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Managing Public Access to Areas of Land

Legal statement

This guidance is intended to relate only to Wales. The primary legislation is the same in England but there are some differences in secondary legislation and in terms of implementation.

Whilst Natural Resources Wales has made every effort to ensure that the contents of this guidance is accurate, Natural Resources Wales will not be held responsible for any inaccuracies which it may contain; neither does Natural Resources Wales assert that this guidance represents an authoritative statement of the law, nor does it purport to provide any member of the public with legal or other professional advice.

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Public Access to Areas of Land

This document provides guidance on the most common issues that may affect anyone responsible for managing land that is available for public access including:

- help for landowners and managers looking for clarification of the law relating to public access to the countryside;
- practical solutions for people looking for advice on ways of reconciling their land management interests with public access.

It is targeted at:

- land managers (who are often best placed to take practical action) and their advisers;
- local authorities (which have duties, powers and expertise in countryside access and are often able to help); and
- anyone interested in the management of public access to the countryside.

Where relevant, we indicate further sources of information or advice.

This document focuses on public access to areas of land **including access and liability issues under the Countryside and Rights of Way Act 2000** (the CRoW Act) and updates the information contained in the 2005 publication *Managing Public Access*.

When considering matters of law, such as trespass and liabilities, it is important to understand the distinction between a criminal offence, which is seen in law as being an offence against the whole of society (represented by the Crown); and a civil offence, which is conduct that could result in legal action between individual members of society to decide their rights and obligations in their dealings with each other. This distinction is particularly important when considering liability issues; as they can sometimes arise out of the same set of facts, both types of liability may need to be addressed.

It is very unusual indeed for individual landowners to have absolute control of all the property rights associated with their land. Much depends on what rights, if any, are vested in other people. For example, a mortgagee might have a charge, or a tenant a lease. The utility companies may also hold easements for their pipelines, cables and associated structures.

The rights held by the public over private property, in particular rights of access over defined routes, or over defined areas of land, are as valid in legal terms as the property rights vested in any other person or body, including a landowner. In fact, landowners and farmers exercise their rights to use and manage their land subject to these public rights.

The public has a right of access to many areas of common land as a result of provisions within the Law of Property Act 1925. Access can also be provided to areas of land as a result of specific Acts of Parliament, by the granting of rights by landowners, or by agreement with landowners. The CRoW Act created a right of access to a significant area of Welsh countryside. This Act also provided a framework for managing this new access right.

The courts have also accepted that residents of an area, but not the general public, can acquire the right to use land for 'lawful sports and pastimes' through a tradition of such use. Long-standing informal public access (access by custom) exists in many areas, even though it is not based on any statutory right. These different types of area-wide access are reviewed in more detail below.

Common Land

There is considerable confusion about public rights over 'common land'. Many people wrongly believe that common land implies public ownership. In fact, most common land is private land over

which people known as ‘commoners’ have specific rights of use (e.g. to graze sheep or cattle, to collect firewood, or to fish). These rights are in addition to those of the owner of the common. Some common land is land that is, or was, ‘waste land of a manor’ and as such is not subject to rights of common. Common Land and common rights must be registered in a register of common Land - this includes land already registered under the 1965 Act, i.e. at the commencement of Part 1 of the Commons Act 2006, as well as other land that may be so registered in it under Part 1 Commons Act 2006. Town or Village Greens must be registered in a register of town or village greens (including land already registered as TVG and land that may be registered as TVG under Part 1 of Commons Act 2006).

In Wales, the 22 unitary authorities hold the registers, in their capacity as commons registration authorities. Some 1,600 commons, with a total area of around 175,000 hectares have been registered. They cover about eight per cent of the entire area of the country. There are also rights of access for recreation to commons. The public has a right of access to:

- all common land situated wholly or partly in the area of a former urban or metropolitan district council (under Section 193 of the Law of Property Act 1925) (often called ‘urban’ commons). The right is for walking and horse riding;
- some other common land as a result a deeds of declaration (issued under the Law of Property Act 1925). Most Crown commons in Wales (commons that are owned by the Crown, Crown agents or government departments) are open to public access by deed of declaration. As with urban commons, the right is for walking and horse riding;
- local inhabitants and/or the general public may also enjoy rights of access over certain rural commons under various other Acts of Parliament and formal management schemes, e.g. a ‘Scheme of Regulation’ run by the local authority. Section 15 of the Countryside and Rights of Way Act 2000 gives these rights to the general public as well; and
- all other registered common land on foot, for informal recreation under the CRoW Act.

The CRoW Act has introduced a framework for restricting or excluding public access where necessary. However, the scope for a landowner to use these restrictions is not available over urban commons or common land that is subject to a deed of declaration under Section 193 of the Law of Property Act 1925. This is because it is not CRoW access land.

Under Section 38 of the 2006 Act which applies to all registered common land, the consent of the Welsh Government is required for the construction of any building or fence, or any other work that would interfere with any public rights of access to common land (or private rights, e.g. those of commoners). This applies to all fences, however temporary they may be and regardless of their purposes (e.g. consent is still required for fences to control stock for conservation reasons), unless they are specifically allowed under subsections 6a, 6b, 6c, and 6d of the Commons Act 2006.

New common land can be created where rights of common are granted to commoners by landowners. Rights can also be acquired by prescription (provided that the use is as of right for an uninterrupted period of not less than 20 years) over land that is not already common land. Both the rights and the land can then be registered under-The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 which came into force on 6 September 2007. These regulations specify

- the procedure for applying to register land as a town or village green;
- the procedure for dealing with applications for registration; and
- the method of registration of land as a town or village green following the granting of an application. Applications should be made to the Commons Registration Authority. WG guidance notes for the completion of an application for the registration of land as a Town or Village Green can be found on the Welsh Government Planning Portal website.
http://www.planningportal.gov.uk/uploads/pins/common_land/guidance/section_16_completing_form_engwel.pdf

Town and Village Greens

Town and village greens are areas of land registered as such under the Commons Registration Act 1965. As with common land, some are privately owned but many are owned and maintained by the community council. 'Greens' are defined as:

- land that has been allotted by or under any Act of Parliament for the exercise or recreation of the inhabitants of any locality;
- land on which the inhabitants of any locality have a customary right to take part in lawful sports and pastimes;
- land on which a significant number of the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years.

The phrase 'lawful sports and pastimes' has never been defined in law. It has been accepted as including such activities as the village cricket match, maypole dancing, flying a kite and 'idling beside the river'. 'Inhabitants of a locality' is now taken to include inhabitants of a neighbourhood within a locality. Land cannot be registered as both a green and common land but rights of common may exist over a green. Approximately 220 town and village greens in Wales have been registered under the Commons Registration Act 1965.

New village greens may be claimed on the basis of use, as of right, for an uninterrupted period of not less than 20 years. Applications can be made to the appropriate Commons Registration Authority under the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 which can be found on the Welsh Government Planning Portal website <http://www.planningportal.gov.uk/planning/countryside/commonland/forms>. Exercising the rights of public access created by Part I of the CRoW Act is to be disregarded in any determination of whether land should become a town or village green.

Access Agreements and Orders

Landowners can enter into agreements to provide for public access to land, air and water with local authorities, statutory agencies and Government departments. For example, landowners can enter into agreements with local authorities to secure public access over certain other types of land called 'open country' under the National Parks and Access to the Countryside Act 1949 and subsequently extended by the Countryside Act 1968 (although the definition of 'open country' for the purposes of access agreements and orders is wider than that for the CRoW Act).

Landowners can also enter into management agreements with local planning authorities (or the National Park authority, for land in National Parks) under Section 39 of the Wildlife and Countryside Act 1981, in which provision is made for public access.

Local authorities may also make access orders over open country (as per the wider definition), whether or not the landowner is in agreement, under the 1949 Act, although the power is used rarely. The orders need to be confirmed by the Welsh Government. Adequate notice must be given to the landowner and compensation must be paid by the authority. Few access orders are in existence. In most cases where they might have been used, access has been secured through an agreement, following negotiations. Much of the land that could have been included in these agreements is now CRoW access land.

Countryside and Rights of Way (CRoW) Act 2000 Access Land

The CRoW Act 2000 created a right of public access to areas of land which we refer to as 'CRoW access land'. CRoW access land includes registered common land and open country and, for the purposes of the 2000 Act, defines 'open country' as land which is wholly or predominantly

mountain, moor, heath or down. Natural Resources Wales produces maps of all the CRoW access land throughout Wales. Ordnance Survey 1:25,000 Explorer and the Natural Resources Wales's website show CRoW access land, together with some other types of land to which the public has access through certain other arrangements.

Natural Resources Wales estimates that the amount of land with rights of public access has increased by 367,000 hectares since May 2005 when the new rights of access came into force across the whole of Wales. The CRoW access land is reviewed at least every 10 years.

The public has a right of access on foot, for informal recreation, to CRoW access land except when restrictions are in force. But Natural Resources Wales encourages farmers and landowners to adopt a 'least restrictive option' approach. People with a legal interest in CRoW access land (such as the landowner, the tenant, or someone with rights of common grazing) can restrict access to that land under certain circumstances. The restriction may be simply a requirement to stay to a particular linear route, or could be total exclusion of the public.

Section 16 of the CROW Act allows freeholders and holders of long term leases to dedicate land as CRoW access land. Natural Resources has dedicated much of the woodland it manages, adding almost 100,000 hectares to the area of CRoW access land.

Access by Custom

The public sometimes enter areas of land onto which they have not been specifically invited and to which no formal rights of access apply. Access in these cases is a fact (de facto) not a right (de jure). In practice, access by custom is often tolerated, particularly where it is low-key and local people are involved. There may be a mix of access as of right and by custom; for example, access to an area on foot may be by right (de jure) but horse riding may be tolerated by the landowner (de facto). Access by custom may also exist simply because it is impractical to prevent or control access to the land involved (e.g. extensive or remote areas).

Key points: Public Access to Areas of Land

- There is no general right of access to private land adjoining public rights of way or other highways.
- Common land is mostly private land subject to rights of common or is what is known as 'waste land of the manor'.
- Town and village greens are areas where local people have a customary right of access for lawful sports and pastimes.
- Local authorities and the Welsh Government may negotiate access agreements with landowners, for example to provide for 'higher rights' uses.
- There is a right of public access, for informal recreation on foot, to all land that is shown on the Conclusive Map of open country and registered common land, subject to restrictions or it being classed as excepted land
- Freeholders and holders of long leases can dedicate land as CRoW access land.
- Access by custom is sometimes accepted on other open land.

Civil Trespass

People who stray from highways, or go onto land to which they have no right of access, without permission or excuse, may be committing the civil wrong of trespass. The public's right over a highway is limited. It has been defined as a 'right of passage for the purpose of passing and re-passing and for purposes reasonably incidental thereto'. The class of highway legally determines whether it can be used on foot, horseback, or by vehicles, whether mechanically propelled or not.

Case law has established that it is reasonable, for example, for a footpath user to take a pushchair. It is probably reasonable to be accompanied by a dog along a public right of way (so long as the dog does is not allowed to stray from the path) but this has not been established in case law.

Case law has also determined what users can do on highways. For example, stopping to admire the view, to talk to a passer-by, to take a photograph, to make a sketch, or to eat a picnic would be acceptable, so long as no obstruction is caused. Whether an activity is acceptable depends on what a court would regard as reasonable in all the circumstances of the particular case.

Members of the public may trespass inadvertently while seeking to follow public rights of way. Trespass of this sort is best avoided by ensuring that the public rights of way are easy to follow. Waymarking a route and making sure gates and stiles are in good condition are effective ways of ensuring this. Users are permitted to deviate around an obstruction on a public right of way without committing a trespass provided that the deviation is across land in the same ownership as the land which the blocked path crosses. But, if the ground across which the public right of way passes erodes away, such as along a river bank or stretch of coastal cliffs, there is no right to deviate around the landslip, and so the way may be lost. In some cases, users considered to be trespassers by the landowner or farmer may strongly maintain that they have a right to use a particular path. In such cases, the highway authority should be asked to examine all the evidence so that the situation can be clarified in the interests of all.

Criminal Trespass

People who cause damage while trespassing may, in the process, commit a criminal offence (e.g. of criminal damage of property under the Criminal Damage Act 1971) but trespass is not normally a criminal offence. Trespass is a criminal offence in some cases, for example on railway land or where military byelaws are in force.

Another example of criminal trespass is where land has been notified as a Site of Special Scientific Interest; a trespasser may, in the process of trespassing, commit a criminal offence under Section 28P of the Wildlife and Countryside Act 1981, if they (without reasonable excuse):

- intentionally or recklessly destroy or damage any flora or fauna or geological or physiographical features by reason of which the land is of special interest;
- intentionally or recklessly disturb fauna; and they know what they destroy, damage or disturb is within a SSSI.

Indeed, any person, whether a trespasser or not, who intentionally causes the damage noted above is also likely to be committing a criminal offence.

Aggravated Trespass

The Criminal Justice and Public Order Act 1994 provides that anyone trespassing on land in order to intimidate someone engaged in a lawful activity or to disrupt a lawful activity on land is committing the offence of 'aggravated trespass'. It is also an offence to ignore the directions of a uniformed police officer to leave the land, when the officer believes that the person is committing or is about to commit aggravated trespass.

Anti-social Behaviour

Section 30 of the Anti-social Behaviour Act 2003 provides the police with powers to disperse groups of individuals in certain circumstances, for instance where the officer has reasonable grounds for believing that any members of the public have been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons and that anti-social behaviour is a significant and persistent problem in the relevant locality. Section 60 of the

2003 Act provides senior police officers with the power to remove trespassers living in vehicles and/or caravans where suitable pitches are available elsewhere within the locality.

Liabilities

Many land managers are concerned about their liability to members of the public on their land. The following comments may be of some help in understanding potential liabilities of landowners and occupiers but do not constitute either general legal advice or specific advice on any particular case. Anyone affected by any of these issues should consider obtaining their own legal or other professional advice.

Landowners and occupiers need to be aware that they owe a civil duty of care to anyone who comes on to their land, under the Occupiers' Liability Acts and other legislation. This duty applies both to visitors and, to some extent, to trespassers. A lesser duty of care is owed to people using access rights on CRoW access land. These duties may have implications for public liability insurance. The standard of care one person owes to another will depend on the facts of the individual case. It is important, when assessing any liability associated with public access, that landowners and occupiers ensure that they are clear as to the legal basis of public access on their land, as this will affect the level of the duty of care owed, as explained below.

Obligations to conduct business activities in a safe way also arise under the Health and Safety at Work etc. Act 1974, and associated regulations. A breach of the Health and Safety legislation may give rise to criminal proceedings, but not every such breach will, of itself, constitute a civil wrong (though a criminal breach may assist in demonstrating that a breach of the civil duty of care has taken place, for which damages may be awarded). In most cases of trespass, the reverse applies; that is, the landowner may bring a civil action for damages, but no crime will have been committed.

The duty of care

The Occupiers' Liability Act 1957 sets out a duty of care to people who come on to land by invitation of the owner or occupier or who are permitted to be there. The duty is to take care over the state of the land so that visitors (which could include children, whose age and ability should be taken into account) will be reasonably safe in using it for the intended or permitted purposes. For example, farmers should take steps to protect visitors from hazards, such as slurry lagoons or dangerous animals.

The 1957 Act provides that this duty does not impose any obligation on an owner or occupier to a visitor who willingly accepts risks. This is a statutory enactment of the common law principle that a willing person cannot be said to have been injured in law. Climbers and mountain walkers for example, voluntarily accept the risks of their sport or recreation. If a climber or hill walker is injured in a climbing accident, a claim against the owner or occupier of the land might be defeated by the defence that the injured person willingly accepted the risks.

In addition, an owner or occupier may discharge the duty by giving sufficient warning of the danger to enable the visitor to avoid the risk. Where a person enters premises for business purposes, a purported exclusion of liability (such as "We accept no liability for ...") is of no effect. In other cases, it may be possible to exclude liability so long as a notice to that effect is brought to people's attention. The Occupiers' Liability Act 1984 extends the duty of care to people other than visitors, including trespassers, but only if three conditions are fulfilled: that the owner or occupier knows, or ought to know, of dangers on his or her premises; that he or she knows or suspects that people might come near that danger; and that the risk is one against which he or she might reasonably be expected to offer some protection.

As with the duty of care to visitors, the duty to trespassers and others does not apply to a person who willingly accepts a risk and the duty may be discharged by giving adequate warning of the danger.

The 1957 Act does not apply at all to people exercising their rights over CRoW access land and the duty of care is lower than that owed to a trespasser under the 1984 Act. When the access rights are available (i.e. there are no restrictions in force), the occupier has no duty of care towards legitimate users of CRoW access land for risks arising from:

- natural features of the landscape or any river, stream, ditch, pond or trees;
- a person passing over, under or through any field boundary, except by proper use of a gate or stile.

These exemptions do not apply to any risk created deliberately or recklessly by the occupier.

In addition, although the occupier could be sued by someone exercising their access rights on CRoW access land in respect of other types of hazard, the courts must take into account, when assessing the extent of any duty owed under the 1984 Act, the following:

- the burden (financial or otherwise) on the occupier of meeting their duty of care;
- the importance of maintaining the character of the countryside (particularly features of historic or archaeological interest);
- any relevant guidance from Natural Resources Wales.

This lowering of the occupier's duty of care applies only when and where CRoW access rights are in force. If public access has been excluded (for the purpose of avoiding danger to the public) or the land is excepted land, then the duty of care owed is equivalent to that owed to a trespasser. Where land is dedicated as CRoW access land under Section 16 of the 2000 Act, the lowest duty of care will apply (i.e. as applies to other CRoW access land).

Health and Safety Legislation

The basis of British health and safety law is the Health and Safety at Work etc. Act 1974. The Act sets out the general duties that employers have towards employees and members of the public, and employees have to themselves and to each other. These duties are qualified in the Act by the principle of 'so far as is reasonably practicable'. In other words, an employer does not have to take measures to avoid or reduce the risk if they are technically impossible or if the time, trouble or cost of the measures would be grossly disproportionate to the risk. What the law requires here is what good management and common sense would lead employers to do anyway; that is, to look at what the risks are and take sensible measures to tackle them. The Management of Health and Safety at Work Regulations 1999 generally make more explicit what employers are required to do to manage health and safety under the Health and Safety at Work etc. Act 1974. Like the 1974 Act, they apply to every work activity. Key requirements are that:

- employers and the self-employed have a duty to conduct their undertakings so as to avoid risks to employees, visitors and others (including access users, volunteers and trespassers);
- a suitable and sufficient risk assessment is required;
- the risk assessment must be reviewed if circumstances change significantly;
- the risk assessment must be recorded in writing where the business employs five or more employees. Employers with fewer than five employees still have to do a risk assessment but do not need to record it, although they would be well-advised to do so.

Breach of these regulations may constitute a criminal offence (it may also be indicative of a breach of the civil duty of care and, in the event of an accident, could be relevant to civil claims for damages lodged against the occupier by injured parties). In practice, most risks from business activities to members of the public enjoying their access rights may not be significant. But going through the risk assessment process, recording and periodically reviewing its findings will help land managers' defence in the event of being sued.

Many organisations have produced model risk assessments to help business operators work systematically through risks associated with their business activities. The NFU has models specifically designed for land managers that cover risks to members of the public. The risk assessment process will highlight where measures may be needed to help reduce risks, such as through erecting signs. If a landowner agrees to his or her land being used for an event – such as an orienteering meet or a music concert – a risk assessment is needed. The landowner and event organiser should be clear about who has responsibility for doing the assessment and for implementing the risk management measures required. Signs might be used to warn of risks associated with, for example, slurry lagoons, buildings, farm machinery and some farming operations (e.g. spraying of pesticides). If a serious incident occurs as a result of land management activities, for example one in which someone has to be taken to hospital, then the business operator is required by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 to report the incident to the Health and Safety Executive.

For further advice, visit the Health and Safety Executive website: www.hse.gov.uk. Health and safety advice is also available via the Government's website: www.gov.uk.

Other Relevant Legislation

The Mines and Quarries Act 1954 and the Quarries Regulations 1999 serve mainly to secure the safety, health and welfare of employees at mines and quarries, but some provisions protect other categories of person as well. For example, a quarry operator has a duty to safeguard the health and safety of those in the immediate vicinity of the quarry who are directly affected by its activities. Working quarries are specifically excluded from the CRoW access land provisions of the CRoW Act.

A quarry, whether being worked or not, could be deemed to be a statutory nuisance (under Section 151 of the Mines and Quarries Act 1954) if it is accessible from a highway or public place, and has not been provided with an efficient and properly maintained barrier to prevent persons accidentally falling into it. The entrance to, or shaft of, an abandoned mine located in a public place may also be a statutory nuisance unless effectively closed off and the closure properly maintained.

Any abandoned mine and quarry on land made accessible as a result of Part I of the CRoW Act is likely to be subject to the provisions of the 1954 Act by reason of it being accessible to the public. The unitary authority has a duty to survey its area for, and respond to complaints about, statutory nuisances. If they believe a statutory nuisance exists, they have a duty to serve a notice on the owner requiring remedial work to abate the nuisance. They have the power to enforce action, if necessary, to abate the nuisance (i.e. to have it made safe). If they believe that an abandoned mineral working represents a statutory nuisance, they will probably notify the owner of any intention they have to serve an abatement notice.

The Animals Act 1971 is an important piece of legislation for anyone who keeps livestock. This is because the Act makes the keeper of an animal 'strictly liable' for injuries caused by their stock in some circumstances. 'Strict liability' means that the keeper can be responsible even if it is not directly their fault. For example, if a gate is left open and stock escape onto a road, the keeper of the animal would be liable for damages if a road traffic accident occurred.

If an animal injures someone or causes damage, the person responsible for it (the 'keeper') may be liable if:

- it was likely to cause that kind of injury or damage unless restrained; or
- any injury or damage it caused was likely to be severe; and
- the characteristics of the animal that made this likely are abnormal in that species, or are abnormal in the species except at particular times or in particular circumstances; and

- those characteristics were known to the owner or the person responsible for the animal.

There are some exceptions and there may be no liability where the damage or injury:

- was wholly the fault of the person suffering it;
- arose from a risk willingly accepted;
- was caused to a trespasser (in some circumstances).

It should be noted that people are obviously not trespassing when they have a legal right to be there such as when using public rights of way or rights of access to CRoW access land (but in the latter case they enjoy a lower duty of care than visitors under the Occupiers Liability Acts 1957 and 1984).

There are specific duties in relation to bulls on public rights of way set out in the Wildlife and Countryside Act 1981.

Liability on Defined Routes

The surface of a publicly-maintainable highway is the responsibility of the highway authority. It follows in those cases that it is the highway authority which is liable to users of a highway who are injured because the way is in disrepair.

However, a highway authority could take action against a landowner or occupier who had created any source of danger on or near a highway or who had failed to keep back vegetation encroaching on a highway from the sides or above. Similarly, the landowner is likely to be held liable for injuries caused by a faulty or dangerous gate or stile.

On a privately-maintainable highway, or on a path where the public are permitted to go by the owner ('permissive' or 'concessionary' or toll ride), the landowner or occupier is responsible for maintaining the surface of the path and therefore could be held to be liable for any accident arising from disrepair.

Public Liability Insurance

Landowners or occupiers are unlikely to be liable to members of the public on their land who have an accident while engaged in a dangerous sport (e.g. climbing, hang-gliding, pot holing). However, occupiers may be liable for injury occurring while people are gaining access to a site (e.g. a crag, hill top or pothole) if it arises from land management activities. For these reasons it is advisable for occupiers to hold appropriate insurance where necessary, and review their cover from time to time – especially if circumstances change.

Landowners who wish to establish permissive paths or toll rides should bear this responsibility in mind, and take out appropriate insurance as necessary

Key Points: Liability

- Occupiers owe duties of care under the Occupiers' Liability Acts to people who come onto their land, including trespassers.
- On CRoW access land, no duty of care is owed to users of CRoW access land with respect to risks arising from natural features of the landscape or to someone crossing a field boundary (unless properly using a gate or stile), when the land is open for access.
- Cost, environmental factors and official guidance must be considered by the courts in deciding the extent of the duty of care and what measures can reasonably be expected to be used in meeting the occupier's duty of care to users of CRoW access land.
- In areas accessible to the public, either the owner or operator of mines and quarries (including abandoned ones) must make them secure against public entry.

- On public rights of way, the liability for injury caused by an inadequate surface normally lies with the highway authority; but on permissive routes the liability normally rests with the landowner.
- Owners and occupiers should take out or check their existing public liability insurance to ensure that they have adequate cover.
- Further sources of information on occupiers' liability are available from Natural Resources Wales's website.

Access to access land under the CRoW Act

The idea of providing statutory public access to open country and common land has been discussed for over a century. The National Parks and Access to the Countryside Act 1949 allowed local authorities to enter into agreements with landowners to provide access to open country. This Act defined open country as mountain, moor, heath, down, cliffs and foreshore and was later extended by the Countryside Act 1968 to include riverbanks and woodland. In practice, relatively few access agreements were made. The CRoW Act provides a statutory right of public access on foot for informal recreation over mountain, moor, heath, down and all registered common land. This Section describes what rights of access are granted by Part I of the CROW Act.

What is CRoW access land?

CRoW access land is defined in the Act as land that is:

- shown as open country (land which is wholly or predominantly mountain, moor, heath or down) on the Conclusive Map produced by Natural Resources Wales.
- registered common land shown on the Conclusive Map produced by Natural Resources Wales;
- dedicated as CRoW access land under Section 16 of the Act.

Improved or semi-improved grassland is not included in any of these definitions (although it can be dedicated under Section 16 of the Act). *Ffridd* or *coed cae* was only mapped as open country where it fulfilled Natural Resources Wales's published criteria for identifying open country.

The public also enjoys rights of access to some land through other forms of legislation or common law. People are able to use public rights of way within certain limits. Other examples include some commons, local or private Acts of Parliament and some access agreements (these types of access take precedence over rights provided by the CRoW Act). Similarly, access to some land has been provided through agri-environment schemes. The CRoW access land rights do not affect these existing rights.

There are a number of circumstances in which land that would otherwise be CRoW access land is 'excepted'. Access rights do not apply to excepted land. The types of land that are excepted can be summarised as being land:

- that has been "disturbed by any ploughing or drilling" during the previous 12 months;
- covered by buildings (and the curtilage of such land);
- within 20 metres of a dwelling or a permanent building used for housing livestock;
- used as a park or garden;
- used for the getting of minerals (including quarrying);
- used for statutory functions (like telecommunications);
- used for railways, golf courses, racecourses, aerodromes or training racehorses;
- covered by pens in use for the temporary holding of stock;
- regulated by military byelaws.

In some cases access land may be classed as excepted if it is being developed so that it will fall into one of the categories above once developed. A more detailed description of excepted land is available from Natural Resources Wales's website.

Some areas of land that meet the criteria for open country or are registered common land are not CRoW access land because statutory rights of public access already exist through other legislation. These types of legislation are collectively known as 'Section 15 land' as they are listed in Section 15 of the CRoW Act. They are:

- Section 193 of the Law of Property 1925;
- Local or private Acts, or a scheme made under Part I of the Commons Act 1899;
- Access agreements or access order made under Part V of the National Parks and Access to the Countryside Act 1949;
- Land made accessible to the public under Section 19(1) of the Ancient Monuments and Archaeological Areas Act 1979.

The mapping of land as CRoW access land does not mean it cannot be developed. Ploughing of any natural or semi-natural vegetation may require permission under the Environmental Impact Assessment regulations, so check with the Welsh Government before ploughing such land for the first time.

Key Points: CRoW Access Land

CRoW access land includes:

- open country (mountain, moor, heath or down);
- registered common land;
- land dedicated under Section 16

and does not include:

- agriculturally-improved or semi-improved grassland;
- excepted land;
- land to which access is already available through some other legislation ('Section 15 land').

Mapping

Natural Resources Wales is responsible for producing the Conclusive Map and is responsible for keeping them under review. The Conclusive Map can be viewed on Natural Resources Wales's website. Alternatively the Conclusive Map (or extract of the map) for a particular area can be obtained from Natural Resources Wales by a written request. Anyone with a legal interest in the land is entitled to a free copy; anyone else may be required to pay a fee. The Conclusive Map will be revised at least every 10 years.

The Conclusive Map shows where access rights over open country and registered common land under Part I of the CRoW Act apply.

Areas of CRoW access land, and many other areas to which the public have access, are shown on the 1:25,000 scale Explorer maps with an orangey-brown border and yellow shading. Forests are as a pale lime green wash, but with the same orangey-brown border as for other access land. The maps do not show land to which public access has been secured through agri-environment schemes, as this access may be lost when the scheme ends. Areas of non-CRoW access land that are less than 5 hectares lying within a bigger area of CRoW access land and areas of CRoW access land that are less than 5 hectares in extent are not generally shown. The maps also show the location of key access information points. Important information may be displayed at these places, including details of any access restrictions.

Rights and Responsibilities – Access Users

The CRoW Act provides a right for anyone to be on CRoW access land for "open-air recreation" on foot but without precluding the use of wheelchairs or pushchairs. In general, the Act requires

anyone using CRoW access land to behave responsibly and not interfere with land management. The access is for 24 hours a day; there are no restrictions to access at night.

The Act does not say what access users have a right to do (other than “open-air recreation”); only what rights the Act does not give them. For example, an access user has no right to use a metal detector, whereas hill walking or rock climbing are not excluded and so these activities can be practiced as of right. Landowners can still allow activities such as metal detecting should they so wish, but the Act does not give people the right to do this. Customary freedoms to participate in certain activities may have developed over the years. The introduction of the Act does not mean these activities cannot be allowed to continue (with the permission of the landowner or occupier). The activities not included within CRoW access rights are summarised below. Schedule 2 of the Countryside and Rights of Way Act 2000 specifies those activities that the Act does not give anyone the right to do. These are (in summary):

- damaging or interfering with any wall, fence, hedge, gate or stile, or neglecting to shut a gate (except where it is clearly intended to be left open);
- driving any vehicle be it mechanically propelled or otherwise, except mobility vehicles used by people with disabilities,
- riding a horse;
- using a vessel or sailboard, or bathing, in any non-tidal water;
- bringing any animal other than a dog, (although any dog must be on a lead of no more than 2 metres between 1st March and 31st July each year and at any time when in the vicinity of livestock);
- committing any criminal offence;
- lighting fires or act in a way that would cause a fire;
- damaging (intentionally or recklessly) any wildlife, including eggs and nests, or plants, shrubs, trees etc.;
- feeding livestock;
- hunting, fishing or shooting;
- using, or having in their possession, a metal detector;
- obstructing the flow of any drain or watercourse, or anything intended to control the flow of water;
- posting any advertising or notices;
- intimidating, obstructing or interfering with the lawful activities of the land manager and others on CRoW access land or adjacent land;
- engaging in any organised games, or in camping, hang-gliding or paragliding;
- engaging in any activity organised or undertaken primarily for a commercial purpose.

The Welsh Government can bring in regulations in future that amend this list.

Any member of the public who exceeds their rights on CRoW access land could become a trespasser. If this happens, the member of the public will lose their right of access to CRoW access land within the same ownership for 72 hours. This prohibition does not apply to public rights of way across land in the same ownership. In some cases, a person exceeding their rights by undertaking an activity specified in Schedule 2 may have committed criminal trespass or a criminal offence, and thus be liable to other penalties.

Where there is no right of access that enables the public to reach an area of CRoW access land, they have no right to cross other land. For them to have access, provision would need to be made via a path creation order or along a permissive route.

Rights and Responsibilities – Those with a ‘Legal Interest in the Land’

There may be several people who have one or more different legal interests in the same land. These interests include freehold ownership, tenancy, sporting or mineral rights and common rights.

The rights and responsibilities with respect to CRoW access land vary slightly depending on the legal interest.

The legislation has been designed to allow land management activity to carry on as before. Those with an interest in the land have been provided with powers to manage public access where necessary, including restriction of access in certain circumstances. However, on CRoW access land, it is an offence to display signs or notices that contain false or misleading information that is likely to deter people from exercising their rights of access.

Unlike a public right of way that follows a fixed route and enters land at specific points often through gates or over stiles, the points of entry onto CRoW access land are not prescribed. It may be in the landowners' interests to create means of access at strategic locations around the perimeter and within their CRoW access land. The access authority is able to help and will consider entering into agreements to provide and maintain means of access. If a landowner and access authority enter into an agreement, they will both be expected to meet their side of the commitment, and the access authority has powers (under Sections 36 to 39 of the Act) to require a means of access to be provided, where it believes this to be necessary.

People making use of their CRoW access rights are owed a duty of care by the Occupier. The duty does not include risks arising from natural features of the landscape (including lakes, rivers, ponds and trees) or injuries incurred while crossing a wall, fence or hedge (except when using a gate or stile properly) unless the danger is due to anything done by the occupier deliberately or recklessly to create that risk. In deciding the extent to which a duty is met, the courts must take into account the burden on the occupier, impacts on the character of the land, including features of historic, traditional or archaeological interest, and statutory advice from Natural Resources Wales.

When access is open (that is, when access has not been restricted), anyone who has exceeded their rights (by not complying with the general restrictions set out above) is owed the same duty of care as anyone else who stays within their rights, though the conduct of the injured person will always be taken into account in apportioning liability. However, if the access rights are not available (because, for example, the landowner has decided to use a discretionary closure day – see then anyone on the land who is not a visitor, or does not have the landowner's permission, is owed the duty of care to 'trespassers' described in the Occupiers' Liability Act 1984.

Powers Available to Access Authorities

The Countryside and Rights of Way Act 2000 imposed few new duties on access authorities with respect to CRoW access land, but it did give them some important new powers. The exercise of these new powers is at the authority's discretion.

The key powers of access authorities over CRoW access land are to:

- introduce byelaws to preserve order, prevent damage and protect access rights;
- appoint wardens to help manage CRoW access land;
- erect and maintain signs and notices to inform the public about the boundaries of CRoW access land and any restrictions that are in force. Two open access symbols show the limits to CRoW access land;



- enter into agreements to provide means of access such as a gate or stile onto CRoW access land.

Role of Natural Resources Wales

The CRoW Act places a lot of responsibilities on Natural Resources Wales. For example, it has a pivotal role in mapping and managing CRoW access land in Wales as the 'appropriate countryside body'. Natural Resources Wales has two other roles under the Act – in relation to public access (where it is a 'relevant authority') and in relation to nature conservation (where it is a 'relevant advisory body').

Natural Resources Wales's main responsibilities are to:

- map the areas of open country and registered common land and review the Conclusive Map at least every 10 years;
- provide guidance to others (for example on responsible behaviour for access users);
- give guidance to other relevant authorities (as it is required to do by Section 33 of the CRoW Act) on how to assess the need for restrictions if applied for and, in some situations (e.g. for nature conservation and heritage preservation – in the latter case, based on advice from the Welsh Government – or to manage fire risk), impose them itself. The guidance is set out in the form of criteria tables covering a wide range of different situations that relevant authorities may have to deal with;
- publicise information about restrictions that are in force.

What are Relevant Authorities?

Relevant authorities administer restrictions. The relevant authorities in Wales are:

- National Park authorities (for CRoW access land within National Parks);
- and
- Natural Resources Wales (for all dedicated forests and for CRoW access land outside of National Parks).

Managing CRoW Access Land

Much CRoW access land already has a long history of public access, and there may be no need for any change in the way it is managed. In many areas where public access is introduced for the first time, the number of users may not be sufficient to warrant any special management measures. But, where some form of management change is needed, farmers and land managers have a lot of options. Many are of an informal nature and can be applied without any risk of impeding public access. It is worthwhile considering an option that is less restrictive of public access prior to seeking a more formal option such as a restriction. Natural Resources Wales encourages farmers and land managers to always to use the option that is least restrictive of public access.

Every farm and area of land is different and management needs to be designed for the particular set of circumstances. But, there are some standard ways of looking at public access and how it is managed to minimise impacts on land management. One is to adopt a proactive and strategic approach to access management that is integrated with other management considerations.

Strategic Approach

There is much to commend a strategic approach to access management (i.e. a 'proactive approach'), rather than piecemeal solutions introduced to deal with specific issues as they arise (i.e. a 'fire-fighting' approach). The aim of such a strategic and integrated approach is to positively manage access rather than simply 'letting it happen'. Some farmers and land managers consult with their neighbours, regular users and user groups to find out where they want to go and what they want to do. This allows the land manager to discuss ways in which users' needs and desires can best be reconciled with those of the farmer or land manager. The access authority may be able

to help facilitate and support this process. So a farmer or land manager may be able to co-ordinate car parking, install gates or stiles, and lay out, signpost, and waymark trails in a way that encourages people into areas where their impact on land management will be minimal. In this way, many potential problems may be avoided at the outset.

Other strategic issues that might be considered are:

- grazing management – is there a better place to calve cows or lamb ewes?
- would it be a good idea for employers /self employed to review their risk assessment?
- who can help develop information to educate users?
- is public access so great that wardens are needed during peak times (if the local authority can assist with provision of wardens)?

Standard Management Tactics

There are several commonly used techniques that have been found to work well on most areas open to public access. The most popular techniques are:

Work Planning: Planning the timing and location of operations that do not mix well with public presence in a way that means potential for interference is minimised. For example, anyone intending to fell a few trees may be able to do so mid-week and make sure there are enough people on hand so that it can be done quickly.

Signage and information: Signs are vital in getting important information and messages across to the public. They work best when located so that the message is delivered where people need the information it contains (e.g. at a car park, at a path junction), although there is always a small minority who ignore advice. A positive message has been found to work better than a message delivered in a negative way (e.g. use 'Please do.....' rather than 'It is prohibited to ...'). Pictures or diagrams can be more effective than words in some situations and can assist in getting over 'messages' to those who may avoid reading text, or to those who may find text difficult to read such as visually impaired people. It is important to remember that signs should not contain any false or misleading information likely to deter the public from exercising their access rights.

Zoning and Steering: Land within a holding varies in its resilience to public access and in the hazards it may present to members of the public. For example, a sensitive area might comprise important conservation features, or principal lambing fields, whereas a more robust area may be extensive upland with few grazing sheep, or well-drained limestone. The other key factor in making this technique work is that most people are happier and more comfortable if they are walking along a clear route. So it is worth considering whether, by managing paths and vegetation, a clear route can be created for people to follow and, with careful planning and forethought, these paths can be aligned so that they go where most people want to go (e.g. to a summit) but avoid sensitive or dangerous areas.

Raising awareness: Visitors who have an awareness and understanding about land and water management will usually have less impact than those who are less aware. Raising public awareness is a 'prevention rather than cure' approach. There are a variety of ways a landowner could consider using, including working with others, talking to people, producing site-specific leaflets, making sure entries into walking guides are correct and working with local authorities.

On-the-ground measures: It might be possible to influence people's behaviour. For example, where people park influences where they enter onto land and it may be possible to influence parking patterns. Well-placed gates or stiles and signs/waymarks will encourage them along specific routes, though care should be taken not to deter the public from exercising their access rights. If working over or near to these routes try to gain the co-operation of people to avoid difficulties. Whilst members of the public will generally be happy to comply with such requests, they are entitled to have access to all CRoW access land unless formally restricted. In some circumstances, therefore, it may be preferable to exercise discretion to restrict public access or seek a direction from the relevant authority to restrict access for land management purposes.

Restrictions

The Countryside and Rights of Way Act 2000 allows access restrictions to be used on CRoW access land. Restrictions can exist in different forms. Examples include:

- excluding dogs;
- keeping people to specified linear routes;
- requiring people to enter only at specified points;
- imposing specific restrictions on what can be done when on the land; and
- excluding public access completely.

For simplicity, the word restriction is used here to cover both restrictions and exclusions of all types.

Restrictions can be introduced in three different ways.

- at the discretion of the landowner or tenant;
- by direction of the relevant authority on request from someone with a legal interest;
- by direction of the relevant authority without an application being made.

The types of restrictions are described below. These restrictions only apply to CRoW access land. None of them has any effect on public rights of way or on land that is accessible to the public under other legal instruments (i.e. Section 15 land).

The Countryside Access (Exclusions or Restrictions of Access) (Wales) Regulations 2003 set out the procedures that must be followed by landowners and tenants as well as the relevant authority when restrictions are to apply.

Discretionary Restrictions

28 days: Section 22 of the Act gives the landowner (or tenant) an entitlement to restrict public access for up to 28 days per calendar year at their discretion. The landowner or tenant can decide to restrict different areas of their land at different times, but cannot under this provision restrict access to a particular piece of land for more than 28 days unless they have applied for additional restrictions (see below). If there are several people, each with a legal entitlement to use discretionary restrictions, they should agree amongst themselves what restrictions are to be used, and when, so that the entitled person can make the appropriate notification.

Landowners or tenants do not need to justify the decision to restrict access to their land for these discretionary days. The decision is entirely of their choosing. Restrictions can take many forms (including complete exclusion) and be for any purpose. However, care needs to be exercised if there may be reasons for seeking additional restrictions. The relevant authority responsible for granting extra restrictions will take into account how the 28 days' discretionary restrictions have been used when deciding whether or not to grant requests for extra periods of restrictions. However, the relevant authority must give a direction if it considers the restriction is necessary. Note that use of restrictions for only part of a day will count as a full day.

There are also limitations to when the 28 days can be used (set out in Section 22(6) and (7) of the Act). The discretionary days can be taken at any time except:

- on Bank Holidays, Christmas Day or Good Friday;
- on more than four weekend days in a calendar year;
- on any Saturday between 1st June and 11th August; or
- on any Sunday between 1st June and 30th September.

Whilst standard application/notification forms are available from the relevant authorities, they do not have to be used. In order to notify the relevant authority of an intention to use a discretionary restriction, the following information should be submitted to it:

- the name and postal address of the person entitled to give notification of restrictions;

- the nature of his/her interest in the land (which entitles him/her to use discretionary closures);
- a description sufficient to enable the location and extent of the land affected to be identified (e.g. a map or plan). This can also be used for future reference, when notification of an intention to use a discretionary restriction is made over the telephone;
- the days on which the restriction is to take place and (if for less than a full day) the times when restrictions will apply;
- the purpose of the restriction;
- the nature of the restriction (e.g. 'dogs must be on leads'). If the restriction is to require people to keep to a linear route, then a map showing the route should be provided.

The first three items must be provided in writing. But, once these details have been lodged with the relevant authority, the additional details can be supplied in writing or by telephone. If details are not lodged in advance, any notification of restrictions will need to be made in writing. Once a notification has been received, the relevant authority will check the validity of the notification, confirm acceptance with the notifier and record the use of the discretionary allowance. It may be necessary to obtain more information or confirm details with the notifier if there are any anomalies in the notification. A notification can be withdrawn where 5 working days' notice was given and the request to withdraw the notification is received not less than 2 working days before the restriction is due to come into effect. But only up to 5 withdrawals are allowed in each calendar year.

Discretion to exclude people with dogs: In addition to the 28 days of discretionary restrictions, which can be taken for any reason, the Act provides some landowners and/or tenants with further discretion with regard to dogs (but not a guide dog being used by a blind person or a hearing dog being used by a deaf person):

- Section 23 (1) gives the landowner (but not any tenant) the power to exclude all dogs from moors used for the breeding and shooting of grouse. The period of exclusion is for no more than 5 years;
- Section 23 (2) enables an owner-occupier or tenant (but not the owner of tenanted land) to exclude all dogs from fields or enclosures needed for lambing. In this context, a 'field or enclosure' can be no more than 15 hectares. Dogs can be excluded for one period only, of no more than six weeks, in any calendar year.

Neither of these entitlements extends to allowing the landowner or tenant to request that dogs are kept on a lead (this is a legal requirement anyway when in the vicinity of livestock). If this is the preferred approach, they can apply for directive restrictions. There are various circumstances in which directive restrictions can be used (see below).

The process for notifying the relevant authority of these restrictions is similar to that followed for the 28-day allowance. But if the relevant authority has any doubt about whether the land qualifies under Section 23, it will seek further information from the notifier. The relevant authority will confirm the restriction once it is satisfied that the notification is valid. The restriction can be withdrawn – at any time in the case of grouse moors, and no later than 2 working days before the restrictions would have come into effect in the case of lambing enclosures. The relevant authority will keep a note of the use, and withdrawals of use, of these restrictions.

Although, these restrictions do not apply to public rights of way across CRoW access land, many dog owners will, if asked, keep their dogs on leads at sensitive times when the need is explained to them.

By Direction of the Relevant Authority

At the request of someone with a legal interest: In addition to the discretionary restrictions, anyone with a legal interest in the land can apply to the relevant authority for additional restrictions. Unlike the discretionary restrictions, this type of restriction will not apply unless approved by the relevant authority. The restrictions will be granted only where the relevant authority believes they

are necessary for the particular purposes specified in the CRoW Act. Restrictions will be granted where the applicant shows them to be necessary:

- for reasons of land management (Section 24);
- to avoid the risk of fire when conditions are exceptional (Section 25(1)(a));
- to avoid danger to the public (Section 25(1)(b)).

In order to obtain a direction from the relevant authority for these purposes, an application needs to be made. As well as information about who is applying, the restrictions being applied for and to what area over what period, the applicant will need to supply sufficient information to allow the relevant authority to make a judgement as to whether they are necessary. Application forms and guidance are available from the relevant authorities. See the publication **How to Use Restrictions** available from the Natural Resources Wales website.

The case of applications for restrictions to avoid danger to the public, the relevant authority may want to see some explanation of why the restriction is needed, and may ask to see a risk assessment. Every employer and self employed person has duties – under the Health and Safety at Work etc. Act 1974 and regulations made under it – to avoid, so far as is reasonably practicable, putting the public at risk through their work activities. For some types of work activity there are also more specific safety requirements under other legislation.

Any direction given by a relevant authority in response to an application may incidentally help to secure compliance with such wider health and safety obligations. However, in considering an application relating to public safety, the authority must focus on whether restriction of public access rights, to the extent proposed by the applicant, is actually necessary to avoid danger to the public from the activities on the CRoW access land or adjacent land. In arriving at its decision, the relevant authority can take account of the way the allowance for discretionary restrictions has been used.

The process to be followed is similar to that when notifying of an intention to use discretionary restrictions. However, anyone with a legal interest in the land can apply, and the relevant authority can refuse an application. Anyone who disagrees with the decision can appeal against it to the Welsh Government, if they so wish, but only where they believe that the relevant authority has not acted in accordance with the application made. An appeal must be lodged in writing no more than 6 weeks after the refusal. While the appeal proceeds, the CRoW access land in question will have the same access arrangements as before the appeal was lodged.

Where the application is for restrictions that will last for more than 6 months, the relevant authority has to consult the local access forum, and to have regard to their advice before deciding on the application. The relevant authority must also notify the access authority for the area and a number of specific bodies representing users and land managers. If the long-term restriction affects land in both Wales and England, two separate consultations will need to be made. When an application has been accepted, the relevant authority will make a direction and inform the applicant.

By Direction of the Relevant Authority – without an application being made

In some circumstances, a restriction can also be introduced over CRoW access land by a relevant authority without anyone with a legal interest in the land making an application. These circumstances are:

- when the relevant authority believes there to be “any exceptional conditions of the weather or any exceptional change in the condition of the land” that means restrictions are needed to prevent fire (under Section 25(1)(a) and 25(3));
- where the relevant authority believes that restrictions are needed to avoid danger to the public (under Section 25(1)(b) and 25 (3));
- if they believe that restrictions are needed in order to protect nature conservation or heritage preservation interests (under Section 26).

Those with a legal interest can also apply for restrictions for the first two sets of circumstances (fire and safety) but not for nature conservation or heritage preservation. Where the relevant authority makes a direction to avoid danger to the public without an application from anyone with an interest in the land, it will do so to manage the risks to the public not to reduce occupiers' liability. Where it takes action (e.g. by erecting signs to provide information about a restriction), again it will do so to enforce the restriction that is believed to be necessary to avoid the risk. However, it will still be the occupier's responsibility to fulfil his/her duty of care, for example by warning of the nature of the risks on the land. Again, any proposed restrictions lasting more than 6 months must be referred to the local access forum for the area, and the relevant authority has to have regard to its advice before deciding on the application.

Where restrictions are needed in the interests of defence or national security, the Secretary of State for Defence or Home Secretary respectively can make a direction under Section 28. Long term restrictions brought in for these purposes are not subject to comment by the local access forum, but must be reviewed by the Secretary of State no later than the restriction's fifth anniversary. Section 31 of the 2000 Act provides the Welsh Government with the power to bring in regulations that would enable the relevant authority to impose restrictions to public access over CRoW access land in the event of emergencies, for the purposes of land management, or to avoid danger to the public, to prevent fire, or for nature conservation or for heritage preservation.

Informing the Public of Restrictions

Guidance is available from Natural Resources Wales on how restrictions are to be managed. The relevant authority is responsible for making information about restrictions available to the public and to the access authorities. It is required to:

- publish the information on a website. Natural Resources Wales' interactive map contains up to date information about where people can go and any restrictions on the land.
- inform Natural Resources Wales (if Natural Resources Wales is not the relevant authority) as soon as possible of any directions made, so that it can also publish relevant information on its website;
- inform the access authorities of certain types of restrictions.

For restrictions introduced at short notice, it may not be feasible for Natural Resources Wales to post the information on a website. Farmers and landowners will have to provide information on the ground to let people know that restrictions are in force, and help may be available from the wardening service of the access authority.

When longer term (i.e. lasting 6 months or more) restrictions are in force, the relevant authority has a duty to provide on the ground information about them. For most other restrictions, it is the person or organisation who has asked for the restriction that is responsible for ensuring that information is made available to potential users. Where restrictions are introduced for nature conservation reasons solely at the request of Natural Resources Wales, it will be responsible for providing appropriate information about restrictions. Similarly, if restrictions are needed for military training purposes, the Ministry of Defence is responsible for providing the relevant information to users.

To inform users on the ground there needs to be adequate information about the nature, duration and extent of any restrictions that are in force needs to be provided. This can be done verbally or by posting notices. No one wants to see a forest of signs in the countryside and so it has been accepted that it would be reasonable to limit signs to key points.

Extending the Access Rights – Dedications under Section 16

The Countryside and Rights of Way Act 2000 enables landowners and leaseholders with 90 years or more of the lease left to run to dedicate land for public access. A dedication by the freeholder will remain in force indefinitely – in other words ‘forever’; whereas a dedication made by a leaseholder will cease to have effect when the lease expires. By dedicating land, not only does this give long-term security to the public’s right of access, it will usually provide a reduction in the occupier’s duty of care. Where there is an inferior leasehold or someone with another form of legal interest (e.g. an easement or an agricultural tenant), then any dedication must be made with their agreement. Dedicated land becomes CRoW access land and is subject to the same rules and regulations, including the possibility that it may become excepted land.

It is also recommended that owners and leaseholders considering dedicating land for access discuss their plans with Natural Resources Wales and the Welsh Government at an early stage. They will advise on how best to introduce public access. In order to make a dedication, a dedication instrument needs to be submitted following procedures laid down in regulations. In summary, a dedication instrument must:

- be made in writing (Welsh or English);
- explain that it is made under Section 16(1) of the 2000 Act;
- identify the land to be dedicated in the form of a plan or map:
 - to a scale of not less than 1:10,000;
 - that shows the dedicated land’s boundaries; and
 - uses an identifiable grid;
- give the details of those people making the dedication (name, address, postcode) and any other persons who are consenting to it;
- include a statement of the dedicators’ entitlement to make the dedication and that, to the best of their knowledge, no-one else needs to give consent;
- indicate if there are to be any removals or relaxations of the general restrictions that apply to CRoW access land (giving details of the relaxations – what, when, where);
- include a declaration of authority to sign and to confirm compliance with the regulations.

The draft dedication instrument must be sent to the access authority (or authorities, if the land to be dedicated occurs in more than one access authority area), Natural Resources Wales, the Welsh Government, and any mortgagee that exists at the time dedication is made. The draft should be submitted three months before the dedication is to be signed.

Access to dedicated land becomes available when the dedication instrument is executed. This will be six months after the date that it has been signed. However, it has to be lodged with the access authority (or authorities) no later than 1 month from when it was signed. The person making the dedication must also send a copy of the lodged dedication instrument to Natural Resources Wales, the Welsh Government, and any mortgagee.

Removal or Relaxation of General Restrictions over Non-Dedicated CRoW Access Land

As has been noted earlier, there are some general restrictions on the rights which the CRoW Act confers on users of CRoW access land. It is possible for a landowner or occupier to relax some of the general restrictions on their CRoW access land, either for a specific period or indefinitely. The terms of a dedication instrument can be amended to provide for relaxation or removal of the general restrictions that apply to CRoW access land. A similar procedure to the original dedication needs to be followed.

Key points: CRoW Access Land

- Natural Resources Wales has mapped all the open country and registered common land in Wales in conclusive form, although the maps will be reviewed periodically.

- Maps showing publicly accessible land, including CRoW access land, are available on Natural Resources Wales's website.
- The public have a right of access to CRoW access land for informal recreation on foot.
- There are a wide range of management techniques that can be used to minimise the impacts of access.
- Those with a legal interest in the land are able to introduce restrictions at their own discretion, and apply for other restrictions by direction of the relevant authority.
- Land can be dedicated as, and additional rights can be granted over, CRoW access land (if the landowner and others with a legal interest wish to do so).

Support

Funds or support in-kind may be available from the access authority to assist with measures needed to provide a means of access, or to manage access. The limited support available is usually targeted at sensitive sites that experience high visitor pressure.