

NORTH YORKSHIRE COUNTY COUNCIL  
NORTH YORKSHIRE LOCAL ACCESS FORUM

5 August 2004

DEFRA Guidance for Access Authorities on Access to Open Countryside –  
Draft Circular

1.0 PURPOSE OF REPORT

- 1.1 To receive details of a draft DEFRA Circular giving guidance to Access Authorities on Access to Open Countryside under Part 1 of the Countryside and Rights of Way Act 2000 and to consider a response on behalf of the Local Access Forum.

2.0 INTRODUCTION

- 1.1 In July 2003, DEFRA issued a circular letter to all local authorities setting out their powers and duties for enabling and managing open access and advising on the steps that needed to be taken to prepare for the new access arrangements under the CROW Act 2000. At that time further guidance was promised on the discharge of access authorities' functions before the new access rights commenced. As the first tranche of access rights are to be introduced in the 'lower north-west' (affecting the Craven area in North Yorkshire) on 19 September, there is a relatively limited period available for responses.
- 1.2 A copy of the draft circular has been sent to the Secretary of all Local Access Forums with an invitation to submit comments. A copy of the draft circular is attached as an Appendix. Comments have been requested by 20 August 2004.

3.0 THE DRAFT CIRCULAR

- 2.1 The draft Circular explains the underlying philosophy and the legislative background to the open access provisions, the general scope of the new powers and duties and the provision made for restrictions. It then covers a number of specific issues in more detail. These are summarised below and where relevant officer comments are given under each of the main heads. In general, however, most of the ground covered by the draft Circular will be familiar to the Local Access Forum and there is relatively little that is new.
- 2.2 Byelaws – The powers to make byelaws are explained “to preserve order, to prevent damage to or on access land and to avoid undue interference with enjoyment of the land by others”. It is considered that these should normally only be used as a “last resort, when all other means to resolve a conflict concerning management of access have failed” as there is separate power to make restrictions on access to open land

which should cover most eventualities. Before making any byelaws, the Countryside Agency and the Local Access Forum must be consulted and suggestions are made for other appropriate consultees, including Parish Councils, user groups, land owner or land management organisations and Conservation Agencies.

*Comment: It is agreed that byelaw making powers, whilst useful as a reserve, should not normally be necessary. Indeed, it is not entirely clear in what circumstances they might be considered appropriate and further guidance would be helpful on this point. If there are any examples of byelaws in place on existing access land created under earlier legislation, it would be useful if these could be circulated.*

- 2.3 Wardens – An access authority or District Council may appoint wardens for a number of purposes under the Act, including enforcement of restrictions, provision of information and face-to-face communication. The Local Access Forum must be consulted by the access authority prior to the appointment of any wardens and from time to time thereafter. District Councils are also encouraged to do so as “a matter of best practice” should they wish to make separate appointments.

*Comment: Plans are already well advanced to appoint open access wardens within the Nidderdale AONB, which is the single largest block of open access land in North Yorkshire. The wardens will be co-ordinated by the County Council’s Access Officer, who is based within the AONB Office. The Local Access Forum may wish to request a report on this matter to a future meeting. It is proposed that wardening should be undertaken by a team of local volunteers who will be provided with appropriate training on a range of access and AONB related issues. It is unclear whether these would fall within the scope of the draft guidance i.e. requiring consultation with the Local Access Forum or whether the guidance refers to part/full time paid wardens. Clarification on this point would be useful.*

- 2.4 Local information and signage – Nationally, information on open access areas and restrictions will be available on the Countryside Agency website and the land will also be mapped on OS Explorer maps. Access authorities are also encouraged to provide local information points and signs in consultation with local landowners and occupiers. More detailed guidance in an Annex stresses the need to make information points available 24 hours a day and to be kept well maintained and up to date.

*Comment: The importance of providing well designed, well maintained access information points is accepted and the need for these has been looked at in detail in the Access Plan dealt with separately on this agenda. Such facilities and other open*

*access infrastructure requirements will be expensive to provide and to maintain and it would be helpful if DEFRA would indicate its intention to provide ongoing financial support to local authorities to help them deliver this element of the guidance.*

- 2.5 Misleading notices – Access authorities will be expected to enforce the provisions of the Act which make it an offence to erect notices “containing any false or misleading information likely to deter the public from exercising their rights of access”. They will also be expected to “enforce and protect the public’s rights to use access land” and, when taking the necessary steps to enforce these rights, they should “adopt a fair and transparent procedure for resolving the issue.”

*Comment: The point made here is accepted but it would be preferable to have national guidance on how such issues should be resolved so that there is uniformity across the country.*

- 2.6 Means of access – Detailed guidance is given here on the steps that access authorities should take to provide appropriate means of access to access areas. It covers the need to assess the likely requirement for access; what infrastructure might be needed on the ground; where there might be a need for agreements to be negotiated with landowners; how proposals should be prioritised; and the need to consult with the Local Access Forum. Last resort powers are explained to enable an access authority to facilitate a means of access if local agreement cannot be achieved.

*Comment: This guidance is familiar and has already been followed in the preparation of the Access Plan, which is dealt with separately on this agenda. The importance of sufficient government financial support being made available at the right time should be stressed once again. Guaranteed funding during the current financial year, when it is most needed, has only been provided by the Countryside Agency for ‘high priority’ work. In reality, therefore, lower priority works may have to be postponed until the following year, after the open access provisions have been introduced. At this stage there appears to be no commitment to providing additional central funding support to enable this work to be undertaken when it is needed. DEFRA should therefore be asked to clarify the level of future Government funding that is likely to be made available.*

- 2.7 Obstructions to the right of access – Powers are explained for access authorities to remove obstructions to the means of access to access land.

*Comment: Whilst these powers are useful, it is not clear exactly what might be classed as an obstruction or whether this should*

*be interpreted in the same way as obstructions on public rights of way. Examples of such obstructions and clarification on this point would be helpful.*

- 2.8 Public places – The Government has decided not to introduce regulations to prevent legislation applying to land that has become a ‘public place’ as a result of the right of access. This means that existing legislation applies to access land in the same way that it currently applies to other public places.

*Comment: The implications of this decision are that disused metalliferous mines which are accessible to the public are deemed to be a statutory nuisance under the Environmental Protection Act and responsibility for public safety lies with the landowner. There are also potentially onerous responsibilities for District Councils who have a duty to inspect their areas to determine if a ‘statutory nuisance’ exists and to serve any necessary enforcement notices. This is a key issue within the Nidderdale open access area and a detailed report on the matter appears elsewhere on this agenda. It is recommended that the report and the recommendations of the Local Access Forum be sent to DEFRA as part of the LAF’s response to the draft Circular.*

- 2.9 Dedication – Guidance is given on the provision under the Act whereby landowners can voluntarily dedicate their land for public access. This would then confer similar permanent rights to those applying on areas of access land shown on the conclusive maps. It is noted that separate more detailed guidance has been issued on this matter.

*Comment: This is a useful provision which, if exercised, would open up additional access land for public benefit.*

- 2.10 Restrictions – Guidance is given in the Circular and its Annex on the system to restrict access to land in certain circumstances. Access authorities are encouraged to provide advice on “informal approaches to managing public access” as an alternative to imposing formal restrictions and to “provide practical management support”

*Comment: This guidance is noted and is in line with the more pro-active countryside management approach currently being developed by the County Council through its new Countryside Service. This will increase the authority’s ability to help resolve local access and land management issues as they arise. However DEFRA need to be made aware that such an approach is potentially time consuming and expensive and could become a heavy burden if the need to negotiate local management solutions becomes a significant element of the new open access provisions. Further guidance would be useful on the degree of priority that should be given to developing a management*

*approach, given that local authority staffing levels and specialist expertise varies significantly across the country. Generally, the issue of restrictions on access is complicated and potentially controversial and there is a key need for access authorities to be kept up to date by the Countryside Agency on national developments so that locally owners are not misled by inappropriate advice.*

- 2.11 Maps of access land – This section explains the provision for access authorities to be sent conclusive maps of access land in their area and the arrangements for retention of these maps.

#### 4.0 RECOMMENDATION

It is recommended that:

- (a) the comments set out in section 3 of this report, as amended following discussion by the Local Access Forum, be submitted to DEFRA as a basis for the Local Access Forum's response to the draft Circular.
- (b) A report be submitted to a future meeting of the Local Access Forum on proposals to appoint voluntary open access wardens in the Nidderdale AONB.

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