

Relaxation or removal of a general restriction: guidance for relevant authorities

June 2012

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Disclaimer

This guidance is non-statutory and provides guidance on the main features contained in the removal or relaxation of a general restriction under the Countryside and Rights of Way Act 2000. The guidance does not attempt to provide a comprehensive explanation of every provision nor does it 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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Introduction

1. Part I of the Countryside and Rights of Way Act 2000 (“the 2000 Act”) introduced a new public right of access for open-air recreation to open country (mountain, moor, heath and down), registered common land and any land that has been voluntarily dedicated for access in England and Wales. Part 9 of the Marine and Coastal Access Act 2009 (“the 2009 Act”) introduced a right of access to the English coast. The 2009 Act amends Part 4 of the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”) 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 route and an associated margin of land linked to the route.
2. The coastal access provisions in the 2009 Act place a duty on 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.
3. Schedule 2 to the 2000 Act (“Schedule 2”) contains a number of general restrictions which must be observed by a person exercising the right of access. Part 2 of the Schedule to the Access to the Countryside (Coastal Margin) (England) Order 2010 (“the 2010 Order”) amended Schedule 2 to make a number of changes to the categories of general restrictions as they applied to coastal margin which is subject to the right of access.
4. This guidance provides you, as a relevant authority with advice about the criteria you will need to take into account when deciding whether to give a direction using the powers available under paragraph 7(1) to Schedule 2 to remove or relax one or more of the general restrictions set out in that Schedule 2. **Annex 1** to this

guidance reproduces the general restrictions listed in Schedule 2 limiting the activities that may be carried out by a person exercising the right of access.

5. A “relevant authority” for land which is open country and registered common land means the National Park Authority where access land falls within a National Park, or 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” as provided for under paragraph 15 of Part 3 of the Schedule to the 2010 Order. Natural England may however authorise the National Park Authority or the Forestry Commission to carry out the functions as “relevant authority” for land which is coastal margin as it may specify.
6. General restrictions may also be removed or relaxed by the landowner as part of a dedication instrument. This process lasts in perpetuity. Where a dedication instrument already exists for the land in question, it may be amended to record the removed/relaxed restrictions.

What does removing or relaxing a general restriction do?

7. In order to protect the interests of owners and farm tenants, the right of access introduced by the 2000 and 2009 Acts, which is for open air recreation on foot, does not entitle a person to be on land if they fail to observe any of these general restrictions by, for example, engaging in activities such as horse riding or camping. The general restrictions do not however prevent any of the lawful activities they cover from being carried out on access land under other rights, arrangements or traditions, or with the agreement of the owner or farm tenant.
8. A relevant authority can give a direction so that a person may engage in an activity by right. Extending the right of access in this way will mean that the owner or farm tenant of the land will face a reduced duty of care to members of the public engaged in these activities than would otherwise be the case.

9. A direction can be used to remove or to relax a general restriction over a particular area of land for either an indefinite or a specified period of time. In this context a “specified period” includes both a specified period in every year, or a single period, of any duration.
10. Removing a general restriction completely would extend the right of access to include any lawful activity undertaken for open-air recreation that would otherwise be covered by the restriction. Removing the general restriction at paragraph 1(s) of Schedule 2, for example, would not only allow the public to engage in organised games on the land, but also to hang-glide.
11. Relaxing a general restriction can be used to extend the right of access to include some, but not other, activities which would not otherwise be covered under the 2000 Act. Relaxing the general restriction at paragraph 1(c) of Schedule 2, for example, would allow horse riding on the land without allowing access users to also bring other types of animal onto that land.

What doesn't removing or relaxing a general restriction do?

12. Removing or relaxing a general restriction does not authorise any activity which is in any case illegal. It provides no defence against prosecution.
13. Please also remember that removing or relaxing a restriction does not remove any requirement which may exist for authorisation to be granted under any other legislation before an activity can be lawfully carried out.

Who can ask for a general restriction to be removed or relaxed?

14. Anyone can propose that you should remove or relax a general restriction. So you may receive enquiries about doing this from landowners or from a diverse range of bodies, including, for example, sporting and recreational clubs,

charities, local authorities and local access forums, as well as from private individuals. You might also identify benefits associated with removing or relaxing a restriction yourself without receiving any representations from other parties.

15. You can only give a direction with the consent of the owner of the land or, if the land is let, the farm tenant. It is essential that you obtain this person's written agreement before giving a direction.

What information should you consider before deciding whether to remove or relax a restriction?

16. We recommend that you seek the following information from any person who is proposing to remove or relax a general restriction:
- the name and address of the person making the request;
 - the name and address of the owner or farm tenant of the land (if different);
 - details of the location and extent of the land concerned, preferably using a large scale map;
 - details of which general restriction(s) they would like to remove or relax;
 - details of whether the general restriction is proposed to be removed or relaxed – and if the proposal is to relax it, a description of the specific activities that the relaxation is intended to permit; and
 - details of the duration of the proposed removal or relaxation, i.e. whether indefinitely or for a specified period.
17. If you require any additional information then you should discuss this with the person who has approached you, or the owner or farm tenant of the land, as appropriate.

Consulting on whether to give a direction

18. There is no statutory requirement under the 2000 Act for a relevant authority to consult any person or organisations about whether to give a direction. However, you cannot give a direction without the consent of the owner or farm tenant of the land. In circumstances where you have been asked to give a direction by a third party, or propose doing this on your own initiative, we therefore recommend that you contact the owner or farm tenant to seek their views at an early stage. To assist them in doing this you should provide them with a copy of the separate guidance which has been issued to land managers.
19. If it is clear that the owner or farm tenant is not willing to give their consent, there will be no need to consider the appropriateness of the proposal further. If they are more amenable, or undecided, about a proposal to remove or relax a general restriction, or indeed have suggested doing this themselves, we strongly recommend that you consult Natural England in the circumstances specified in paragraph 20, and similarly consult English Heritage in the circumstances specified in paragraph 21 below.
20. Section 28(l) of the Wildlife and Countryside Act 1981 requires any public body, including a relevant authority, to notify Natural England before permitting activities to be carried out likely to damage any of the flora, fauna or other features which make a Site of Special Scientific Interest (“SSSI”) of special interest. Where a proposal has been made for you to give a direction to remove or relax a general restriction on land which is a SSSI, you should therefore check with Natural England to see if this would be compatible with the nature conservation interests of the site. You should also consult Natural England where other designations for nature conservation exist, or if there is any other reason to consider that there could be adverse impacts on the natural environment as a result of giving a direction.
21. Likewise, we recommend that you consult English Heritage where the historic environment or a Scheduled Monument might be affected by the proposals.

22. You may wish to consult other organisations which may be affected by, or have concerns about, a proposed direction too, including the access authority for the area.
23. Before giving a direction you should also consider consulting any other parties that might have a legal interest in the land. This is particularly important in circumstances where the land may be used by others (e.g. grazing licensees), or where third parties enjoy rights over the land which might be compromised by a direction.
24. If you propose to give a long term direction - that is a direction for an indefinite period or for a period of six months or more - you may also find it helpful to seek the views of the relevant local access forum, although there is no requirement for you to do so.

Deciding whether to give a direction

25. In general you should only decline to give a direction which has been requested by an owner or farm tenant if there is an overriding reason why giving it would be inappropriate - for example, on nature or heritage conservation or public safety grounds. You may also consider that the action would appear to authorize actions that are unlawful, or that the impact on other legal interests in the land would be unreasonable. In considering proposals made by third parties, you should take account of the views of the owner or farm tenant of the land in making your decision.
26. A table setting out guidance as to whether or not it would be appropriate to give a direction is included at **Annex 2** to this guidance. However you will need to use your judgment to decide whether a direction is appropriate according to the local circumstances of each case. If you propose to give a direction that differs in any way from the form of the original proposal you should discuss the proposed changes with the owner or farm tenant before deciding how to proceed.

27. There is no right of appeal against any decision you make not to give a direction. However, if a decision not to issue a direction cannot be justified then you may be at risk of an application for judicial review from the person who made the proposal. It is therefore important to consider the circumstances of each case carefully.

Consent and notification

28. A relevant authority has no powers to issue a direction without obtaining the consent of the owner or farm tenant of the land.
29. It is important to obtain a written record of this consent. Accordingly, if you decide that issuing a direction would be appropriate, and have already received the owner or farm tenant's agreement in principle, then we recommend that you fill out the model direction included at **Annex 3** to this guidance and send this to the owner or farm tenant for them to sign and return to you. The wording used in the direction ensures that it will not take effect until the owner or farm tenant's signature has been provided.
30. In general, you should aim to give your decision to the person who has applied for a direction within about six weeks from the date you receive the proposal and information set out at paragraph 15.
31. If you decide not to give a direction, or the owner or farm tenant refuses to give their consent to this, you should notify the party that proposed the direction.
32. In circumstances where you do decide to give a direction then we recommend that you send a copy of the signed direction to:
- the access authority for the area concerned;
 - the local access forum;
 - Natural England or English Heritage, if they were consulted during the course of deciding whether to give the direction; and

- any other person or body that you may have consulted during this process.
33. You must send a copy of the direction to Natural England's Open Access Contact Centre (see contact details), which will publish the information you send it on a website so that interested parties will be able to see where extended rights of access apply.

Varying or revoking a direction

34. The owner or farm tenant of the land may withdraw their consent to a direction by writing to you at any time. If they indicate their wish to do this you may wish to discuss the matter with them and then if you conclude that the existing direction should be revoked you will need to give a new direction revoking the previous one to meet their new concerns.
35. You should also consider varying or revoking a direction if you have reason to believe that it is no longer necessary or appropriate for its purpose, for example, where there has been a change in the circumstances that led to the direction being given. If you are considering reintroducing a general restriction that has already been removed or relaxed then, while there is no requirement for you to secure the consent from the owner or farm tenant we nevertheless recommend that you discuss your proposals with them.
36. If you wish to vary a direction by extending the right of access to include other activities covered by the remaining general restrictions then you will need to obtain the consent of the owner or farm tenant. In either case, you will need to issue a new direction, replacing the previous one, to give effect to the variation or revocation.
37. After giving a new direction, you should inform any person or organization that you notified when making the original direction, as at paragraph 32 above.

Annex 1 General restrictions to the right of access

The general restrictions listed in Schedule 2 to the 2000 Act limiting the activities that may be carried out by a person exercising the right of access, are reproduced below. The changes to the general restrictions which apply to coastal land, as amended by the 2010 Order, are shown in bold:

- 1(1) **Subject to sub-paragraph (2) section 2(1)** does not entitle a person to be on any land if, in or on that land, he-
- (a) drives or rides any vehicle other than an invalid carriage as defined by section 20(2) of the Chronically Sick and Disabled Persons Act 1970,
 - (b) uses a vessel or sailboard on any non-tidal water,
 - (c) has with him any animal other than a dog,
 - (d) commits any criminal offence,
 - (e) lights or tends a fire or does any act which is likely to cause a fire,
 - (f) intentionally or recklessly takes, kills, injures or disturbs any animal, bird or fish,
 - (g) intentionally or recklessly takes, damages or destroys any eggs or nests,
 - (h) feeds any livestock,
 - (i) bathes in any non-tidal water,
 - (j) engages in any operations of or connected with hunting, shooting, fishing, trapping, snaring, taking or destroying of animals, birds or fish or has with him any engine, instrument or apparatus used for hunting, shooting, fishing, trapping, snaring, taking or destroying animals, birds or fish,
 - (k) uses or has with him any metal detector,
 - (l) intentionally removes, damages or destroys any plant, shrub, tree or root or

any part of a plant, shrub, tree or root,

- (m) obstructs the flow of any drain or watercourse, or opens, shuts or otherwise interferes with any sluice-gate or other apparatus,
- (n) without reasonable excuse, interferes with any fence, barrier or other device designed to prevent accidents to people or to enclose livestock,
- (o) neglects to shut any gate or to fasten it where any means of doing so is provided, except where it is reasonable to assume that a gate is intended to be left open,
- (p) affixes or writes any advertisement, bill, placard or notice,
- (q) in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does anything which is intended by him to have the effect-
 - (i) of intimidating those persons so as to deter them or any of them from engaging in that activity,
 - (ii) of obstructing that activity, or
 - (iii) of disrupting that activity.
- (r) without reasonable excuse, does anything which (whether or not intended by him to have the effect mentioned in paragraph (q)) disturbs, annoys or obstructs any persons engaged in a lawful activity on the land,
- (s) engages in any organised games, or in camping, hang-gliding or para-gliding, or
- (t) engages in any activity which is organised or undertaken (whether by him or another) for any commercial purpose.

(2) Nothing in sub-paragraph (1)(f) or (j) affects a person's entitlement by virtue of section 2(1) to be on any land which is coastal margin if the person's conduct (to the extent that it falls within sub-paragraph (1)(f) or (j)) is limited to permitted fishing-related conduct.

(3) In sub-paragraph (2) the reference to permitted fishing-related conduct is a reference to the person—

- (a) having a fishing rod or line, or**
- (b) engaging in any activities which—**
 - (i) are connected with, or ancillary to, fishing with a rod and line,**

or with a line only, in the exercise of a right to fish, and

(ii) take place on land other than land used for grazing or other agricultural purposes.

2. - (1) In paragraph 1(k), "metal detector" means any device designed or adapted for detecting or locating any metal or mineral in the ground.

(2) For the purposes of paragraph 1(q) and (r), activity on any occasion on the part of a person or persons on land is "lawful" if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.

3. Regulations may amend paragraphs 1 and 2.

4. – (1) During the period beginning with 1st March and ending with 31st July in each year, section 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead.

(2) Sub-paragraph (1) does not apply in relation to land which is coastal margin.

5. Whatever the time of year, section 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead and which is in the vicinity of livestock.

6. In paragraphs 4 and 5, "short lead" means a lead of fixed length and of not more than two metres.

6A.—(1) Whatever the time of year, section 2(1) does not entitle a person to be on any land which is coastal margin at any time if—

- (a) that person has taken onto the land, or allowed to enter or remain on the land, any dog, and**
- (b) at that time, the dog is not under the effective control of that person or another person.**

(2) For this purpose a dog is under the effective control of a person if the following conditions are met.

(3) The first condition is that—

- (a) the dog is on a lead, or**
- (b) the dog is within sight of the person and the person remains aware of the dog's actions and has reason to be confident that the dog will return to the person reliably and promptly on the person's command.**

(4) The second condition is that the dog remains—

(a) on access land, or

(b) on other land to which that person has a right of access.

(5) For the purposes of sub-paragraph (4), a dog which is in tidal waters is to be regarded as remaining on access land.

6B.—(1) Section 2(1) does not entitle a person to be on any land which is coastal margin if, on that land, the person obstructs any person passing, or attempting to pass, on foot along any part of the English coastal route, any official alternative route or any relevant temporary route.

(2) In this paragraph—

“the English coastal route” means the route secured pursuant to the coastal access duty (within the meaning of section 296 of the Marine and Coastal Access Act 2009;

“official alternative route” has the meaning given by section 55J of the National Parks and Access to the Countryside Act 1949;

“relevant temporary route” means a route for the time being having effect by virtue of a direction under section 55I of that Act to the extent that the line of the route passes over coastal margin.”

Annex 2 - Should a general restriction be removed or relaxed?

Paragraph of Schedule 2	Description of general restriction	Whether or not it would be appropriate for the restriction to be removed or relaxed
1(a)	<i>driving or riding any vehicle other than an invalid carriage</i>	<p>Removing the restriction will be inappropriate as it would allow people to take motor vehicles onto access land.</p> <p>Selective relaxation could be used to allow cycling along pre-determined paths.</p>
1(b)	<i>canoeing, jet-skiing, rowing, sailing and windsurfing on non-tidal water</i>	<p>Removing the restriction would give people a right to use inland water for any of these purposes. Before giving a direction to this effect you should check with the local authority that these activities are not covered by local byelaws and do not need planning permission.</p> <p>You should also take any parking requirements into account.</p> <p>Relaxing the restriction</p>

		could be used to allow people to engage in some but not all of these activities.
1(c)	<i>taking any animal – except a dog - onto the land</i>	Removing this restriction would be unnecessary and might have unforeseen consequences should someone use this to take an animal potentially harmful to wildlife onto the land. The restriction could be relaxed to allow horse-riding or pony-trekking
1(d)	<i>committing a criminal offence</i>	Removing the restriction will be inappropriate
1(e)	<i>lighting or tending a fire</i>	Removing the restriction will be inappropriate
1(f)	<i>intentionally or recklessly taking, killing, injuring or disturbing any animal, bird or fish</i>	Removing or relaxing the restriction will be inappropriate as they will overlap with wildlife crimes under the Wildlife and Countryside Act 1981 and

		Part III of the Habitats Regulations ¹
1(g)	<i>intentionally or recklessly taking, damaging or destroying any eggs or nests</i>	Removing or relaxing the restriction will be inappropriate as they will overlap with wildlife crimes under the Wildlife and Countryside Act 1981 and Part III of the Habitats Regulations
1(h)	<i>feeding livestock</i>	Removing or relaxing the restriction will be inappropriate
1(i)	<i>bathing in non-tidal water</i>	Removing this restriction would be appropriate as long as there are no potentially dangerous strong currents, or physical hazards around the water's edge or below its surface, and providing that the water is not used for any of the purposes in paragraph 1(b) above

¹ Fishing on the coastal margin is however permitted, as provided for in subparagraph 1(2) and (3) of Schedule 2 to the 2000 Act.

1(j)	<i>doing anything connected with hunting, shooting, fishing, trapping, snaring, or taking or destroying animals, birds or fish</i>	<p>This restriction duplicates in part the restriction at paragraph 1(f). Removing the restriction will therefore not be appropriate in any circumstances.</p> <p>Relaxing the restriction could, potentially, be used to include fishing within the scope of the right of access but would not circumvent the licencing requirements associated with this.</p> <p>Check with the Environment Agency if you propose to issue a direction to this effect.²</p>
1(k)	<i>using a metal detector</i>	<p>This restriction could be removed or relaxed but if you are proposing to issue a direction to this effect then check with English Heritage that this will not risk damage to any local archaeology.</p>
1(l)	<i>intentionally removing, damaging, or destroying, any plant, shrub,</i>	<p>Removing the restriction will be inappropriate as they will</p>

² See footnote 1

	<i>tree, or root, or part of one</i>	overlap with wildlife crimes under the Wildlife and Countryside Act 1981 and Part III of the Habitats Regulations
1(m)	<i>interfering with sluice gates, drains and watercourses</i>	Removing or relaxing the restriction will be inappropriate
1(n)	<i>interfering with a barrier designed to prevent accidents or to enclose livestock without a reasonable excuse</i>	Removing or relaxing the restriction will be inappropriate
1(o)	<i>neglecting to close a gate unless it is reasonable to assume it is intended to be left open</i>	Removing or relaxing the restriction will be inappropriate
1(p)	<i>writing or putting up notices or other advertisements</i>	Removing or relaxing the restriction might be appropriate
1(q)	<i>protect access users and others from any unwarranted disturbance, annoyance, obstruction or intimidation while they are engaged in lawful activities on access land</i>	Removing or relaxing the restriction will be inappropriate
1(r)	<i>protect access users and others from any unwarranted disturbance, annoyance,</i>	Removing or relaxing the restriction will be

	<i>obstruction or intimidation while they are engaged in lawful activities on access land</i>	inappropriate
1(s)	<i>engages in any organised games, camping, hang-gliding or para-gliding</i>	<p>Whether removing this restriction completely is appropriate will depend on the circumstances of each case. In most cases, relaxing the restriction to allow one or more of these activities will be more sensible.</p> <p>Before giving a direction you should check with Natural England and English Heritage that the activity concerned is not likely to endanger any nature conservation or heritage preservation interests.</p>

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Annex 3 - Model Direction

Direction removing or relaxing general restrictions in Schedule 2 to the Countryside and Rights of Way Act 2000

The [relevant authority name] gives this direction, on [insert date], under paragraph 7(1) of Schedule 2 to the Countryside and Rights of Way Act 2000, to remove or relax one or more of the general restrictions set out in that Schedule to the extent specified below:

Column 1	Column 2	Column 3	Column 4	Column 5
General restriction in Schedule 2	Removed	Relaxed (state the extent of the relaxation)	Land affected (shown on the attached map)	Period affected (if indefinite, show date from which removal or relaxation takes effect)

The owner or farm tenant of the land and the relevant authority must sign the direction to confirm the removal or relaxation of these restrictions.

As owner or farm tenant of the affected land, I give my consent to the removal or relaxation of these general restrictions to the extent shown above.

Signed:

Name and address:

Date of signature:

Signed on behalf of the relevant authority by:

Signed:

Name and position:

Date of signature:

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Notes for filling in the model direction

Once it has been decided or agreed to remove or relax a general restriction, the model direction must be completed:

- (i) Insert the relevant paragraph(s) of Schedule 2 in column 1.
- (ii) Tick the box in column 2 if it is proposed to remove the restriction
- (iii) If it is proposed to relax the restriction describe in column 3 the activities covered by the restriction it is wished to include under the right of access eg, by inserting “persons with horses permitted” or “persons with ponies or horses permitted” etc.
- (iv) A map must be enclosed with the direction so that it is clear the area of land on which it is proposed to either remove or relax the restriction. Complete column 4 to describe whether the removal or relaxation will apply to all or part of this land. If the removal or relaxation of the restriction will apply only in relation to a specific part(s) of the land (for example along defined tracks or paths) then this should be described in words, and the appropriate area(s) marked on the map.
- (v) In column 5 insert the start and end dates for the period it is proposed to remove or relax the restriction. If it is proposed to remove or relax the restriction on an indefinite basis, insert the words “indefinite from [date]”.

Contact details

Access authorities

The access authority is a National Park authority if your land falls within a National Park, or the relevant local highway authority (i.e. the local authority for your area) in all other cases.

Charity Commission

Charity Commission, PO Box 1227, Liverpool, L69 3UG. Telephone: 0845 300 0218 (national contact centre)

Countryside Council for Wales

Countryside Council for Wales, Maes y Ffynnon, Penrhosgarnedd, Bangor, Gwynedd, LL57 2DW. Telephone: 0845 1306 229

Department for Environment, Food and Rural Affairs

Landscape and Outdoor Recreation, Defra, Zone 1/09, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB. Telephone: 0117 372 3553. Email: coast.consultation@defra.gsi.gov.uk.

English Heritage

English Heritage, 1 Waterhouse Square, 138 - 142 Holborn, London EC1N 2ST. Telephone: 020 7973 3000. Email: customers@english-heritage.org.uk

Forestry Commission

Forestry Commission, 620 Bristol Business Park, Coldharbour Lane, Bristol, BS16 1EJ. Telephone: 0117 906 6000. Email: fe.england@forestry.gsi.gov.uk

National Assembly for Wales

The National Assembly for Wales, Cardiff Bay, Cardiff, CF99 1NA. Telephone: 0845 010 5500. Email: assembly.info@wales.gov.uk.

Natural England

The Open Access Contact Centre, Temple Quay House, 2 The Square, Bristol BS1 6EB. Telephone: 0845 100 3298. Email: openaccess@naturalengland.org.uk.

Contact details for your local Natural England office can be found in the notification documents sent to owners and occupiers of Sites of Special Scientific Interest, or by telephoning the Natural England enquiry service on 0845 600 3078. You can also obtain these details by emailing: enquiries@naturalengland.org.uk.

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