and *5* require the countryside bodies to draw up and consult on maps of open country and registered common land.
20. *Section 4* imposes a duty on the countryside bodies to prepare maps of open country and registered common land (which must be separately identified). It also gives the countryside bodies a discretion not to map small areas of open country, and to map the boundary of open country to an appropriate physical feature. This discretion does not apply in the mapping of registered common land.
21. *Section 5* sets out a procedure for public consultation on draft maps. The countryside bodies are required to take any comments during the consultation into account when revising the maps, which they must then issue as provisional maps.
22. *Section 6* provides a right of appeal to the Secretary of State (or the National Assembly for Wales) against the showing of any land on provisional maps as open country or registered common land. The right may be exercised by anyone with an interest in the land, which includes the owner, a tenant, a commoner, or generally anyone with any rights over the land (see the definition of interest in section 45). An appeal against the showing of land as open country may be brought on the grounds that the land is not wholly or predominantly open countryside, and (where relevant) that the boundary of the land should not have been mapped to a nearby physical feature. However, an appeal against the showing of land as registered common land may be brought only on the ground that the land is not registered as common land under the Commons Registration Act 1965 (see the definition of registered common land in section 1). On determining an appeal, the Secretary of State (or the National Assembly for Wales) may confirm the map with or without modifications, or he (or it) may direct the relevant countryside body to prepare a new map (which may be of the land subject to the appeal, or all or part of the map on which the land is included). If a new map is prepared, further consultation will then take place on the new map in draft form.
23. *Sections 7 and 8* and *Schedule 3* set out a procedure for the hearing of appeals, and appellate functions in respect of which the Secretary of State (or the National Assembly for Wales) may delegate his (or its) powers.
24. Under *subsection (1)* of section 7, an appellant (or the relevant countryside body) may elect for a hearing of the appeal (rather than for the appeal to be determined by correspondence), and the Secretary of State (or the National Assembly for Wales) may decide to deal with any case by means of a hearing or a local inquiry, whether or not one has been requested. *Subsection (2)* of section 7 provides (by reference to subsections (2) to (5) of section 250 of the Local Government Act 1972) that, where a hearing or inquiry is held, witnesses may be required to attend and give evidence, and costs may be awarded. Costs arising from any planned hearing or inquiry which does not take place may also be awarded under *subsection (3)*, where the hearing or inquiry has been requested by either of the parties.

25. *Section 9* provides for a provisional map to be confirmed as a conclusive map once all appeals (in relation to the land shown on the map) have been determined, or, if there were no appeals (or any appeals were withdrawn), after the period for lodging appeals has passed. The Secretary of State (or the National Assembly for Wales) may at any time direct the countryside body to issue in conclusive form any part of a provisional map in respect of which there are no appeals outstanding. A conclusive map will incorporate any modifications made by the Secretary of State (or the National Assembly for Wales) on appeal. *Subsection (6)* ensures that a document which has been certified by the appropriate countryside body as a copy of a conclusive map may be used in evidence in court without further proof of provenance.
26. *Section 10* requires the countryside bodies to review a statutory map within ten years and not less frequently than every ten years thereafter (or any other periods specified by the Secretary of State or the National Assembly for Wales by regulation). On review, the bodies must consider both whether land shown on the map as open country or registered common land remains of that description, and whether other land should now be shown as open country or registered common land.
27. *Section 11* makes provision for the Secretary of State and the National Assembly for Wales to make regulations supplementing the provisions of sections 4 to 10 on mapping. These regulations will (among other things) provide for the procedure to be followed on a review.

Sections 12 to 14: Rights and liabilities of owners and occupiers

28. *Section 12* provides that the right of access does not increase the liability of a person interested in the land in respect of the state of the land or things done on it. It also provides that persons interested in the land will not be liable for the breach of any covenant restricting the use of the land, and that the statutory right takes precedence over the covenant. Under *subsections (3) and (4)*, use of any path or area of land in exercise of the right of access cannot support a claim for the existence of a right of way or of a town or village green.
29. *Section 13* amends the Occupiers' Liability Act 1957 so as to reduce the liability of occupiers of land owed to those exercising the right of access to the same level which would be owed to trespassers, but further provides (by amending the Occupiers' Liability Act 1984) that, at any time when the right is exercisable, occupiers of access land will owe no liability to those exercising the right of access, nor to trespassers, in respect of risks arising from: natural features of the landscape; any river, stream, ditch or pond; and the passage of any person across a wall, fence or gate (except by proper use of a gate or stile). "Natural features" are defined so as to include any plant, shrub or tree. Liability is not excluded in any of these circumstances if the risk arises from anything done intentionally or recklessly by the occupier. *Subsection (3)* provides that the courts, in determining whether any liability is owed to non-visitors on access land, must have regard to certain additional considerations.
30. *Section 14* introduces a new offence of displaying a notice containing false or misleading information on or near access land (or a way leading to it) likely to deter the exercise of the statutory right. The offence is similar to an existing offence relating to rights of way (section 57 of the National Parks and Access to the Countryside Act 1949). The offence would apply, for example, to notices forbidding access to access land, or purporting to indicate that access land is closed when it is not, and would attract a fine on conviction of up to level 1 on the standard scale (currently £200). The courts may order that an offender should remove the notice, and a further offence — attracting a penalty of level 3 (currently £1,000) on the standard scale — is committed if the offender does not comply with the order.

Sections 15 and 16: Access under other enactments and by dedication

31. *Section 15* specifies the categories of land to be treated as accessible to the public (under other enactments) for the purposes of excluding the operation of the statutory right of access under section 2(1). It also extends the provision of any local or private enactment, or scheme made under the Commons Act 1899, which grants rights of access for open-air recreation to the inhabitants of a neighbourhood, so that they may be exercised by the public generally. (Such limited rights in particular arise under schemes made under the Commons Acts 1876 and 1899, and under local Acts of Parliament.)
32. *Section 16* allows the owner of land to dedicate the land for the purposes of this Part of the Act, so that it is treated as access land for the purposes of the general right of access under section 2(1). Such dedications are irrevocable, although land which has been dedicated under this section may nevertheless become excepted land. The owner of a lease with an unexpired term of at least 90 years may (by virtue of *subsections (1) and (4)*) dedicate the land for the duration of the lease. The person dedicating the land may provide that any of the restrictions set out in Schedule 2 should be relaxed or removed, so that, for example, people may exercise the right of access on horseback. The dedication may be subsequently amended in order to exclude or relax further restrictions, but not so as to reimpose any restrictions. Land may be dedicated under this section even if it would otherwise be access land (because it is open country or registered common land). This will allow the person dedicating the land to lift any of the restrictions set out in Schedule 2, and dedication will ensure that the land remains access land even if it ceases to be open country or registered common land (unless it becomes excepted land). *Subsections (2) and (6)* allow the Secretary of State (or the National Assembly for Wales) to make regulations, including regulations prescribing the form of dedication, requiring its notification to the appropriate countryside body and the access authority, and making provision for the dedication of land where interests are held in the land other than by the owner of the fee simple.

Sections 17 to 20: Miscellaneous

33. *Section 17* provides a new power to make byelaws. Where necessary, access authorities (defined in section 1 as the local highway authority, or in national parks, the National Park authority) will be able to make byelaws to preserve order, to prevent damage on access land in their area, and so as to avoid undue interference with the enjoyment of the land by others. Byelaws will not affect the exercise of rights of way crossing the land to which they apply. Whereas a failure to comply with the restrictions set out in Schedule 2 will not in itself constitute a criminal offence, transgression of a byelaw may be made an offence punishable by a maximum fine of level 2 on the standard scale (currently £500). Byelaws will need to be confirmed by the Secretary of State (or the National Assembly for Wales). Byelaws may be made in anticipation of land becoming access land, but may not be confirmed until such time as the land is access land. Once confirmed, they may be enforced by any other county, district or parish council in whose area lies the land affected by the byelaws.
34. *Section 18* enables access authorities to appoint wardens in respect of access land, so as to give advice both to access users and land owners, to secure compliance with byelaws, with the restrictions set out in Schedule 2 and with any restriction or exclusion imposed under Chapter II. Wardens will have a right of access to access land, but must produce evidence of their appointment if required. Wardens will generally have no powers to undertake any activities on the land which would cause damage to the owner.
35. *Section 19* permits access authorities (after consulting with the owner or occupier of land affected) to erect notices indicating the boundaries of access land and excepted land, notifying the public of the general restrictions set out in Schedule 2 and any exclusions or restrictions in force under Chapter II, and providing information about any other matters relating to the land or access to it. Authorities may also contribute toward

the cost of such signs provided by anyone else (such as the owner or user groups): they are not obliged to do so.

36. *Section 20* imposes a duty on the countryside bodies to issue a code of conduct for the guidance of users of the right of access and persons interested in access land (such as farmers, landowners and commoners). It also requires the countryside bodies to take such steps as they consider expedient to ensure that the public are informed of the extent of and means of access to access land, and that both the public and persons interested in access land are informed of their rights and obligations under the statutory right of access. It also allows the countryside bodies to use the code as a means of fulfilling their existing duties under section 86 (1) of the National Parks and Access to the Countryside Act 1949 to prepare a country code relating to National Parks, Areas of Outstanding Natural Beauty and long distance routes. The section enables the countryside bodies to contribute towards expenses incurred by third parties in providing information about the new right.

Sections 21 to 33: Exclusion or restriction of access

37. *Section 21* defines exclusions or restrictions of access for the purposes of Chapter II, and gives examples of the forms which restrictions of access might take. *Subsection (5)* explains that, for the purposes of the Chapter, the “relevant authority” is the countryside body, or, where the land falls within a National Park, the National Park authority. However, *subsection (6)* enables the Forestry Commissioners to give notice that the Commissioners will act as the relevant authority for any land dedicated under section 16 which appears to the Commissioners to consist wholly or predominantly of woodland. *Subsection (7)* enables the notice to be revoked where land ceases to be woodland. (Where the Commissioners have given such notice, the Commissioners are the relevant authority from the date specified in the notice.)
38. *Section 22* explains how landowners (or, where the land is subject to a farm tenancy, the tenant) will have a discretion to exclude or restrict access on up to 28 days each calendar year. However, no more than four of the 28 days may comprise a Saturday or Sunday, and the discretion may not be exercised at all in respect of Saturdays between 1 June and 11 August in each year, nor on Sundays between 1 June and 30 September, nor any bank holiday. The Secretary of State (or the National Assembly for Wales) will be able, by regulations, to vest the discretionary right to exclude or restrict access in any combination of persons with an interest in the land (such as the tenant and those with sporting rights), but only so that, taken together, their rights do not exceed 28 days in any year. The person exercising the discretion will be required to inform the relevant authority of the exclusion or restriction. *Subsection (8)* will enable the Secretary of State (or the National Assembly for Wales) to make regulations requiring the exercise of discretion under section 22 to relate to land the boundaries of which are determined in accordance with regulations. The regulations could, for example, seek to ensure that land subject to discretionary restrictions is identifiable in practice — by requiring it to be bounded by, for example, a stream, ditch or fence.
39. *Section 23* provides that landowners will also, in certain circumstances, have a discretion to restrict access so as to exclude the taking of dogs. The restriction may apply at any time in respect of land which is managed for the breeding and shooting of grouse; and for a period of no more than six weeks, in respect of any field of 15 hectares in size or less, in connection with lambing. *Subsection (5)* provides that any exclusion of dogs under this provision does not apply to trained guide or hearing dogs.
40. *Sections 24 to 26* and section 28 set out the circumstances in which exclusions or restrictions may be directed by the relevant authority or, in the case of defence or national security, by the Secretary of State. In every case, the authority (or the Secretary of State) may impose only the minimum restriction consistent with the purpose for which it is sought. Exclusions or restrictions for the purposes of land management, the prevention of fire, the prevention of danger to the public, nature conservation, heritage,

defence or national security may be for a fixed period or may take place at a time to be determined by a person specified for that purpose in the direction. Where a direction would exclude or restrict access to land indefinitely, or for a period of at least six months, the relevant authority must first consult any local access forum for the area (see the notes on sections 94 and 95 relating to the provision for local access forums in Part V of the Act).

41. An application may be made for a direction in respect of land which is not (at the time of the application) access land, but sections 24(4) and 25(5) provide that the relevant authority may not give such a direction unless they are satisfied that the land is likely to become access land during the period of the proposed direction. Such directions might be given in anticipation of land being shown as access land on the publication of a conclusive map by the countryside body, or in anticipation of the termination of an access agreement over land to which the new statutory right would apply but for the effect of section 15(1)(c).
42. *Section 24* allows the relevant authority to exclude or restrict access for the purposes of land management. Any person with an interest in the land may apply. In deciding whether to approve such applications, the authority must take into consideration the use made or intended to be made by the applicant of the discretionary power to exclude or restrict access for up to 28 days each year.
43. *Section 25* enables the relevant authority to exclude or restrict access where there is particular risk of fire, or to protect the public from any danger by reason of anything done or intended to be done on the land. Any person with an interest in the land may apply, or the relevant authority may initiate such an exclusion or restriction itself. In deciding whether to approve an application, the authority must take into consideration the use made or intended to be made by the applicant of the discretionary power under section 22.
44. *Section 26* sets out provisions for excluding or restricting access to land in the interests of wildlife and habitat conservation, or to protect sites of historic or archaeological importance. The relevant authority will be responsible for directing such exclusions or restrictions of access, but in England, they must have regard to any advice given by English Nature or the Historic Buildings and Monuments Commission (English Heritage), as appropriate. In Wales, a National Park authority and the Forestry Commissioners must have regard to any advice given by the Countryside Council for Wales (for proposals with respect to wildlife and nature conservation) or the National Assembly for Wales (Cadw — for proposals with respect to the preservation of sites of heritage or archaeological importance). The Countryside Council for Wales must have regard to any advice given by the Assembly (Cadw) on exclusions or restrictions for the preservation of sites of historic or archaeological importance. The body to whose advice the relevant authority must have regard are known as “the relevant advisory body”.
45. *Section 27* provides for directions which exclude or restrict access on grounds of nature conservation, heritage, land management, fire or danger, to be revoked or modified by the relevant authority, after consulting (where reasonably practicable) the person who initially applied for the exclusion or restriction or his successor in title (or, in the case of nature conservation or heritage closures, consulting with the relevant advisory body). It also requires long-term or annual exclusions or restrictions which last for more than five years to be reviewed at least every five years.
46. *Section 28* provides for the Secretary of State to exclude or restrict access for the purposes of defence or national security. Where such exclusions or restrictions last for more than five years, the Secretary of State must review them at least every five years. The Secretary of State must also prepare a report on any review of a direction given for the purposes of defence undertaken in a year, and lay a copy of his report before Parliament. The Secretary of State may revoke or modify a direction given under this section.

47. *Section 29* outlines the provisions for a reference by a relevant advisory body in relation to exclusions or restrictions proposed under section 26. Where the advisory body has given advice and the relevant authority has decided not to direct the exclusion or restriction (or otherwise not to act in accordance with the advice), the advisory body may make a reference to the appropriate Minister (or to the National Assembly for Wales), who may require the authority to make such exclusions or restrictions as he (or it) thinks fit. The appropriate Minister will be the Secretary of State, except in relation to referrals arising from a decision of the Forestry Commissioners (in England), where the appropriate Minister will be the Minister of Agriculture, Fisheries and Food. This provision does not apply to proposals with respect to the preservation of sites of historic or archaeological importance in Wales, because Cadw are themselves an executive agency of the National Assembly for Wales.
48. *Section 30* makes provision for an applicant for a direction under section 24 or 25 (exclusions or restrictions in interests of land management, fire or danger), to appeal to the appropriate Minister (or the National Assembly for Wales) where the relevant authority decides not to act in accordance with the application. The appropriate Minister is defined as in section 29. On hearing the appeal, the appropriate Minister (or the National Assembly for Wales) may require the authority to make such exclusion or restriction as he (or it) thinks fit. *Subsection (5)* provides for sections 7 and 8 (and Schedule 3) to apply to the procedure on appeal as they apply to the procedure on appeals against provisional maps.
49. It may be necessary to exclude or restrict access to land in an emergency. *Section 31* provides that the Secretary of State (or the National Assembly for Wales) may make regulations to enable the relevant authority to exclude or restrict access in such circumstances for up to three months. *Subsection (2)* allows the regulations to apply any of the other provisions in Chapter II, with modifications, to a direction given under this section — for example, to allow for consultation (possibly after the direction has been made) with advisory bodies where the restriction or exclusion is made in the interests of the urgent protection of wildlife.
50. *Section 32* enables the Secretary of State to make regulations providing for the procedures relating to the exclusion or restriction of access under Chapter II, including the requirements for the giving of notice, the undertaking of consultation, the giving of directions, and the procedure on an appeal. These regulations may also restrict applications for directions under section 24 or 25 from commoners: regulations might, for example, require applications to represent a majority of the commoners interested in the land, or to show that the applicants have the power to implement any direction given (by excluding or restricting public access to the common).
51. The Countryside Agency, and the Countryside Council for Wales, are generally responsible for administering the provisions for exclusions and restrictions under Chapter II outside the National Parks. *Section 33* provides powers for those two bodies to issue guidance to National Park authorities on their role in administering these provisions within National Parks, and to the Forestry Commissioners where the Commissioners are the relevant authority for woodlands dedicated under section 16. The countryside bodies' guidance will need approval from the Secretary of State or the National Assembly for Wales, and must be published.

Sections 34 to 39: Means of Access

52. Chapter III sets out the arrangements for access to be secured or improved to access land. It allows the access authority (which is defined in section 1 as the highway authority or, in National Parks, the National Park authority) to seek agreement with landowners for the creation or safeguarding of means of access, or in default of such agreement, to secure the means of access by carrying out any necessary works themselves.

53. *Section 34* defines a means of access for the purposes of this Chapter. It includes an opening in a fence, wall, hedge or gate on the land, or a construction (such as a stile or bridge) which allows the public to cross such a feature or any watercourse.
54. *Section 35* sets out the circumstances in which an access authority may make an agreement with an owner or occupier in relation to means of access on their land. These are where the authority 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. The authority may also make an agreement with a landowner to impose restrictions on any change to an existing means of access. *Subsection (2)* allows the authority to agree to carry out the works themselves, or to pay for the owner or occupier to do so. The authority may also make payments in consideration of the owner or occupier's agreement to restrictions.
55. *Section 36* sets out the action the authority may take if the owner or occupier fails to carry out his obligations under the agreement. Where the agreement was for the owner or occupier to carry out work to an agreed timetable (or in reasonable time, if no timetable is stipulated in the agreement), the authority may, after giving at least 21 days' notice, carry out the work themselves. The authority may recover any costs incurred less any contribution which they were themselves to make under the agreement.
56. Where the agreement was for the owner or occupier to observe a restriction, and he fails to abide by that agreement, the authority may serve a notice requiring him to carry out work to remedy the breach of the restriction, within not fewer than 21 days. If the landowner fails to comply with the notice, the authority may carry out any work specified in the notice. Any costs incurred by the authority in carrying out the work may be recovered from the owner or occupier who entered into the agreement.
57. *Section 37* sets out procedures which an access authority may follow if it considers that it cannot enter into an agreement on reasonable terms with a landowner to secure a means of access to the land. It may serve on the owner or occupier a notice stating its intention, after a period of at least 21 days, to carry out work to provide the means of access. The authority must serve a copy of the notice on any other owner or occupier of the land.
58. *Section 38* allows for an appeal to the Secretary of State (or the National Assembly for Wales) against a notice from an access authority alleging the breach of an agreement imposing restrictions (under section 36(3)) or requiring the creation or safeguarding of a means of access (under section 37(1)). The appeal may be made on the grounds that any of the work specified in a notice under section 36(3) is not necessary to remedy the breach of the agreement or has been carried out or requires more time. An appeal against a notice under section 37(1) may be made on the grounds that any of the work specified in the notice is not necessary to secure reasonable public access to the land, has been carried out, that the means of access should be provided elsewhere (for example, because it would be detrimental to the effective management of the land), or that a different means of access should be provided (for example, a gate instead of a stile). The Secretary of State (or the National Assembly for Wales) may confirm the notice with any modifications, or cancel it. The access authority will not be able to carry out any works while they remain the subject of an appeal.
59. The Secretary of State (or the National Assembly for Wales) may make regulations as to the making of appeals. Sections 7 and 8 (and Schedule 3) apply to the procedure on appeal as they apply to the procedure on appeals against provisional maps.
60. Where an owner or occupier repeatedly fails to comply with notices served by the access authority, *section 39* enables the authority to seek an order from the courts. The section applies where two or more notices under section 36(3) or 37(1) have been served on the owner or occupier within a period of three years, and the period for compliance with those notices has expired. In these circumstances, a magistrates' court may grant an order requiring the owner or occupier to remove any obstruction and to keep the

means of access clear. Failure to comply with the order is an offence, attracting a fine on conviction of up to level 3 on the standard scale (currently £1,000). The access authority may also remove any such obstruction at the expense of the offender.

Sections 40 to 46: General

61. *Section 40* concerns powers of entry to land. It may be necessary for the bodies charged with functions under Chapters I to III of Part I of the Act to enter land in order to carry out their functions. The section sets out the circumstances and manner in which the countryside bodies, the highway authorities, the Forestry Commissioners and the National Park authorities may enter land. Any person authorised by these bodies for the purposes of entering land which is not access land must give the occupier 24 hours' notice, unless it is not reasonably practicable to do so, or the entry is in relation to a possible offence under section 14 or 39. He must also produce evidence of his authority at any time. It will be an offence to obstruct access for authorised persons, attracting a fine on conviction of up to level 2 on the standard scale (currently £500). The power of entry does not extend to dwellings.
62. *Section 41* requires a body exercising a power of entry under section 40 to compensate any person who has sustained damage in consequence. Any dispute as to entitlement to compensation is to be determined by an arbitrator appointed by the Secretary of State or the National Assembly for Wales, as appropriate.
63. *Section 42* enables the Secretary of State or the National Assembly for Wales to make regulations to provide that the fact that land is subject to the right of access is to be disregarded in deciding whether the land is or is not a 'public place' for the purposes of a specified enactment. For example, regulations could provide that access land would not be treated as a public place for the purposes of the Firearms Act 1968 merely by virtue of the new statutory right applying to the land, and that the landowner would therefore not need to show "lawful authority or reasonable excuse" to use or carry a firearm on the land.
64. *Section 43* explains that the access legislation binds the Crown as it does any other landowner.
65. *Section 44* provides that orders and regulations made under this Part of the Act are to be made by statutory instrument and as respects England are to be subject to annulment by either House (except that any order made under section 3 extending the right of access in England to coastal land, or under paragraph 3 of Schedule 2 amending the restrictions in paragraphs 1 and 2 of that Schedule, will require to be approved in draft by a resolution of both Houses).
66. *Section 45* comprises definitions of a number of terms used in this Part of the Act.
67. *Section 46* and Part I of *Schedule 16* effect repeals consequent on the provisions of Part I. *Paragraph (a) of subsection (1)* provides for the repeal of section 193(2) of the Law of Property Act 1925. Section 193(2) allows the owners of common land to execute a deed of dedication so that the common will become subject to the right of access for air and exercise provided for in section 193(1). This power will be rendered obsolete in view of the new powers to dedicate access over land contained in section 16. Any commencement order bringing this repeal into force is expected to contain a saving for existing deeds.
68. *Paragraph (b) of subsection (1)* provides for the repeal of sections 61 to 63 of Part V of the National Parks and Access to the Countryside Act 1949. These sections imposed an obligation on local planning authorities to survey the extent of open country within their areas, and to consider the need for increasing access to such open country by means of access agreements and orders. By virtue of *subsection (2)*, local planning authorities will continue to be able to make access agreements and orders using their powers under Part V of the 1949 Act (as amended by the Countryside Act 1968), other than over

*These notes refer to the Countryside and Rights of Way Act
2000 (c.37) which received Royal Assent on 30 November 2000*

land which is open country or registered common land for the purposes of the Act (the powers will continue to apply to open country which comprises woodland, land including or adjacent to rivers or canals, and, pending any order made under section 3, the foreshore).

69. *Subsection (3)* of section 46 introduces *Schedule 4*, which includes an amendment of section 193(1) of the Law of Property Act 1925 so that limitations or conditions qualifying the right of access to urban and other commons under the 1925 Act may also be imposed by the Secretary of State (or National Assembly for Wales) for the purpose of nature conservation. *Paragraph 4* of Schedule 4 amends section 2(6) of the Countryside Act 1968, so that the duties of the countryside bodies, which include giving advice to local authorities about the use of their byelaw-making powers under the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968, extend equally to the giving of advice to access authorities about the use of their powers in section 17.