

Access to National Parks and the Broads & Rights of Way



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Overview

- Public rights of way
- The 'right to roam': CROW 2000
- Common land

Public rights of way (1)

Essential characteristics:

- A way open to the public at large
- The public must have the right to use the way
- Public right must be primarily for passage
- Must follow a defined route

Identified on Definitive Map & Statement for county/metropolitan district/London borough

Public rights of way (2)

- Footpath
 - Right of way on foot only
 - No definitive list of permitted ‘accompaniments’(dogs ✓ bicycles x)
- Bridleway
 - Can be used by pedestrians, horse riders and cyclists (latter must give way to those on foot / on horseback)
 - Mechanically propelled vehicles not permitted – but an electrically assisted pedal cycle is not precluded
- Restricted byways
 - Right of way for all types of traffic save mechanically propelled vehicles
 - Mostly former RUPPs with rights for mechanically propelled vehicles extinguished (s.67 NERC 2006)
- Byways open to all traffic
 - Right of way on foot, horseback and all mechanically propelled vehicles but used mainly for the purpose of walking/riding

Public rights of way (3)

Creation

- Public path creation agreements (HA 1980 s.25)
 - Landowner + local authority (includes Broads Authority and NP Authorities)
 - Creation of footpaths, bridleways and restricted byways
- Public path creation orders (HA 1980 s.26)
 - Power for National Park authorities, district and county councils to make orders for creation of footpaths, bridleways and restricted byways
 - (i) it appears to the authority/council that there is a need for the new path and (ii) expedient to create a new path
 - Compensation may be payable to landowners.
 - + power for NE / NRBW to apply to SS for public path creation order under Part 1 CROW

Public rights of way (4)

Creation

- Dedication
 - Deemed statutory dedication under S.31 HA 1980
 - 20 years' use before the right of way is brought into question
 - Onus on landowner to show no intention to dedicate
 - Not available for land owned by public body where dedication would be incompatible with public purposes for which the land is held
 - Common law
 - No specified period of use – depends on the circumstances
 - Onus on applicant to demonstrate (inferred) intention to dedicate

Public rights of way (5)

The Definitive Map and Statement

- Treated as conclusive of the rights recorded (but not in respect of rights not recorded)
- Surveying authority under a duty to keep the map under review / up to date
- Changes may be made by way of modification order (s.53 WCA 1981) either by local authority of own volition or following application
 - Procedure set out in Schs 14 & 15 WCA 1981 and Wildlife and Countryside (Definitive Map and Statement) Regulations 1993
 - If objections to the Order, referred to SS for confirmation, modification or refusal
 - Note – Sch 14 para 3 (SS power to direct LA to determine application)

Public rights of way (6)

- Interference with PROW
 - Part IX HA 1980
 - Offence under s.137 to wilfully obstruct a highway “without lawful excuse”
 - Gates/stiles etc may be placed on PROW if originally dedicated subject to such structures (should be recorded on definitive statement)
 - Ploughing of fields – may be recorded in definitive statement, claimed under common law, or under s.162 HA 1980
 - Specific provisions relating to bulls.

Public rights of way (7)

Diversions & Extinguishments

- “Once a highway always a highway”
- Provisions for extinguishment/diversion in Part VIII HA 1980
 - S.118 – power to stop up footpath / bridleway / restricted byway where it appears to the council it is expedient to do so on the ground that it is not needed for public use
 - S.116 – power to apply to Mags Ct for an order to stop up or divert a highway on the basis that
 - It is unnecessary; or
 - It can be diverted so as to make it nearer or more commodious to the public
 - S.119 – power for council to make a diversion order where it appears to them that in the interests of the owner, lessee or occupier of land crossed by the path or way it is expedient that the line of the path, or part of that line, should be diverted.

‘Right to roam’ – CROW 2000 (1)

- Part 1 CROW 2000
- Does not confer a freestanding general right of ‘access’ to or ‘roaming of’ the countryside
- Right for members of the public to enter onto, and remain on, “access land” for the purposes of recreation – subject to certain restrictions and conditions
- “Access land” – defined in s.1
 - Any land shown as “open country” on conclusive map
 - If no such map – any land situated more than 600m above sea level
 - Land shown as registered common land (or if no such map, registered common land in any area outside Inner London)
 - “Coastal margin”
 - Land dedicated under s.16 (not including “excepted land” or land treated by s.15(1) as being accessible to the public apart from the provisions of CROW 2000)

‘Right to roam’ – CROW 2000 (2)

- “Excepted Land”:
 - Part 1 of Schedule 1 CROW 2000 sets out, by way of description land which is excepted from the right to roam conferred by Part 1 of the Act, eg:
 - (i) Land on which the soil has, in the last 12 months, been disturbed by ploughing or drilling for the purpose of planting or sowing crops or trees (other than, in England, land which is coastal margin or forms part of the coastal route strip);
 - (ii) Land covered by buildings, or the curtilage of such land;
 - (iii) Land within 20m of a dwelling (other than coastal margin in England); and
 - (iv) Land within a park or garden.
 - Has to be read with definitions and qualification in Part 2 of Schedule 1
- S.15(1) – land treated as publicly accessible apart from CROW 2000
 - Includes metropolitan commons and access to monuments under public control (s.19 Ancient Monuments and Archaeological Areas Act 1979)

‘Right to roam’ – CROW 2000 (3)

- The right under Part 1 of CROW 2000 is the right to use access land on foot for recreation. Unless with the agreement of the landowner, it does not include the right to e.g:
 - (i) Drive or ride a vehicle, bicycle or horse;
 - (ii) Bring an animal, other than a dog;
 - (iii) Camp;
 - (iv) Engage in any commercial activity.
- There are other general conditions in s.2 CROW 2000.
- There is also a power conferred on an “access authority” (National Park Authority or Highway Authority) to make bylaws in respect of access land in their area.

‘Right to roam’ – CROW 2000 (4)

- Access may be restricted by a direction made by the access authority under Chapter II CROW 2000, e.g.
 - s.24 – necessary for management of that land;
 - S.26 – necessary for nature conservation purposes
- Owners of certain land may also provide that dogs cannot be brought onto land during specified periods in connection with lambing, or moor managed for breeding and shooting grouse.
- A landowner may not place a notice on or near access land a notice containing false or misleading information likely to deter the public from exercise their ‘right to roam’ on access land. Placing such a notice is an offence, punishable by fine on summary conviction.

‘Right to roam’ – CROW 2000 (5)

- “Coastal margin”
 - Under s.3A CROW 2000, the Secretary of State may, by order, specify descriptions of land in England which are “coastal margin” for the purposes of the Act.
 - S.3A was inserted by the Marine and Coastal Act 2009. Part 9 of the 2009 Act places a duty on SS/NE to secure a route around the whole of the English coast consisting of one or more long-distance routes and available to the public for recreational journeys on foot or by ferry
 - + public access rights to a wider area of land along the way for people to enjoy.
 - S.3A also makes provision land not to become coastal margin until the end of an “access preparation period” in relation to the land.

Common land

- 2 common misconceptions:
 - Common land is in some form of public ownership. Most common land is privately owned
 - Public has a right of access to all of it. Not correct (at least, not by virtue of its status as common land – see now CROW Part 1)

- Metropolitan Commons
 - S.193 LPA 1925 – “Members of the public shall, subject as hereinafter provided, have rights of access for air and exercise to any land which is a metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898,” (as well as other specified land) – subject to qualifications/conditions in s.193(1)(a) – (d)
 - Not limited to urban areas – eg applies to large areas of Lake District and South Wales

Thank you for listening

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