

**Countryside and Rights of Way (CROW) Act 2000**

**REVIEW OF STATUTORY DIRECTION(S)**

**SUMMARY FOR PUBLIC CONSULTATION**

**Prepared by Natural England**

**1. INFORMATION ABOUT THE PUBLIC CONSULTATION**

**Access Authority:** Cumbria County Council, Durham County Council and Northumberland County Council

**Relevant Authority:** Natural England

**Local Access Forum:** Cumbria, Durham and Northumberland

The relevant authority, Natural England, is about to review the following directions:

<b>Land Parcel Name:</b>	<b>Access Authority</b>	<b>Direction Ref.</b>
Flinty Fell	Cumbria	2008080091
Red Carle Allotment		2005100020
Rotherhope (North and South)		2005100015
Teesdale Allotments	Durham	2010075582
Teesdale Allotments		2010075583
Widdybank Fell		2005090267
Widdybank Fell – Hole Head & Guys Moss		2005090326
West Allotment, Langdon		2009085039
South Crossthwaite Common		2009030090
Atkinsons Peat Allotment		2009020012
North of Coanwood Common	Northumberland	2008100116

This is in line with the relevant authority's statutory duties (see Annex 1).

Your views on the **current directions** are sought to assist the relevant authority in deciding whether the restrictions are still necessary for their original purpose; and if so, whether the extent and nature of the restrictions are still appropriate for the original purpose.

The relevant authority may decide that no change is necessary to the current terms of the directions, in which case a Consultation Outcome Report will be published on the [Consultation Pages](#) of the Government's Website<sup>1</sup>.

If the relevant authority decides to vary or revoke the direction, a further round of public consultation may be necessary (see Annex 1) in which case a second Consultation Summary Report will be published.

## **2. SUMMARY OF EXISTING DIRECTION(S)**

<b>Cumbria</b>			
<b>Land Parcel Name</b>	<b>Direction Reference</b>	<b>Details of Current Restriction</b>	<b>Reason for Exclusion</b>
Flinty Fell	2008080091	Dog exclusion between 1st October to 31st March (until 2016)	CROW s26: Nature Conservation
Red Carle Allotment	2005100020		CROW s26: Nature Conservation
Rotherhope (North and South)	2005100015		CROW s26: Nature Conservation
<b>Durham</b>			
<b>Land Parcel Name</b>	<b>Direction Reference</b>	<b>Details of Current Restriction</b>	<b>Reason for Exclusion</b>
Teesdale Allotments	2010075582	Keep dogs to a short lead from August 1st to 31st each year (until 2016)	CROW s26: Nature Conservation
Teesdale Allotments	2010075583	Public Exclusion - Keep to Public Rights of Ways from 1 <sup>st</sup> October to 31 <sup>st</sup> March each year (until 2016)	CROW s26: Nature Conservation
Widdybank Fell	2005090267	Public Exclusion all year (until 2016)	CROW s26: Nature Conservation
Widdybank Fell – Hole Head & Guys Moss	2005090326	Public Exclusion all year (until 2016)	CROW s26: Nature Conservation
West Allotment, Langdon	2009085039	Public Exclusion from March 1st to May 31st (until 2016)	CROW s26: Nature Conservation
South Crossthwaite Common	2009030090	Public Exclusion from October 1st to March 31st (until 2016)	CROW s26: Nature Conservation
Atkinsons Peat Allotment	2009020012	Public Exclusion from October 1st to March 31st (until 2017)	CROW s26: Nature Conservation

<sup>1</sup> [https://www.gov.uk/government/publications?publication\\_filter\\_option=consultations](https://www.gov.uk/government/publications?publication_filter_option=consultations). To access the consultation enter "Open Access" into the free text box titled "Contains" and then filter by "Natural England" in the Department drop down.

Northumberland			
Land Parcel Name	Direction Reference	Details of Current Restriction	Reason for Exclusion
North of Coanwood Common	2008100116	Keep dogs to a short lead from August 1st to 31st each year (until 2016)	CROW s26: Nature Conservation

A short summary is provided below giving the background to the directions. This should be read in conjunction with the outcomes reports following the last round of reviews (See Annex 2). Further information is available from Chris Pope on [christine.pope@naturalengland.org.uk](mailto:christine.pope@naturalengland.org.uk).

### **Flinty Fell, Red Carle Allotment and Rotherhope (North and South).**

Based on the feedback gathered during the previous review, Natural England concluded that:

- There are decreased numbers of black grouse on the 3 sites;
- The decline in numbers is attributed to climatic factors;
- Black grouse are particularly sensitive to disturbance from dogs; and
- Monitoring indicates that there are low levels of access by people.

Based on these conclusions, Natural England decided that the original restriction (total exclusion of the public October to March each year) no longer represented the “least restrictive” option and needed to be varied. However, as the relevant authority we did accept that it was still important to take appropriate measures to protect black grouse at these sites. Therefore Natural England:

- Varied the restriction on all three sites to exclude CRoW rights to people with dogs from October to March each year; and.
- Made changes to land parcel boundary at Red Carle Allotment.

In addition, Cumbria County Council and the Game and Wildlife Conservation Trust (GWCT) agreed to and have undertaken monitoring since the last review to establish the numbers of wintering black grouse (so that we can ascertain whether they are still important wintering sites) and the numbers of CROW users. We have recently received the data from the GWCT and the information from Cumbria County Council will be available in the New Year. We will consider the findings as part of this review.

### **Teesdale Allotments**

Based on the information gathered during the previous review, Natural England did not believe that there was a need to restrict access to Marked Routes & Public Rights of Ways from 1<sup>st</sup> October to 31<sup>st</sup> August each year (until 2099) across the entirety of the site because:

- The whole site was not considered to be a wintering site; and
- The use of Open Access land is low.

However, as the relevant authority we did accept that it was still important to take appropriate measures to protect black grouse at these sites. Therefore, Natural England, as relevant authority, decided that the restrictions should be varied:

- To exclude the public, on a reduced area, between October 1<sup>st</sup> and March 31<sup>st</sup> each year, until 2016, as indicated on the attached map (Case Number 2010075583) - to prevent disturbance and protect the integrity of the vulnerable species during the winter period; and
- To keep dogs to a short lead from August 1<sup>st</sup> to 31<sup>st</sup> each year (until 2016), thereby extending the national dogs on leads restriction (1st March to 31st July) by one month, to cover the breeding period (Case Number 2010075582).

### **Widdybank Fell, Guys Moss and Hole Head**

Taking into account all the information and evidence provided during the last review, Natural England, as relevant authority, decided that the current restrictions (Public Exclusion) should remain but the end date should be varied from 2099 to 2016. Therefore a new direction was put in place to exclude the public, all year across all three areas - to protect the integrity of the vulnerable features of these sites, until 2016, because:

- Research indicates it only takes a small number of people to cause damage to the sugar limestone; and
- The total exclusion for the sugar limestone habitat also served to protect black grouse from disturbance during the breeding season (1<sup>st</sup> April to 31<sup>st</sup> August) and the wintering season (1<sup>st</sup> October to 31<sup>st</sup> March).

### **West Allotment**

During the reassessment in 2010, Natural England sought confirmation that the information received at the time of granting the original direction was still accurate. The matter was discussed with GWCT as this site is unusual, in that it is a well-known leking site and prone to a higher level of visitors, compared to other areas of Open Access land. A majority of these visitors tend to be bird watchers early in the morning, not average general public, therefore there is a risk that they would like to access the allotment to view and photograph the Black Grouse closely.

Following the outcomes from these discussions Natural England, as the relevant authority, concluded that a variation to the current direction; total exclusion from 1st March to 31st August each year to a total exclusion from 1st March to 31st May each year, until 2016, to cover the leking period was the least restrictive option. This decision was based on the following information:

- Due to the sensitive nature of this particular area, informal management measures are not sufficient to protect the vulnerable features;
- The presence of Black Grouse results in these areas being much more susceptible to disturbance from the new CRoW access right;
- Black grouse are extremely vulnerable to disturbance by people and dogs;
- The site is readily accessible from a minor road where visitors can view the Black Grouse without accessing the site; and
- Dogs are excluded from the site due to the presence of an s23 discretionary dog exclusion, therefore a restriction, under s26, for the breeding period would not be necessary.

### **South Crossthwaite Common**

At the last review Natural England concluded that the current restriction (Public Exclusion - Keep to Public Rights of Ways from October 1<sup>st</sup> to March 31<sup>st</sup> each year) should remain and subsequently varied the end date from 2011 to 2016 for the following reasons:

- Due to the sensitive nature of this particular area, informal management measures are not sufficient to protect the vulnerable features;
- The presence of Black Grouse in the winter results in this area being much more susceptible to disturbance from CRoW access rights;
- Black grouse are extremely vulnerable to disturbance by people and dogs; and
- As the area has a PRoW running through there is a potential for people to stray from the path.

### **Atkinsons Peat Allotment**

Following the research undertaken at the last review Natural England concluded that the current direction (Public Exclusion - Keep to Public Rights of Ways from 1st October to 31st August each year) should remain but the dates varied to cover the winter period only (1st October to 31<sup>st</sup> March each year) until 2017. The decision was based on the following information:

- Due to the sensitive nature of this particular area, informal management measures are not sufficient to protect the vulnerable features.
- The presence of Black Grouse in the winter results in this area being much more susceptible to disturbance from the new CRoW access rights.
- As the area has a Public Highway and a PRoW abutting the Northern and Southern boundaries respectively there is a potential for people to stray into the area of concern.
- The presence of the CRoW s23 discretionary dog exclusion negates the need for a “dogs on short leads” restriction under S26 to cover the breeding period.

### **North of Coanwood Common**

Following the research undertaken at the last review Natural England, as the relevant authority, did not believe that there was a need to continue with the current restriction (Keep to Marked Routes & Public Rights of Ways from 1st October to 31st August each year) and varied the restriction type and area accordingly; restricting dogs to be on a short lead between August 1<sup>st</sup> and 31<sup>st</sup> each year (until 2016), thereby extending the national dogs on leads restriction (1<sup>st</sup> March to 31<sup>st</sup> July) by one month, to cover the breeding period, on a reduced area.

## **3. SUBMITTING COMMENTS ON THE REVIEW**

If you wish to comment on the review of this direction then you must do so **before January 30<sup>th</sup> 2015** directly to Kevin Vigers on [kevin.vigers@naturalengland.org.uk](mailto:kevin.vigers@naturalengland.org.uk).

A map accompanies this notice and can be seen on the [Consultation Pages](#) of the Government's Website<sup>2</sup>.

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<sup>2</sup> [https://www.gov.uk/government/publications?publication\\_filter\\_option=consultations](https://www.gov.uk/government/publications?publication_filter_option=consultations). To access the consultation enter “Open Access” into the free text box titled “Contains” and then filter by “Natural England” in the Department drop down.

## Annex 1

In accordance with statutory guidance, the relevant authority has a duty to:

- review directions of a long-term character no later than their fifth anniversary; and
- revoke or vary directions where necessary.

Under CROW section 27(3) the relevant authority must review, at least every five years, any direction it has given that restricts access indefinitely; for part of every year; for part of each of six or more consecutive calendar years; or for a specified period of more than five years.

During the review the relevant authority must, having regard to the interest of the public in having access to the land, consider whether the restriction is still necessary for its original purpose; and if so, whether the extent and nature of the restriction is still appropriate for the original purpose.

Before reviewing a long-term direction the relevant authority must consult:

- the local access forum;
- the applicant or his successor in title, where reasonably practicable – for directions under section 24 or 25 made on application; or
- the relevant advisory body – for a direction made under section 26.

The authority must also publish a notice on a website (and send a copy to statutory consultees) that must explain that the authority proposes to review the direction in question; where documents relating to the review may be inspected and copies obtained; and that representations in writing with regard to the review may be made by any person to the authority by a date specified in the notice.

Once consultation is complete the relevant authority should have regard to any representations it receives before making a decision.

If following the consultation, the Relevant Authority decides to:

- leave the original direction unchanged, the relevant authority should record the date that the decision was made and should schedule a subsequent review where necessary.

If following the consultation, the Relevant Authority decides to:

- vary a direction in any way (type, extent or date); the relevant authority must give a new direction under the same section that was used to give the original direction. If the new direction is long-term, it must be reviewed within five years of the date it is given;
- revoke a direction, the relevant authority must give a new direction under the same section to revoke it. There is no requirement to review the new direction.

Before varying or revoking a direction the relevant authority must: consult the original applicant or his successor in title, where reasonably practicable – for directions given under section 24 or 25 on an application; or consult the relevant advisory body – for directions given under section 26. In either case, follow the consultation procedures set out in the Relevant Authority Guidance but only if it proposes to give a new direction that would restrict access indefinitely or for more than six months continuously.

## Annex 2

### Countryside and Rights of Way (CRoW) Act 2000

#### NOTICE OF RELEVANT AUTHORITY DECISION FOLLOWING REVIEW OF DIRECTION RESTRICTING CRoW ACCESS

Prepared by Natural England

**Access Authority:** Durham County Council  
**Relevant Authority:** Natural England (North East)  
**Local Access Forum:** Durham

Land Parcel Name	Original Direction Ref.	Details of restriction on original direction	Reason for Exclusion
Teesdale Allotments (including Parcel B)	2005090144	Keep to Marked Routes & Public Rights of Ways from 1 <sup>st</sup> October to 31 <sup>st</sup> August each year (until 2099)	CRoW s26: Nature Conservation
Teesdale Allotments (Parcels A and C)	2005090146	Keep to Marked Routes & Public Rights of Ways from 1 <sup>st</sup> October to 31 <sup>st</sup> August each year (until 2099)	CRoW s26: Nature Conservation

Natural England has now decided how to proceed following its review of the above mentioned direction to restrict CRoW access on this land. Two separate consultations have been held with statutory consultees and the general public during this process

The first consultation was held between May 24<sup>th</sup> and June 18<sup>th</sup> 2010 with statutory consultees and the general public. We received feedback from a number of consultees including:

- Durham County Council;
- Durham Local Access Forum (LAF);
- The British Mountaineering Council (BMC);
- The Ramblers; and
- The Moorland Association

Comments from all these organisations were considered and changes to the original direction were then proposed.

A second consultation was held between July 12<sup>th</sup> and August 6<sup>th</sup> 2010 with statutory consultees and the general public. We received feedback from a number of consultees including:

- Durham County Council; and
- The Ramblers.

#### **Outcome of the Review**

Durham County Council and The Ramblers were supportive to the varying of the current directions as Natural England proposed.

a) Site Context

Teesdale Allotment forms part of an extensive area of enclosed upland grazing in two blocks among a larger area of rough grazing on the north side of the Tees Valley near Middleton-in-Teesdale and are of national importance for their breeding bird assemblage. The bird community includes lapwing, snipe, redshank, curlew, golden plover and black grouse. In terms of breeding wader densities the populations in Teesdale District of Durham are the most significant in the uplands of England and the Teesdale Allotments along with the Upper Teesdale SSSI and parts of the tributary valleys of the Lune and Balder are the most important areas for these birds.

b) Original Direction

In 2005, the then Countryside Agency (now Natural England) made a direction<sup>1</sup> to keep people to marked routes and Public Rights of Ways for nature conservation purposes between 1<sup>st</sup> October to 31<sup>st</sup> August each year, until 2099.

The original restriction was made prior to the commencement of open access and was based largely upon an anticipated significant increase in those using CRoW rights in these areas. This statutory review has enabled Natural England to seek confirmation that the information received and used at the time of granting the original direction is still accurate.

c) Black Grouse

As outlined in the initial consultation report, the English Nature / Countryside Agency detailed assessment identified this particular site as having breeding and wintering black grouse present which are prone to human disturbance and particularly disturbance from dogs. Black grouse can flush at variable distances which during the breeding season can have a significant impact on breeding success. Disturbance is potentially critical at times of prospecting; incubation, chick rearing and feeding and can lead to exposure to the elements and possible chick death.

The English Nature Report<sup>2</sup> (Contract No JW/05/04) reported that during the winter months a large proportion of black grouse from the surrounding area gather at favoured localised feeding points. The location of these sites were recorded in the report, with one site on Teesdale Allotments providing refuge to 18 females and another site to 18 males and 22 females. Given the concentrations of black grouse and their tendency to flush at considerable distances, the small patches of traditionally favoured habitat during the winter months may be the occasion when the potential for disturbance is highest.

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<sup>1</sup> *This direction was made following a detailed nature conservation assessment that was devised so that it fulfils the requirements of The Appropriate Assessment (Regulation 48) The Conservation (Natural Habitats &c) Regulations 1994. The aim of the assessment was to identify current access and predict any likely changes in the levels and patterns of access as a result of CRoW for each identified concern site (SPA/cSAC, Ramsar, SSSIs). If a likely significant change in the levels and patterns of use was predicted for an identified concern site, the next step was to identify the site-specific sensitive areas (vulnerable features) within the SPA/SAC, SSSI which have been predicted to have an increased change in the levels or patterns of use and where these areas coincide together. Working closely with the then English Nature and Northumberland County Council (Access Authority) a way forward was agreed to address the nature conservation concerns of the North Pennine SPA, using a combination of informal management solutions aimed at altering visitor behaviour in the main across the site, with additional use of statutory restrictions (**least restrictive option**) where necessary under s26(3)(a) CRoW to ensure there is no significant impact on the integrity of the site).*

<sup>2</sup> **Warren, P, Richardson, M. and Baines, D.** 2005. *A Strategic approach to the conservation of Black Grouse in relation to Open Access within the North Pennines Complex.*



During the course of this review, the matter was discussed with GWCT who indicated that the behaviour of black grouse varies in response to disturbance changes throughout the year.

During the breeding period (May-August) hens are very secretive and will only flush reluctantly (on average 22m), the key restriction here is to keep dogs on leads. The landowners of Teesdale Allotments have placed CRow s23 discretionary dog exclusions on most of the land covered by the current restrictions under review.<sup>3</sup>

During the winter, black grouse flush at much greater distances (on average 71m) and research has demonstrated that flushing distances increase with higher disturbance (60% increase). Therefore increased access in the winter may negatively impact on black grouse at these identified winter feeding areas. The key restriction during the winter period is to minimise disturbance which may include excluding access to a specific site.

The GWCT have also indicated that the winter feeding areas identified in 2005 are still important to the recovery of Black Grouse.

d) Current levels and patterns of use

There are a number of existing Public Rights of Way that cross the site, some of which form part of promoted walking routes.

The detailed assessment, in 2005, predicted a high significant change in the levels and patterns of access use across the site post commencement, which was supported by the GIS Predicting Levels and Patterns of use model, causing a likely significant affect on the vulnerable feature. In addition a new predicted route was identified along Coldberry Hush.

In their initial consultation response, Durham County Council, as the access authority, reported that use other than on Rights of Way or close to the road is not significant.

This view is supported by the monitoring undertaken by Durham County Council in 2007/08 at Coldberry. The few recordings of where visitors to Coldberry walked during their visit show that a number of the visitors walked across the excluded area. Although some of the walks were on Public Rights of Ways (and so unaffected by restrictions on Open Access Land), many spent at least part of their visit on land over which their right of access had been excluded.

e) What is the lowest level of restriction necessary?

The CRow Act is clear in stating that in deciding whether a CRow restriction is necessary, the Relevant Authority must always seek the least restrictive option. To help determine what action may need to be taken in such cases a set of default recommendations to protect Black Grouse on CRow Access land was published in 2005 (see Annex 1 below). Based on these recommendations and information on current distribution and numbers of birds supplied by GWCT during this review, Natural England, as the relevant authority, believes that the recommendations outlined in this guidance in relation to breeding and wintering sites are still relevant today.

Therefore, based on the information gathered during this review, Natural England does not believe that there is any need to restrict access to Marked Routes & Public Rights of Ways

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<sup>3</sup> Section 23 case references for Teesdale Allotments are 2010055479, 2010055480 and 2010055481.

from 1<sup>st</sup> October to 31<sup>st</sup> August each year (until 2099) across the entirety of all three areas because:

- The whole site is not considered to be a wintering site; and
- The use of Open Access land is low.

Natural England, as the Relevant Authority, are aware that the information gathered in 2005 may now be dated, but we have sought advice from the GWCT on the current situation to assist in our duty under Section 26 of the CRow Act.

We also acknowledge that we do not have any significant evidence on the levels of disturbance to Black Grouse from people. To acquire this evidence we would need further research / monitoring to be put in place to establish the impact of disturbance. GWCT have reported that the bird population is very sensitive, and GWCT are reluctant to risk the population to conduct experiments on disturbance.

Taking into account all the information and evidence provided as part of this review, Natural England, as relevant authority, has decided that the current restrictions should be varied:

- to exclude the public, on a reduced area, between October 1<sup>st</sup> and March 31<sup>st</sup> each year as indicated on the attached map (Case Number 2010075583) - to prevent disturbance and protect the integrity of the vulnerable species during the winter period; and
- to keep dogs to a short lead from August 1<sup>st</sup> to 31<sup>st</sup> each year on breeding areas<sup>4</sup> - to provide a consistent message about the purpose and extent of the proposed S26 restriction, it is proposed that the whole area indicated on the attached map (Case Number 2010075582) will be subject to the restriction, regardless of any overlap with existing S23 restrictions.

To support the varying of these directions we have already been in discussions about the need for better signage and information with Durham County Council and are planning for installation of such management measures to take place soon.

**Summary of changes made to the existing directions:**

Land Parcel Name	Details of restriction on original direction	New details of restriction
Teesdale Allotments (Case Number 2005090144)	Keep to Marked Routes & Public Rights of Ways from 1 <sup>st</sup> October to 31 <sup>st</sup> August each year (until 2099)	Keep dogs to a short lead from August 1 <sup>st</sup> to 31 <sup>st</sup> each year (until 2016) <b>New Case Number 2010075582</b>
Teesdale Allotments (Case Number 2005090146)	Keep to Marked Routes & Public Rights of Ways from 1 <sup>st</sup> October to 31 <sup>st</sup> August each year (until 2099)	Public Exclusion - Keep to Public Rights of Ways from 1 <sup>st</sup> October to 31 <sup>st</sup> March each year (until 2016) <b>New Case Number 2010075583</b>

<sup>4</sup> This extends the general restriction under Schedule 2 of the CRow Act to keep dogs on a short lead between March 1<sup>st</sup> and July 31<sup>st</sup> each year

Natural England's policy for long term directions is that they should not be given for a period of more than 6 years. Therefore the new directions will have an end date of March 31<sup>st</sup> 2016 (2010075583) and August 31<sup>st</sup> 2016 (2010075582).

Details of the restriction will appear on the relevant map of access land on the Open Access website - [www.naturalengland.org.uk/openaccess](http://www.naturalengland.org.uk/openaccess).

Where a direction restricts access indefinitely, for more than five years, for part of every year, or for part of at least six consecutive years, we have a statutory duty to review it within five years of the date of its issue.

Date review completed: August 12<sup>th</sup> 2010.

Annex 1

**CRoW Part1: After Predicted Access Increase Default Recommendations to protect Black Grouse on Access Land (Final 18/07/05). Where impractical to meaningfully define lek sites or allotment lands flexibility, discretion and exceptions will apply.**

	<b>Traditional Lekking Sites<sup>5</sup></b>	<b>Breeding Sites</b>	<b>Wintering Sites</b>
<b>On Open Moorland</b>	<b>Access Excluded April-May inclusive</b>	<b>Access Management<sup>6</sup></b>	<b>No special action</b>
<b>Within Enclosed Allotment Land<sup>7</sup></b>		Traditional sites <sup>8</sup> : i) where no increase in access use is anticipated; dogs on short leads 1st May to 31st August ii) where an increase in access use is predicted (or results); dogs on short leads 1st May to 31st August <u>and</u> access users excluded to linear routes	Traditional wintering grounds with large aggregations of Black Grouse <sup>9</sup> : <b>Pre-emptive exclusion</b> of access 1 October to 31 March
		Occasional or new sites <sup>10</sup> : <b>Access Management</b>	Occasional wintering grounds: <b>No special action</b>

<sup>5</sup> Sites used for lekking, present annually.

<sup>6</sup> Focussing on existing Schedule 2 signs (or s23) restrictions on dogs

<sup>7</sup> Defined as enclosed, often walled, adjacent to but below the 'fell wall' some show evidence of partial improvement if only grazing & dunging by livestock. Often demonstrate the lower limit of heather (or other dwarf shrub), cover. Sheltered with good food supply (invertebrates & cotton-grass), also provide feeding & roosting opportunities when more exposed land is inaccessible due to adverse weather i.e. snow cover.

<sup>8</sup> Sites used for breeding (presence of eggs/chicks or 'nest' site or sustained pairing/courtship behaviour) present annually for at least the last 3 years.

<sup>9</sup> Sites occupied by minimum of 5 birds (smallest sites at about 5 ha), annually for at least 3 years.

<sup>10</sup> Sites which have demonstrated sustained occupancy for at least a 3 year period.