

Guidance on appeals under the Countryside and Rights of Way Act 2000 and the Marine and Coastal Access Act 2009

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Disclaimer

This guidance is non-statutory and provides guidance on the types of appeal that may be made the Countryside and Rights of Way Act 2000 and the Marine and Coastal Access Act 2009. The guidance does not attempt to provide a comprehensive explanation of every provision and does not offer a definitive interpretation of the legislation, which only the courts can do.

The Department for Environment, Food and Rural Affairs cannot provide specific advice on individual circumstances. Anyone needing this should consider taking independent expert advice.

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Chapter 1: Introduction

1.1 In May 2006 the Department for Environment, Food and Rural Affairs issued guidance¹ on the three types of appeals provided for under Part 1 of the Countryside and Rights of Way Act 2000 (“the 2000 Act”).² The 2000 Act introduced a right of access for open-air recreation to ‘access land’. Access land means open country (mountain, moor, heath and down), registered common land and any land that has been voluntarily dedicated as access land in England, but does not include land that is excepted land or land which is treated by section 15(1) of the 2000 Act as being accessible to the public apart from that Act. Part 1 was implemented throughout England by October 2005.

1.2 The three types of appeal were:

- mapping appeals against the inclusion of land on a provisional map of open country and registered common land;
- restriction appeals where the relevant authority decided not to act in accordance with an application or representations; and
- notice appeals where an owner or occupier of land appealed against a notice requiring that something be done to facilitate access to open country or registered common land.

1.3 Part 9 of the Marine and Coastal Access Act 2009 (“the 2009 Act”) ³ introduce a right of access to the English coast. The coastal access provisions in the

¹ Available at <http://archive.defra.gov.uk/rural/documents/countryside/crow/appeals-guide.pdf>

² Available at <http://www.legislation.gov.uk/ukpga/2000/37/contents>

³ Available at <http://www.legislation.gov.uk/ukpga/2009/23/contents>

2009 Act place a duty on the Secretary of State for Environment, Food and Rural Affairs (“the Secretary of State”) and Natural England to secure two linked objectives:

- that there is a route for the whole of the English coast consisting of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
- that in association with the route there is a margin of land along the length of the English coast which the public can have access to and enjoy for the purpose of open-air recreation.

- 1.4 The 2009 Act amends Part 4 of the National Parks and Access to the Countryside Act 1949 to provide for the designation of a long-distance coastal route. It also amends Part 1 of the 2000 Act to provide a right of access to the coastal margin which, in addition to the margin of land in association with the route, includes the land covered by the route itself and any land voluntarily dedicated as coastal margin.
- 1.5 Before deciding whether to approve the proposals in a Natural England coastal access report, the Secretary of State must consider any representations and objections that Natural England has received about the proposals. Owners and occupiers of affected land may make objections which are considered by an independent person – an Inspector from the Planning Inspectorate who will be appointed for this purpose.
- 1.6 Under the 2009 Act the right of access to the coastal margin can only come into force after the Secretary of State has approved a Natural England coastal access report which sets out its proposals for access on a particular stretch of coast. The right of access to coastal land will come into force in stages, starting in 2012 with a stretch of the English coast between Rufus Castle, Portland and Lulworth Cove in Dorset.
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1.7 This guidance, which relates to England only, highlights the changes to the previous guidance issued in May 2006 on appeals in the light of the introduction of the coastal access provisions in the 2009 Act. It does not cover the representations and objections process under the 2009 Act for which separate guidance – *Natural England’s coastal access reports: Guidance on the Secretary of State’s decision-making process, including the consideration of representations and objections* - has been issued.⁴

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For later information see

⁴ Available at <http://archive.defra.gov.uk/rural/documents/countryside/crow/110401-coastal-access-report.pdf>

Chapter 2: The inspector's role in relation to the Secretary of State

- 2.1 The Secretary of State is responsible for determining appeals under Part I of the 2000 Act and paragraph 4 of Schedule 20 to the 2009 Act. The two Acts entitle the Secretary of State to appoint any person to carry out the function of determining such appeals on her behalf and these appeals will therefore be initially “transferred” to the Planning Inspectorate for determination. An Inspector will be appointed by the Secretary of State for that purpose.
- 2.2 The vast majority of cases will be dealt with in this way. Occasionally, however, (for example, in cases with novel features, or which are particularly high profile or controversial) the Secretary of State may “recover” jurisdiction; that is to say, she will take back a case initially transferred to an Inspector in order to make the final determination herself. The Secretary of State will make her decision after receiving a report from an Inspector setting out his or her conclusions and recommendations on the appeal.
- 2.3 Inspectors “stand in the shoes” of the Secretary of State, and must in consequence deal with the appeals before them by reference to the same criteria as she would herself. This will, in the first instance, mean making determinations in accordance with the provisions in the 2000 and 2009 Acts, any regulations made under these Acts, as well as any other publicly available guidance issued by either Defra or the Planning Inspectorate. For appeals that cover land which is designated as coastal margin land the Inspector may wish to look at Natural England’s Coastal Access Scheme⁵, which is approved by the Secretary of State.

⁵ Natural England’s Coastal Access Scheme is available at <https://publications.naturalengland.org.uk/publication/35035?category=50007>

2.4 As and when a body of other guidance builds up (for example, from decisions made by the Courts), this will also need to be taken into account.

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Open access land and the coastal margin: how to restrict public access at
<https://www.gov.uk/open-access-land-and-the-coastal-margin-how-to-restrict-public-access>

Chapter 3: Appeals against the mapping of land as open country and registered common land

- 3.1 The right of access to open country (mountain, moor, heath and down) and registered common land, and any land that has been voluntarily dedicated as access land, was fully implemented throughout England in October 2005.
- 3.2 Appeals to the Secretary of State against the mapping of land as open country and registered common land can no longer be made under the 2000 Act.

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Chapter 4: Appeals against decisions of relevant authorities in respect of exclusions and restrictions of access

Background

- 4.1 This chapter provides guidance on the restriction appeals provided for in Part I of the 2000 Act which will be transferred to the Planning Inspectorate for determination. Inspectors are appointed by the Secretary of State for that purpose.
- 4.2 Not all the land on the conclusive maps of open country and registered common land are subject to the new right of access. People will not be able to walk on some areas of land which are treated as “excepted land” such as gardens or golf courses. The categories of excepted land are set out in Schedule 1 to the 2000 Act.
- 4.3 Schedule 2 to the 2000 Act contains a number of general restrictions which must be observed by a person exercising the right of access to access land. Damaging activities such as lighting fires or destroying plants will not be allowed. The right of access is limited to open air recreation on foot, and other recreational activities (e.g. cycling, horse riding, camping) are excluded from the new right.
- 4.4 Part 2 of the Schedule to the Access to the Countryside (Coastal Margin) (England) Order 2010⁶ (“the 2010 Order”) amended Schedule 2 to the 2000 Act to make a number of changes to the categories of general restrictions as they applied to coastal margin that is subject to the right of access.

⁶ Available at <http://www.legislation.gov.uk/uksi/2010/558/contents/made>

4.5 Where, despite these general restrictions, land managers feel that local intervention is necessary to prevent unacceptable impacts from access, they can use informal management techniques, such as encouraging use of particular paths, areas or access points, to influence how people visit the land.

4.6 While informal management techniques are usually simpler and more convenient to implement than restrictions and exclusions of access, land managers are not obliged to try such techniques before using discretionary restrictions or applying for directions as described below.

Discretionary restrictions and exclusions

4.7 **Table A** below shows the discretionary restrictions and exclusions which may be used by landowners under the 2000 Act without an application being necessary to be made to the relevant authority⁷. These discretionary restrictions and exclusions only apply to access land: they **do not** apply to the coastal margin.

4.8 These discretionary restrictions and exclusions must be notified to the relevant authority. Because a landowner does not require permission to

⁷ For access land a relevant authority means:

- the National Park Authority where access land falls within a National Park;
- the Forestry Commission where land voluntarily dedicated for access is comprised mainly of woodland; and
- Natural England in all other cases.

For land which is coastal margin Natural England is the “relevant authority”. Natural England may however authorise the National Park Authority or the Forestry Commission to carry out the functions as a “relevant authority” for land which is coastal margin, as it may specify.

impose discretionary restrictions there is **no** provision for a right of appeal in respect of these powers.

Table A

Brief description	Detailed description and relevant section of CROW Act	Who may use the restriction
Any reason	To exclude access up to 28 days over a year (Bank Holidays and some Saturdays and Sundays in the year are excluded) – section 22	Landowner or farm tenant notifies the relevant authority via the Open Access Contact Centre: Natural England First Floor
Dogs on grouse moors	To exclude people with dogs on land consisting of moor managed for the breeding and shooting of grouse for up to 5 years at a time – section 23(1)	Temple Quay House 2 The Square Bristol BS1 6EB
Dogs in fields with lambs	To exclude people with dogs on land containing sheep in the connection with lambing – section 23(2) and (3)	0845 100 3298 e-mail: openaccess@naturalengland.org.uk

Directions to restrict or exclude access

4.9 If a landowner (or, where relevant, a farm tenant) considers that discretionary restrictions and exclusions are not sufficient (or they are not available) and further legal restrictions on the right of access are required at the local level, this is possible under the provisions in Chapter 2 of the 2000 Act as they apply to open country, registered common land and any land that has been voluntarily dedicated for access. The 2010 Order amended the restrictions which apply to land which is coastal margin. Other people with an interest in

the land, who are not entitled to use discretionary restrictions, may also apply for directions.

4.10 Applications for a direction to exclude or restrict access are made to the relevant authority. A relevant authority may also give a direction excluding or restricting access for the purposes of public safety and fire prevention of its own volition, without the need for an application.

4.11 **Table B** below shows the grounds for which a direction can be given and the relevant section of the 2000 Act; who may apply, and the authority which may make a direction to exclude or restrict access:

Table B

Brief description	Detailed description and relevant section of 2000 Act	Who may apply	Authority to make direction
Land management	For the management of the land – section 24	Landowner or others with a legal interest in the land apply to the relevant authority	Relevant authority may make a direction on receipt of an application In relation to land which is coastal margin the relevant authority may make a direction without an application having been made
Fire prevention	To prevent fire by reason of exceptional weather or ground conditions – section 25(1)(a)	Landowner or others with a legal interest in the land apply to the relevant authority	Relevant authority may make a direction on receipt of an application or without an application having been made

		Section 25 (1)(a) does not apply to land which is coastal margin if it is land over which the coastal route passes	
Public safety	To avoid danger to the public from something done or proposed to be done on the land – section 25(1)(b)	Landowner or others with a legal interest in the land apply to the relevant authority	Relevant authority may make a direction on receipt of an application or without an application having been made
Salt marsh and mudflat	To exclude access to salt marsh or mudflat where it is unsuitable for public access – section 25A	This is no power to apply for such a direction	Relevant authority may make a direction
Nature conservation	To conserve flora or fauna or geological or physiographical features – section 26(3)(a)	There is no power to apply for such a direction	Relevant authority may make a direction, with regard to any advice received from Natural England, as appropriate
Heritage preservation	To preserve any scheduled monument as defined by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979, or	There is no power to apply for such a direction	Relevant authority may make a direction, with regard to any advice received from English Heritage, as appropriate

	any other structure, work, site, garden or area which is of historic, architectural, traditional, artistic or archaeological interest – section 26 (3)(b)		
Defence	For the purposes of defence – section 28	There is no power to apply for such a direction	Ministry of Defence, on behalf of the Secretary of State
National Security	For reasons of national security – section 28	There is no power to apply for such a direction	Home Office, on behalf of the Secretary of State

Appeals

4.12 Section 30 of the 2000 Act provides a right of appeal against two sorts of decision made by a relevant authority:

- in respect of applications for directions under section 24 and 25: and,
- on representations following consultation under section 27(5).

4.13 Section 30(2) of the 2000 Act requires relevant authorities to inform the applicant of their reasons for not acting in accordance with the application or representations. This information should assist applicants in deciding whether they should exercise their right of appeal. It will also be a material consideration if an appeal is made. In some cases, relevant authorities may find that they can rely entirely on the information they provided under section 30(2) of the 2000 Act when contesting an appeal.

- 4.14 A right of appeal is available where a person interested in any land has applied for a direction under section 24 or 25 of the 2000 Act and the relevant authority has, in any respect, decided not to act in accordance with that application. An appellant may bring an appeal if the relevant authority has refused his or her application either outright or in part. If a relevant authority gives a direction in response to an application but that direction differs in any way from the one being applied for, the applicant may exercise his or her right of appeal.
- 4.15 On an appeal against the relevant authority's decision not to act in accordance with an application under section 24 or 25 of the 2000 Act, consideration will need to be given to the evidence submitted by the parties, the provisions of section 24 or 25 of the 2000 Act (as appropriate) and any other relevant factors, including the statutory guidance issued by Natural England under section 33 of the 2000 Act (see paragraphs 4.33 to 4.39). The decision on appeal will turn on the question of whether the relevant authority was correct in deciding not to give a direction in accordance with the application. To make this decision it will be necessary for the Inspector to come to a view, on the basis of the evidence, whether the exclusion or restriction applied for was necessary (to the extent applied for) for the purpose for which it was sought, in accordance with the provisions of section 24 or 25 of the 2000 Act.
- 4.16 On appeal the Secretary of State has the power to require the relevant authority to give such direction under sections 24 or 25 of the 2000 Act as she thinks fit; so she is not limited to either deciding an appeal in favour of the appellant (and thus requiring the relevant authority to give a direction in accordance with the application) or the relevant authority (and thus confirming the relevant authority's decision). Section 30(4)(b) allows for a judgment to be made with the Secretary of State's powers on what, if any, direction should be given in response to the application.

Appeal against the decisions by a relevant authority not to act in accordance with an application under sections 24 or 25 of the 2000 Act where the relevant authority considers the exclusion or restriction applied for is for the purposes of nature conservation or heritage

- 4.17 A landowner and others with an interest in land cannot apply for a direction excluding or restricting access for the purposes of nature conservation or heritage preservation. If a relevant authority believes that all or part of an application it receives under section 24 or 25 of the 2000 Act is an application for one or both of these purposes, it must refuse the application or that part of the application. If, however, the application is to exclude or restrict access for land management or to avoid danger to the public, where these purposes may be connected with nature conservation or heritage preservation objectives, a relevant authority must consider the application on its merits and decide whether the restriction or exclusion is necessary in all the circumstances.
- 4.18 On appeal the same considerations should apply. If the exclusion or restriction applied for is for the purposes of nature conservation or heritage preservation the appeal should be dismissed. If, however, the application is to exclude or restrict access for land management or to avoid danger to the public, even where those purposes may be connected with nature conservation or heritage preservation objectives, the appeal should be determined in the same way as any other appeal against the decision of a relevant authority not to act in accordance with an application under section 24 or 25 of the 2000 Act.

Appeal against the decision of a relevant authority not to act in accordance with an application under sections 24 or 25 of the 2000 Act where the relevant authority considers an existing direction already excludes or restricts access to the land

- 4.19 If it is decided, on the basis of the evidence, that a direction has already been given under Chapter II of Part I of the 2000 Act and that direction covers the whole of the land to which the application relates, it is for the same (or longer) duration and it excludes or restricts access to the land to the same (or

greater) extent, this would indicate that the direction applied for under section 24 or 25 of the 2000 Act is not necessary. The appeal should therefore be dismissed.

Appeal against the decision of a relevant authority not to act in accordance with representations on being consulted on the revocation or variation of a direction under section 27(5) of the 2000 Act

- 4.20 Under section 27(2) of the 2000 Act a relevant authority can revoke or vary any direction it has given by giving a subsequent direction under the same section.
- 4.21 If a relevant authority is minded to revoke or vary a direction given on application under section 24 or 25 of the 2000 Act, section 27(5) of the 2000 Act requires the relevant authority to consult the original applicant or their successor in title. Section 30 of the 2000 Act provides a right of appeal where a person has made representations on being consulted under section 27(5) of the 2000 Act, but, in any respect, the relevant authority has decided not to act in accordance with those representations.
- 4.22 When consulting the original applicant or their successor in title under section 27(5) of the 2000 Act, regulation 13 of the Regulations (see paragraph 4.47) requires the relevant authority to provide a statement of its reasons for the proposed revocation or variation, and in the case of a variation, a description of the variation.
- 4.23 It is likely that a relevant authority's reasons for proposing to revoke or vary a direction will usually fall into one or more of the following three broad categories:
- the exclusion or restriction is no longer necessary for the purpose for which it was given;
 - the extent of the exclusion, or the nature of the restriction is no longer appropriate for the purpose for which it was given; or,

- access has been excluded or restricted for a purpose other than that provided for by the direction.

4.24 Paragraphs 4.25 to 4.32 below set out the factors that need to be taken into account in an appeal against a relevant authority's decision not to act in accordance with representations made on consultation under section 27(5) of the 2000 Act. They are discussed with reference to the categories of decision set out above. For convenience categories (i) and (ii) are grouped together.

Appeals relating to a relevant authority's decision - categories (i) or (ii)

4.25 In some cases, a relevant authority may have proposed the revocation or variation of a direction following a review of that direction under section 27(3) of the 2000 Act. Section 27(3) of the 2000 Act requires relevant authorities to review those directions which exclude or restrict access, indefinitely; on an annual basis; or, for more than five years. A relevant authority is required to review all directions of the types described in section 27(3) of the 2000 Act at least every five years.

4.26 When undertaking a review under section 27(3) of the 2000 Act, regulation 14 of the Regulations requires relevant authorities to consider:

- whether the exclusion or restriction is still necessary for the purpose for which the direction was given; and if so,
- whether the extent of the exclusion or the nature of the restriction remains appropriate for the purpose for which the direction was given.

4.27 If a proposal to revoke or vary a direction follows a review of that direction, the considerations set out in regulation 14 are likely to inform the relevant authority's statement of reasons provided under regulation 13(3). Those considerations are also likely to be referred to as part of its reasons for not acting in accordance with representations made under section 27(5) of the 2000 Act which the relevant authority is required to provide to the applicant under section 30(2) of the 2000 Act.

4.28 A relevant authority is only required to review directions of the type described in section 27(3) of the 2000 Act, and it may revoke or vary a direction under section 27(2) of the 2000 Act without having first formally reviewed it (although it should nevertheless have clear reasons for doing so). However, relevant authorities may also find it helpful to take account of the considerations set out in regulation 14 before revoking or varying a direction in cases where they are not required by section 27(3) of the 2000 Act to review it.

4.29 The considerations set out in regulation 14 also provide a useful framework for the determination of an appeal against the decision of a relevant authority not to act on representations made following consultation under section 27(5) of the 2000 Act.

Appeals relating to a relevant authority's decision - category (iii)

4.30 There may be cases where a relevant authority proposes to revoke or vary a direction because it has reason to believe that access has been excluded or restricted for a purpose other than that provided for by the direction. In many cases the period of the exclusion or restriction will have expired before the relevant authority becomes aware that the direction is not being used for the specified purpose or period. In such cases there would be no point in the relevant authority deciding to revoke or vary the direction because it would already have ceased to have effect.

4.31 However, for long term directions or directions which allow the applicant to notify the period(s) of the restriction or exclusion at a later date (described as "outline directions" in guidance issued by Natural England), a relevant authority could revoke or vary the direction before the period expires.

4.32 If it can be established, on the basis of the evidence, that access has been excluded or restricted for a purpose other than that provided for by the direction, the appeal should be dismissed. But, if that cannot be established on the evidence, the appeal should be upheld, provided the restriction or exclusion remains necessary for the purpose for which it was given.

Statutory guidance to certain relevant authorities on their functions in relation to local access restrictions under section 33 of the 2000 Act

4.33 Under section 33 of the 2000 Act, National Park authorities and the Forestry Commissioners must have regard to guidance⁸ issued by Natural England. Natural England will also have regard to that guidance in determining applications for directions which it receives in its role as a relevant authority.

4.34 Natural England's guidance contains the following sections:

- Overview summarises the land affected by the right of access, the nature of those rights and how they can be managed;
- Part 1 summarises the approaches – both informal management techniques and restrictions and exclusions – that can be used to manage the right of access;
- Part 2 gives relevant authorities detailed advice on assessing the need for directions on the various grounds provided for by the 2000 Act; and
- Annexes provide further detailed information on access rights, key functions, discretionary restrictions, directions, appeals and related legislation.

4.35 Chapter 2.5 of Part 2 of the guidance "*Considering the case for a land management or public safety direction*" includes a determination chart setting out 8 steps which a relevant authority is recommended to follow when deciding whether or not to give a direction in respect of an application under

⁸ The guidance under section 33 of the Countryside and Rights of Way Act 2000 was first issued in March 2004 by the Countryside Agency. Since the establishment of Natural England it has issued a number of revisions to the guidance. The current version of the guidance dated April 2010 is available at http://www.naturalengland.org.uk/Images/RAG%20V4%20for%20website_tcm6-12375.pdf

section 24 or 25 of the 2000 Act. The guidance includes specific sets of criteria to give relevant authorities supplementary guidance on the circumstances most commonly encountered in relation to land management or public safety issues on access land. The guidance advises relevant authorities to choose the criteria set that best fits the circumstances of the case, or to use the general criteria set for circumstances not covered by the specific criteria sets. It explains that the specific criteria sets cannot cover all of the situations that will arise locally, so the relevant authority's decisions must take full account of the circumstances in each particular case.

- 4.36 Relevant authorities may therefore, in their reasons for not acting in accordance with an application for a direction under section 24 or 25 of the 2000 Act, and in evidence submitted as part of an appeal, refer to the guidance in support of their decision where the guidance has been applied or is otherwise relevant.
- 4.37 A relevant authority could also submit evidence relating to the guidance in support of a decision not to act in accordance with representations made by the appellant on being consulted under section 27(5) of the 2000 Act.
- 4.38 In considering such evidence, it is important to remember that the guidance has been issued under a statutory power, and National Park authorities and the Forestry Commissioners are required to have regard to it (and Natural England has decided to have regard to it). The guidance is therefore likely to contain information which is material to the decision which is the subject of an appeal. If the evidence shows that a relevant authority has acted in accordance with the guidance in coming to the decision that is the subject of the appeal, appropriate weight must be given to that in determining the appeal.
- 4.39 Appellants are entitled to assert and submit evidence that the guidance was wrongly applied to the case in question. If their evidence is convincing, this may result in a successful appeal. An appellant may also assert that the guidance is wrong in principle on a particular issue, and submit evidence to

support this assertion. If a relevant authority has acted in accordance with the guidance, an appeal against its decision is unlikely to succeed unless the Inspectorate consider that the particular circumstances of the case require a different approach from that suggested in the guidance. In such cases the Inspectorate may wish to consider whether the powers of the Secretary of State should be used to recover the appeal for determination and advise accordingly.

If an appeal is dismissed

4.40 If an appeal is dismissed the relevant authority's decision in respect of the application or representations stands.

If an appeal is upheld in whole or in part

4.41 Section 30(4) of the 2000 Act gives the Secretary of State the power to either cancel any direction given by the relevant authority, or to require the relevant authority to give such direction under section 24 or 25 of the 2000 Act as she thinks fit.

4.42 Section 30(4)(a) of the 2000 Act may be used to require the relevant authority to cancel a direction revoking or varying the original direction. It may also be used to cancel a direction given by a relevant authority in response to the appellant's application.

4.43 Section 30(4)(b) of the 2000 Act may be used to require the relevant authority to give a direction in accordance with the original application. It may also be used to require the relevant authority to replace a direction it has given with another direction. The powers of the Secretary of State are not limited to requiring a relevant authority to give a direction in accordance with the application. If it is considered that a different direction is more appropriate, there is the power under section 30(4)(b) of the 2000 Act to require the relevant authority to give that direction instead.

4.44 If the power under section 30(4)(b) of the 2000 Act is used to require a relevant authority to give a long term direction - that is, a direction which

excludes or restricts access indefinitely or for a period which exceeds or may exceed six months – the requirement in the 2000 Act and the Regulations for the relevant authority to consult the local access forum and the public on long term directions would not apply.

- 4.45 It is important when exercising the powers in section 30(4) of the 2000 Act that clear instructions are given to the relevant authority on the direction they are being required to give.

If an appeal is conceded

- 4.46 There is no provision for a restrictions appeal to be cut short if the relevant authority accepts that the appeal should succeed. But, there would be nothing to stop an appellant, in such circumstances, from withdrawing their appeal or seeking to hold an appeal in abeyance and resubmitting their application to the relevant authority, which could then give a direction in accordance with the application. However, where the original application was for a direction lasting six months or more, in accordance with section 27(1) of the 2000 Act and regulation 9 of the Regulations, the relevant authority would be obliged to consult the local access forum and the public before it could give the direction.

Regulations

- 4.47 A number of regulations – The Access to the Countryside (Exclusions and Restrictions)(England)Regulations 2003 as amended by both the Access to the Countryside (Exclusions and Restrictions)(England)(Amendment) Regulations 2006 and the Access to the Countryside (Exclusions and Restrictions) (Amendment) (England) Regulations 2011- set out the procedures which owners and land managers must follow if they wish to restrict or exclude access to their land. They set out the procedures which a relevant authority and the Secretary of State, as appropriate, must follow in dealing with a direction.

4.48 The regulations also include details of the procedures and time limits which apply for the making of an appeal where a relevant authority has decided not to act in accordance with an application for a direction and the decision on any such appeal made by the Planning Inspectorate⁹.

This document has been archived.
For later information see

⁹ Available at <http://www.legislation.gov.uk/uksi/2003/2713/contents/made>;

<http://www.legislation.gov.uk/uksi/2006/990/contents/made>; and

<http://www.legislation.gov.uk/uksi/2011/2021/contents/made>

Chapter 5: Appeals against works notices

Background

- 5.1 This chapter provides guidance on appeals against works notices provided for in Chapter III of Part I of the 2000 Act and in paragraph 4 of Schedule 20 to the 2009 Act, which will be transferred to the Planning Inspectorate for determination. Inspectors are appointed by the Secretary of State for that purpose.
- 5.2 Chapter III of Part I of the 2000 Act provides a range of powers for access authorities relating to means of access. The access authority is the local highway authority: where the land is in a National Park it is the National Park authority. The Act defines “means of access”, in relation to land, as meaning: any opening in a wall, fence, or hedge bounding the land (or bounding part of the land) (with or without a gate, stile or other works); any stairs or steps to enable people to enter on the land (or any part of the land); and, any bridge, stepping stone or other works for crossing a watercourse, ditch or bog on or adjoining the boundary of land.
- 5.3 Under section 35 of the 2000 Act, the access authority may make an agreement with an owner or occupier where it considers 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 access authority may agree to carry out the works itself, or pay the whole or part of the cost to the owner or occupier to do so.
- 5.4 The access authority may also make an agreement under which the owner or occupier agrees to a restriction not to destroy, stop-up or alter existing means of access, or to a restriction on doing anything which would impede public access.
- 5.5 These powers may be used on access land or land on the boundary of or adjoining access land. This does not include any access land from which the

public has been excluded under Chapter II of Part I of the 2000 Act either indefinitely or for a specified period of which at least six months remain unexpired.

- 5.6 Section 36 of the 2000 Act provides powers for the access authority to undertake the work where an owner or occupier fails to abide by an agreement to do the work. The access authority may recover the amount of any expenses reasonably incurred by it from the owner or occupier reduced by their contribution under the agreement. Where the owner or occupier has failed to observe a restriction, section 36(3) of the 2000 Act enables the access authority to serve a notice requiring him to undertake any remedial work and, if this is not complied with, the access authority may undertake the work itself and recover the amount of any expenses reasonably incurred by them from the owner or occupier.
- 5.7 Where no agreement can reasonably be reached, section 37(1) of the 2000 Act allows the access authority to serve a notice on the owner or occupier stating its intention to carry out the necessary work.
- 5.8 Under paragraph 2 of Schedule 20 ("Schedule 20") to the 2009 Act an agreement may be made between Natural England, or an access authority, and the owner and occupier of land with respect to works relating to the establishment and maintenance of the English coastal route. The types of works that the agreement may include, including clearance or maintenance, the removal of an obstruction to the route, clearance or maintenance to enable the public to enter or remain on land on a bicycle or on horseback (where a general restriction under Schedule 2 to the 2000 Act has been removed or relaxed), drainage or levelling, or the construction of a barrier.
- 5.9 Paragraph 3(3) of Schedule 20 enables Natural England or the access authority to carry out works required for the establishment or maintenance of the English coastal route if they are unable to conclude on reasonable terms an agreement with the owner or occupier of the land. Before carrying out those works, Natural England or the access authority, as appropriate, must

give notice to the owner or occupier that it intends to carry out the works in the notice. A period of not less than 21 days' notice must be given to the owner or occupier before any works can be carried out.

Appeals

5.10 An owner or occupier may appeal under section 38 of the 2000 Act against a notice requiring the carrying out of works to remedy the failure to observe a restriction (under section 36(3) of the 2000 Act or a notice of intention to create or safeguard a means of access (under section 37(1)) of the 2000 Act.

5.11 Where an appeal has been brought under section 38 of the 2000 Act, the access authority may not exercise its powers (sections 36(5) or 37(5) of the 2000 Act) to carry out the works specified in the notice until the appeal has been determined or withdrawn.

5.12 An appeal against a notice under section 36(3) of the 2000 Act may be brought on the grounds that:

- the notice requires the carrying out of works which are not necessary for remedying the breach of the agreement;
- any of the works have already been carried out, and;
- the period specified in the notice for carrying out the works is too short.

5.13 An appeal against a notice under section 37(1) of the 2000 Act may be brought on the grounds that:

- the notice requires the carrying out of any works which are not necessary for giving the public reasonable access to the land;
- the means of access should be provided elsewhere or a different means of access should be provided, and;
- any of the works have already been carried out.

5.14 Unlike the other types of appeal under Part I of the 2000 Act, there is no equivalent to the mapping methodology or the relevant authority guidance which needs to be taken into account in appeals. Consideration will therefore need to be given to the evidence submitted by the parties, the grounds of appeal and any other relevant factors. The decision on an appeal will ultimately turn on whether, on the basis of all the evidence, the appellant is able to show valid grounds for his or her appeal.

5.15 An appeal against a notice under paragraph 3(3) of Schedule 20 of the 2009 Act may be made on the grounds that:

- the notice requires the carrying out of works which are not necessary;
- the works have already been carried out; or
- the period specified in the notice for carrying out the works is too short.

5.16 Sections 7 (appeal procedures) and 8 (power of Secretary of State or Assembly to delegate functions relating to appeals), and Schedule 3 (delegation of appellate functions) to the 2000 Act apply to an appeal and enable the Secretary of State to cause an appeal to take the form of a hearing or inquiry and to delegate functions relating to appeals.

Regulations

5.17 The Access to the Countryside (Appeals against Works Notices) (England) Regulations 2011, as amended by the Access to the Countryside (Appeals against Works Notices) (England) (Amendment) Regulations 2012¹⁰, provide for the period which, and the manner in which, appeals under section 38(1) of the 2000 Act and paragraph 4 of Schedule 20 are to be brought. They also

¹⁰ Available at <http://www.legislation.gov.uk/uksi/2011/2019/contents/made> and <http://www.legislation.gov.uk/uksi/2012/67/contents/made>

make provision for the advertising of those appeals and for the appeal procedures. In particular:

- regulations 4-12 relate to the initial stages of appeal and include provision as to how appeals are to be made and the period within which they are to be brought;
- regulations 13-37 relate to the determination of these appeals and set out the procedures for—
 - appeals to be determined on the basis of written representations (regulations 13-15);
 - appeals to be determined by way of a hearing (regulations 16-24);
 - appeals to be determined by way of an inquiry (regulations 25-37);
 - and
- regulations 38-45 contain general provisions, including provision for allowing further time for taking any step required by the and provision for the inspection and copying of documents.