

Relaxation or removal of a general restriction: guidance for land managers

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. See **Annex 1** of this guidance for details.
4. This guidance provides you, as an owner or farm tenant, with advice about what to do if you wish to extend the right of access introduced by the 2000 Act by voluntarily removing or relaxing one or more of the general restrictions set out at

Schedule 2. It also gives you advice about the things you will need to think about if you are approached by the relevant authority for your land, or a third party, about a proposal to remove or relax one or more of these restrictions.

5. A “relevant authority” for 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” although it may 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.
6. The guidance only applies to England. If you wish to remove or relax a restriction in Wales, then you should contact the National Assembly for Wales or the Countryside Council for Wales.
7. If you have dedicated your land for access under section 16 of the 2000 Act then you can remove or relax a general restriction as part of this process to include the activities you wish to allow under the right of access on a permanent basis. Making a dedication creates a *permanent* right of access over the land which will remain in force even if the status of land as mountain, moor, heath, down or registered common land changes.

What does removing or relaxing a general restriction do?

8. A relevant authority may give a direction under paragraph 7(1) of Schedule 2 to the 2000 Act to remove or relax a general restriction. The effect of a direction would ensure that a person engaging in an activity which would not otherwise be allowed under the right of access would not be regarded as a trespasser.
9. It is not necessary for a restriction to be removed or relaxed for the lawful activities that it covers to be carried out. You may, for instance, prefer to permit

members of the public to engage in recreational activities on your land on an informal basis, without extending the right of access to include them (i.e. by removing one or more of the general restrictions). However, because section 13 of the 2000 Act reduces an occupier's liability towards members of the public exercising the right of access to the lower level usually owed to trespassers, removing or relaxing a general restriction means that an occupier's liability towards a person who is engaged in an activity allowed by the removal or relaxation will also be similarly reduced.

10. A direction can remove or 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. In any event, the period for the arrangement is determined by you as the land owner or farm tenant and you can terminate the arrangement by withdrawing your consent at any time. The arrangement is not binding on future owners of the affected land unlike a dedication of land under section 16 of the 2000 Act.
11. 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 organized games on the land, but also to hang-glide.
12. 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.
13. A table setting out guidance as to whether or not it would be appropriate to consider removing or relaxing a general restriction is included at **Annex 2** to this guidance.

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

14. Removing or relaxing a general restriction does not authorise any activity which is illegal. It provides no defence against prosecution. It does not remove any requirement which may exist for authorisation to be granted under other legislation before an activity can be lawfully carried out.

Who can remove or relax a general restriction?

15. Only a relevant authority can give a direction to remove or relax a general restriction. It may give a direction on its own initiative, or in response to a proposal made to it by you or a third party, for example a sports or recreational club. However, it only has powers to give a direction with **your** consent as the owner of the land or, if the land is let, the farm tenant.
16. If the relevant authority proposes to lift one of the general restrictions set out at Schedule 2 it will contact you at an early stage to seek their views about the appropriateness of this.
17. If you have dedicated your land for access, however, then you can remove or relax a general restriction by amending the dedication without obtaining approval from the relevant authority.

What information should a proposal to remove or relax a general restriction contain?

18. If you wish to remove or relax a general restriction you should give the relevant authority the following details:

- your name and address;

- 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) you 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, ie. whether indefinitely or for a specified period.
19. The relevant authority will also supply you with the relevant details if it proposes to remove or relax a general restriction itself, either on its own initiative or in response to an approach made to it by a third party. If you require any additional information before deciding whether you wish to give your consent to the proposal then you should discuss this with the relevant authority.

What do I need to consider before deciding whether to consent to a direction?

20. If you are considering whether to remove or relax a general restriction there are a number of points you will need to consider:

Duration: you will need to decide whether the general restriction in question should be lifted indefinitely, or for a “specified period”, either each year or for one or more single periods.

Removal or relaxation: removing or relaxing a general restriction will allow access users to engage in any lawful activity that would otherwise be covered by the restriction. You will need to consider which of the specific activities you want to allow to be carried out. A general restriction can be removed or relaxed over a particular area of land or route.

Permission under other legislation: you will need to consider whether you need the permission of any authority under other legislation. If, for example, your land includes a Site of Special Scientific Interest (SSSI), then you should check your notification documentation to check whether your proposal might require special consent, authorisation or permission. Under the Wildlife and Countryside Act 1981 it is an offence for the owner or occupier of a SSSI to carry out, or cause or permit to be carried out, any operation specified in the notification documentation for the site without the consent of Natural England.

If your land contains a Scheduled Monument then you should also check with English Heritage whether your proposal requires special consent. Under the Ancient Monuments and Archaeological Areas Act 1979 it is an offence for any person to execute, cause, or permit any works which might result in damage to a Scheduled Monument, unless consent has been received from the Secretary of State.

You might also need to consult your local authority about your proposals. Removing or relaxing the restriction at paragraph 1(c) of Schedule 2 to allow camping, for example, does not circumvent any requirement to obtain a licence which may exist.

Agreements in private law: lastly, you should make sure that removing or relaxing a general restriction will not put you in breach of any agreement you may have entered into in private law. Failure to do this could lead to civil action being taken against you by a third party.

Where, for example, a financial charge is held over your land through a mortgage agreement or via a secured loan, then the terms of the agreement may require you to inform the lender of any change in the status of the land. You may also need to obtain the consent of the holder of a third party right, such as a sporting right, over the land in question, to avoid incurring any liability as a result of relaxing or removing a general restriction. If you are a farm tenant then you should also make sure that your tenancy does not contain any covenants which might restrict or prohibit use of the land for the purposes you propose to allow.

21. It is not possible to give examples of all of the situations where you may need to obtain the permission or consent of a third party before giving your consent to lift a general restriction in this guidance. If you are in any doubt about the need to do this then the relevant authority may also be able to offer advice. If you are still concerned about the implications involved with doing this then you should seek independent legal advice.

Consent and notification

22. If you have made a proposal to remove or relax a general restriction then the relevant authority will let you know whether it agrees with this within about six weeks from the date it receives the information and details set out at paragraph 18. The relevant authority may use this time to consult with bodies like Natural England, English Heritage and any other parties that it considers may have an interest in the proposal. If it does, then it will send you a direction setting out details of the proposal you have made. The relevant authority will also send you a direction if you have already given your “in principle” agreement to a proposal made by the authority itself, or a third party. A model direction is attached at Annex 3 to this guidance.

23. Once you have received the direction from the relevant authority and provided that you are content to give your consent, you will need to sign and return a copy of the direction to the authority. Once you have done this, the direction will come into force. The relevant authority will then forward copies of the direction to Natural England’s Open Access Contact Centre. The relevant authority is also recommended to send a copy to the access authority¹ for the land concerned, the

¹ The access authority will be the National Park Authority if your land is sited within the boundary of a National Park, or the local highway authority elsewhere.

local access forum², English Heritage and any other person or body which it may have consulted during this process.

24. Natural England will also publish a map on its website with details of the direction. Of course, not everyone will check the website, so you may want to draw attention to the direction on the ground too, using additional signage. If you are not sure about how to go about doing this, then you should contact your access authority, which may be able to help.

Varying or revoking a direction

25. You can withdraw your consent to a direction at any time by writing to the relevant authority. If you do this, the relevant authority will issue a new direction revoking the current direction. The relevant authority can also vary or revoke a direction itself, if it has reason to believe that a direction 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 made.
26. An existing direction can also be varied, either by removing or relaxing more of the general restrictions set out at Schedule 2, or by reintroducing some of those which have already been removed or relaxed. If you wish to do either of these things, then ask the relevant authority about how to take this forward. If the relevant authority proposes to vary a direction independently, then it will need to obtain your consent first.

² Local access forums are appointed under Part V of the 2000 Act 2000 by access authorities to advise them about access issues. Their membership will typically comprise people representing the interests of landowners, recreational user groups and the local authority.

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.”

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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 ³
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

³ Fishing on the coastal margin is however permitted, as provided for in sub-paragraph 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.⁴</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>

⁴ See footnote 3

	<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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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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