

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

### REVIEW OF STATUTORY DIRECTIONS – PROPOSED CHANGE TO EXISTING DIRECTIONS

#### SUMMARY FOR PUBLIC CONSULTATION

Prepared by Natural England

#### 1. INFORMATION ABOUT THE PUBLIC CONSULTATION

**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
Widdybank Fell	2005090267	Public Exclusion all year (until 2016)	CROW s26: Nature Conservation
Guy's Moss and Hole Head	2005090326	Public Exclusion all year (until 2016)	CRoW s26: Nature Conservation

Natural England has commenced a review of the above directions in accordance with statutory guidance (further information provided at Annex One below).

An initial consultation has already been held with statutory consultees and the general public. This consultation period ended on January 30<sup>th</sup> 2015. Following that consultation, Natural England received feedback from a number of consultees including:

- Durham County Council;
- Durham Local Access Forum (LAF); and
- The Ramblers

In summary the feedback was as follows:

- Durham County Council felt it appropriate to retain the existing direction at the three sites.
- The LAF felt that the network of Public Rights of Ways provided a reliable network for visitors to enjoy the area. However, they felt that the need of the total restriction was not well documented and considered that excluding public access during the black grouse breeding season, coupled with restrictions on allowing dogs to run loose at other times, would seem to be a more proportionate. In subsequent discussions with officers of Durham County Council the LAF were informed that the reason for the restriction is because of the vulnerability of the sugar limestone but did not feel that this was made very clear in the consultation.
- The Ramblers believe the current restriction to be the lowest level of restriction necessary and in line with the relevant authority guidance. However, they asked if the access authority and relevant authority could investigate the possibility of a marked route

to the high point on Widdybank Fell as they believed such a route would have a high degree of value to walkers and the public.

### **Widdybank Fell, Guys Moss and Hole Head – Site Context.**

Widdybank Fell is 502ha in size, representing approximately 7% of the total Nature Reserve and constitutes about 0.4% of the total Open Country and Registered Common Land in the North Pennines AONB

There are existing Public Rights of Way (the Cow Green Nature Trail and the Pennine Way) that circle the fell on two sides, and these routes are unaffected by the restrictions. The Cow Green Nature trail in particular has been developed specifically to inform, educate and illustrate the natural history of the area to visitors, and many of the rare and characteristic plants of Widdybank Fell are readily visible from this route.

Guys Moss and Hole Head are in close proximity to Widdybank Fell and consequently share the same nature conservation concerns as Widdybank Fell.

There are no Public Rights of Way across these two sites, however a Public Footpath, which also serves as the access road to Widdy Bank Farm and the National Nature Reserve Office, passes close to Hole Head and the access road to Cow Green Reservoir abuts Guy's Moss to the south.

### **Sensitive and Vulnerable Features of Interest**

#### Sugar Limestone

In 2005, the English Nature / Countryside Agency detailed assessment concluded that the most important plant communities in this area are very vulnerable to the physical damage which might be occasioned by an increase in access on foot. These habitats comprise lime-rich flushes and limestone grassland.

The lime-rich flushes on Widdybank Fell are of a more fragile character than similar flushes elsewhere on account of the terrain they occupy. A very large number of rare and threatened plant and animal species occur within them.

The concern for this area is access by walkers causing detachment of vegetation, erosion and disturbance to the fragile plant communities. These communities of rare and threatened plant species are collectively known as the Teesdale Assemblage, and the area is one of England's most celebrated botanical localities.

#### Black Grouse

In 2005, 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.

### **Restriction History**

#### Original Restriction

In light of the findings of the detailed assessments in 2005, the Countryside Agency (now Natural England) made a direction to exclude people from the open access land, rendering the

site accessible via Public Rights of Way only all year round until 2099, to prevent damage to the sugar limestone habitat mosaic.

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).

### Current Restriction

Following the 2010 review, Natural England, as relevant authority, decided that the original restriction (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.

### **Current levels and patterns of use**

The LAF are of the opinion that most use in this area is taking place on Public Rights of Ways and other tracks. This view is supported by Durham County Council, the NNR staff and North Pennines AONB.

This reflects people's behaviour identified as part of the monitoring<sup>1</sup> undertaken between 2006 and 2008 at Cow Green Reservoir. The monitoring reported a high tendency towards visitors to the Cow Green Reservoir staying on Public Rights of Way's and that the impacts of public access are likely to be low.

However, the monitoring confirmed that, even with restrictions, there are small numbers of walkers potentially disturbing the interests on the restricted areas. Whilst overall visitor usage is relatively low, research<sup>2</sup> would indicate it only takes a small number of people to cause damage to the sugar limestone, calcareous mires and flushes that support an assemblage of particularly rare and fragile plants.

In response to the initial consultation, the Ramblers asked if the access authority and relevant authority could investigate the possibility of a marked route to the high point on Widdybank Fell. In discussion with the Responsible Officer and the Reserve Manager there was concern, due to the nature and openness of the terrain, that it would be difficult to implement and manage so as to mitigate against damage to the notified features of the SSSI and SAC. This was a view shared by Durham County Council, as the Access Authority.

### **What is the lowest level of restriction necessary?**

In relation to the Sugar Limestone habitat, discussions with specialists within Natural England would indicate that there have been no material changes since the original vulnerability assessment was produced and therefore the original restriction to exclude access should remain.

Following further discussion with the GWCT, it is apparent that the three sites still have breeding and wintering black grouse present which are prone to human disturbance and particularly disturbance from dogs.

In response to the initial consultation, there was general consensus that the current restrictions are the lowest level of restriction necessary.

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<sup>1</sup> **Natural England.** 2009. *Three Year Monitoring Research Programme to Monitor and Obtain Market Information on the Public Use of Open Access Land, Mapped Under the Countryside and Rights of Way Act 2000, Site Report: North Pennines Area of Outstanding Natural Beauty*

<sup>2</sup> **Abernethy, V.** 1990. *A study of factors influencing vegetation along Birkdale Track, Upper Teesdale*

Therefore, Natural England, as the relevant authority, proposes to vary the current direction end date, 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 serves to protect black grouse from disturbance during the breeding season (April 1<sup>st</sup> to August 31<sup>st</sup>) and the wintering season (October 1<sup>st</sup> to March 31<sup>st</sup>).

In light of the reasons for the restrictions, as the Relevant Authority, we considered that the circumstances at these three sites warranted us to look at the length of the direction.

Paragraph L.4.1 of the Relevant Authority Guidance (April 2014) states:

*If the relevant authority considers that the circumstances that make a direction necessary are likely to last indefinitely, the relevant authority should normally give a direction for not longer than 6 years. It must then schedule a review not later than the fifth anniversary of the date on which the direction was given (see Annex M). The relevant authority may in certain circumstances choose to give a direction indefinitely, although this will usually only be necessary to prevent fire.*

As stated above we would not ‘normally’ give a direction for longer than 6 years. However, in this instance the reason for the exclusion is geological and therefore unlikely to change so we consider an appropriate lifespan for the direction to be 20 years.

As the Relevant Authority we must still review the direction no later than five years from the date of this review so unless any new information came to light in the interim period, the cases would have to be reviewed before they expired.

As we have decided to vary the direction (and are proposing to make a long term direction) then we must undertake a further consultation.

## **2. SUMMARY OF PROPOSED CHANGES TO EXISTING DIRECTIONS**

<b>Details of restriction on original direction</b>	<b>Proposed details for new direction</b>	<b>Reason for proposed direction</b>
Public Exclusion - all year (until 2016)	Public Exclusion - all year (for a period of 20 years from the completion of the review)	CRoW s26: Nature Conservation

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

If you wish to comment on the review of this direction then you must do so **before May 15<sup>th</sup> 2015** directly to Kevin Vigars on [kevin.vigars@naturalengland.org.uk](mailto:kevin.vigars@naturalengland.org.uk).

A map accompanies this notice and can be seen on the [Consultation Pages](#) of the Government’s Website<sup>3</sup>

<sup>3</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.

## **Using and sharing your consultation responses**

In line with Natural England's [Personal Information Charter](#), any comments you make, and any information you send in support of them, will help us to determine the application and / or determine if the restriction is still necessary in relation to the review or reassessment of a current direction.

We may wish to pass such comments or information to others in connection with our duties and powers under the open access legislation. This may mean for example passing information, including your name and contact details, to the Secretary of State or their appointees, the Planning Inspectorate or to the relevant access authority(s).

We do not plan to publish individual comments in full, but we may publish extracts from them when we report on our consultation(s).

There may also be circumstances in which we will be required to disclose your response to third parties, either as part of the statutory process for consideration of representations and objections about our decision, or in order to comply with our wider obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please explain clearly why you regard the information you have provided as confidential. However, we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on Natural England.

## **Annex One:**

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 relevant 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, it 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), it 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, it 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.