

Government Consultation on Guidance Relating to Countryside Access

Report by Senior Waterways and Recreation Officer

Summary:	This report provides members with a summary of the recently published Defra consultation on smarter guidance relating to countryside access legislation. The guidance, which is intended to simplify the information provided by government, covers the subject matter that Defra proposes to include in guidance provided on a range of subjects that are pertinent to local access forums specifically coastal paths, coastal access plans, rights and obligations for managing land, public rights of way and local authorities, open access rights, local access forum members and the role of NGO's, LAFS and government bodies and access for all.
Recommendation:	That members consider the contents of the report, identify any specific topic areas that have been omitted from the proposed guidance documents and consider how good practice guidance would best be delivered in the future.

1 Background

- 1.1 Defra and its regulators are simplifying all of their guidance to make it quicker to understand and easier to use. This report focuses on a range of guidance that Defra is currently consulting on which relates to countryside access. The legislation relating to the areas covered by the guidance is not changing – the idea behind the project is to explain the law and policy more clearly.
- 1.2 The new guidance, which will be web based, will focus on information that government has to provide (such as explaining law, services or how to access peoples' rights). In drafting the guidance Defra considered who would use the guidance and what they needed to know to be able to use the information provided by government effectively.
- 1.3 The draft guidance is not intended to provide advice on good practice as Government considers that it should work increasingly with others such as user groups and other stakeholders to provide this kind of advice where needed.
- 1.4 The consultations that are the subject of this report are open for public comment until the 7th of July 2014.

2 Subjects Covered by the Consultation

- 2.1 The subjects listed in the consultation which pertain to the business of local access forums are grouped under the heading “Access and Engagement”. This covers a wide range of issues including things like camping and caravanning and National Nature Reserves as well as issues closely related to the business of local access forums.
- 2.2 This report considers the consultation documents relating to the following subjects:
- Local Access Forum members
 - National trails and local authorities
 - Coastal access plans
 - Coastal paths
 - Rights and obligations for managing land
 - Enjoying the natural environment – access for all
 - PROW and local authorities
 - Role of NGO’s LAF’s and government bodies
 - Open access rights
- 2.3 This is the link to the full list of access and engagement consultation subjects on the Defra consultation website <http://guidanceanddata.defra.gov.uk/reforming-access-and-engagement-guidance/> and the consultation documents listed at paragraph 2.2 above are attached to this report at Appendix 1.

3 Proposed Future Content of the Guidance

- 3.1 As can be seen from these documents the details of the proposed guidance are quite brief and set out in bullet points which provide an outline of the future guidance rather than the detailed guidance itself. In some cases these bullet pointed lists could be extended and members are invited to consider whether topics have been omitted from the individual documents and also how the existing bullet points should be expanded.
- 3.2 In particular officers consider that guidance on the topic of open access rights both with regard to the role of landowners and the responsibilities of NGO’s, LAF’s and open access authorities, should be expanded. There is a need for detailed clear guidance on enforcement in cases where landowners are restricting access to designated land without authority. This is because powers available to access authorities are limited and without a detailed analysis of the processes set out in the Countryside and Rights of Way Act 1990 and its associated statutory instruments access authorities are left to interpret the legislation themselves. The guidance that will be issued by government in the future should therefore be detailed and further good practice advice provided to access authorities.
- 3.3 In light of reducing funding for rights of way management across the public sector it is to be welcomed that the proposed guidance on public rights of way

will include guidance on funding for the creation of PROW and maintenance of existing routes. However, officers consider that this guidance should be extended to cover the subject of permissive paths both with regard to their funding and the legal means available to bring them into being. In particular a precedent permissive path agreement that is acceptable to all public authorities with access management responsibilities would be of value.

4 Conclusions

- 4.1 This consultation on changes to access management guidance is welcomed as it has the potential to provide clarification on a number of issues that the Broads Authority and the Broads Local Access Forum are involved with. Defra has stated in the documentation that it is seeking comments on its plans for the content of each topic that is being covered. The sort of comments it is looking for relate to the information that is needed from government and whether anything is missing. Notwithstanding the fact that Defra considers that best practice guidance should be provided by working with user groups and other organisations, it is also seeking comments about which good practice advice is important to respondents that will no longer be provided by government. Thoughts are welcomed as to how government might work with others to develop this advice and what subjects should be included. Members are therefore asked to note the contents of this report, consider whether there are additional subjects that should be included and identify which good practice guidance should be identified as important.

Background papers: Nil

Author: Adrian Clarke

Date of report: 29 May 2014

Broads Plan Objectives: TR1

Appendices: APPENDIX 1 – Defra list of access and engagement consultation subjects

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Local Access Forum members

As a... Local Access Forum (LAF) member

I need to... access material relevant to my LAF

So that... we are able to fulfil our duties as a LAF and work better in partnership

This is an outline of future content, not guidance itself

New guidance will tell you...

- your responsibilities and how to fulfil them including commenting on the Rights of Way Improvement Plan (ROWIP)
- how to access data to help you fulfil your annual reporting responsibilities
- how to access the chair and secretary contact details as outlined in the Countryside and Rights of Way (CROW) Act
- the contact details of your neighbouring LAF members

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National Trails and local authorities

As a... local authority

I need to... find out how National Trails are managed differently to other rights of way

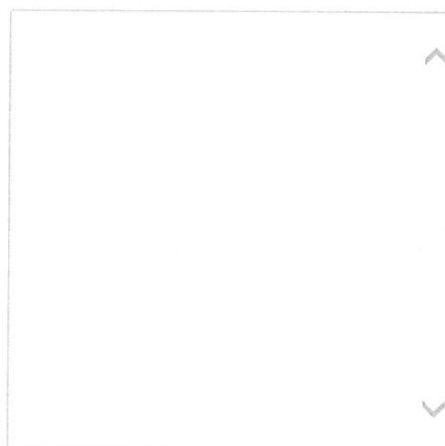
So that... I can ensure the local authority maintains them to the required standards

This is an outline of future content, not guidance itself

New guidance will tell you...

- about the funding and management of National Trails
- about the National Trails standards
- about the economic benefits from National Trails

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Coastal access plans

As a... member of the public, coastal landowner/occupier, local authority, Non-Governmental Organisation (NGO) or government body eg. Environment Agency

I need to... find out about Coastal Access/the England Coast Path delivery programme

So that... I know 1) what the plans are (including location of delivery stretches, process and timing), 2) how I am likely to be affected and 3) how I can comment on the plans

This is an outline of future content, not guidance itself

New guidance will tell you...

- about the delivery plans including maps and timings
- how and when you can object or comment on the plans
- about what areas of land are NOT affected by the process
- the legal responsibilities and options you might have under these processes
- that suitable processes are in place to protect key sensitive features on the coast
- the purpose of the Coastal Access Scheme and relationship to the legislation
- where to go for further advice or information
- where to access Defra's Coastal Access Policy

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Coastal paths

As a... person who wants to use the path or who wants to inform others about using the path

I need to... find out about where the coastal path and spreading room are and at what points I can access it

So that... I can start using the path and wider access or can inform others about using it

This is an outline of future content, not guidance itself

New guidance will tell you...

- where the England Coast Path and spreading room are located
- about any restrictions or other rules to be complied with by those using it
- where to go for further advice or information

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Rights and obligations for managing land

As a... landowner/occupier, local authority or others involved in managing the land in question

I need to... find out what are my rights, powers and obligations within the Coastal Margin and in relation to the England Coast Path

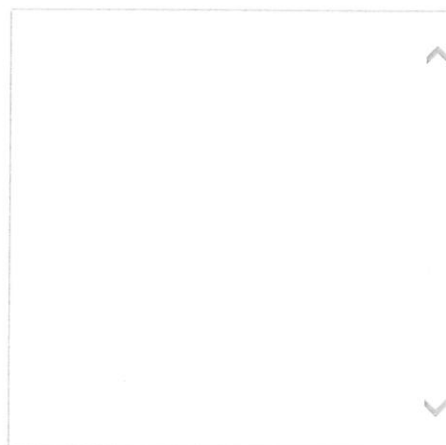
So that... I can act lawfully, comply with any legal obligations on me, or keep the path open and safe

This is an outline of future content, not guidance itself

New guidance will tell you...

- about the relevant powers, rights and obligations
- about the advantages of dedicating your own land as Coastal Margin (such as occupier's liability)
- where to go for further advice or information

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Enjoying the natural environment

As a... provider, such as a Non-Governmental Organisation (NGO), site manager, local authority, Environment Agency, Forestry Commission or member of the public

I need to... understand how the natural environment can provide benefits to diverse groups of people

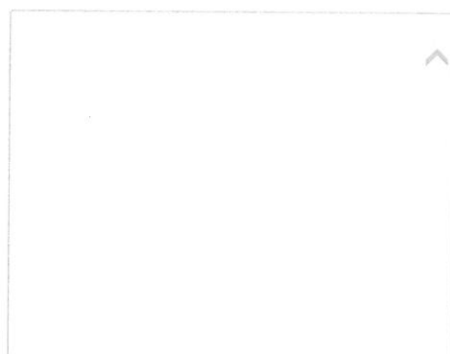
So that... a greater diversity of people can enjoy the natural environment

This is an outline of future content, not guidance itself

New guidance will tell you...

- how providers of outdoor facilities and opportunities can meet the needs of everyone
- how to reach hard to reach groups
- about any government initiatives to promote access to the natural environment
- about the Outdoors for All Working Group and how to contact them or get involved

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PROW and local authorities

As a... local authority

I need to... know my responsibilities for Public Rights Of Way (PROW) in my authority

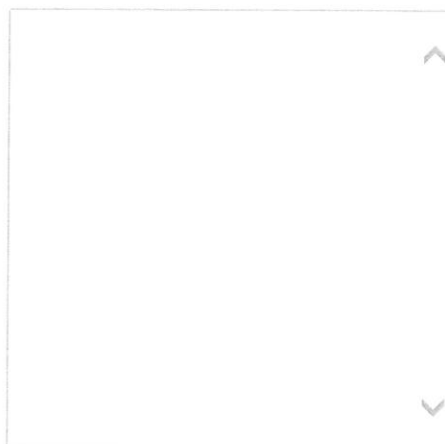
So that... I can carry out my statutory duties

This is an outline of future content, not guidance itself

New guidance will tell you...

- your duties and policy in respect of recording, managing and maintaining, protecting, creating and changing PROW
- your duties within PROW work with respect to wildlife/habitats law requirements
- which grants or programmes can help create new PROW or look after existing ones
- your revised duties and powers regarding recording historical routes

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Role of NGOs, LAFs and government bodies

As a... Non-Governmental Organisation (NGO), Local Access Forum (LAF) or government body eg. Environment Agency

I need to... understand our rights and responsibilities in relation to open access land

So that... we can engage appropriately with the law and programmes relating to open access

This is an outline of future content, not guidance itself

New guidance will tell you...

- your rights and responsibilities in relation to open access land
- where to view maps of open access land and restrictions
- where to view maps of the fire severity index for each area of the country and where any fire restrictions are (Met Office)
- what a landowner etc. can do to manage the use of the rights
- what section 15 land is, user rights, where it is and how it relates to Countryside and Rights of Way (CROW) mapped land
- the rules about enforcement of the access rights if problems arise in relation to this
- how to engage with the process of consultations and reviews of restrictions
- about Natural England's programme to dedicate its own National Nature Reserves (NNRs) wherever practicable
- where to find evidence that the NNR dedication programme is legally compliant and protects key sensitive features on these sites

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Open access rights

As a... member of the public, land owner/occupier or information provider to the public

I need to... know where open access land is, what the rights and rules are and whether any local restrictions apply in particular places

So that... I know where rights exist and how I am likely to be affected

This is an outline of future content, not guidance itself

New guidance will tell you...

- your rights and responsibilities under the Countryside and Rights of Way (CROW) Act 2000
- where CROW restrictions are in force and how to implement them where necessary over land you hold
- where to access maps of the fire severity index for each area of the country and where any fire restrictions are in place (Met Office)
- what a landowner etc. can do to manage the use of the rights
- what section 15 land is, user rights, where it is and how it relates to CROW mapped land
- the rules about enforcement of the access rights
- how to comment on long term local restriction proposals when these are consulted on
- how dedication of land under CROW section 16 can deliver permanent access and reduced occupier's liability
- about Natural England's programme to dedicate its own National Nature Reserves (NNRs) wherever practicable
- how to respond to the process for statutory review of CROW maps when this starts