

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

EXPLANATORY NOTES

INTRODUCTION

Part I: Access to the Countryside

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.
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”¹. *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 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.

¹ Halsbury’s Laws of England (4th ed.), vol 6, page 197.