

Countryside and Rights of Way (CROW) Act 2000

REVIEW OF STATUTORY DIRECTION – PROPOSED CHANGE TO EXISTING DIRECTION

SUMMARY FOR PUBLIC CONSULTATION

Prepared by Natural England

1. INFORMATION ABOUT THE PUBLIC CONSULTATION:

Access Authority: Wiltshire Council
Relevant Authority: Natural England
Local Access Forum: Wiltshire and Swindon Countryside Access Forum

Original direction reference: 2008090036

Land Parcel Name:	Details of restriction on original direction
Gurston Down	1st July until 1st February No public access due to shooting

Natural England has begun a review of the above long term direction in accordance with statutory guidance (see Annex One). A consultation has been held with statutory consultees and the general public that sought views on the existing direction.

We received feedback from one consultee, the Ramblers.

Summary of consultee comments:

The Ramblers stated that although they agreed that some form of restriction is needed on shooting days to avoid disturbance to game, they do not believe that the current direction is still valid or the least restrictive option.

Given the low level of predicted access and good path networks around the site they believe that the current direction should be varied, with a total exclusion of dogs during the game rearing period and the shooting season, and a public access restriction on the day before, during and the day after each shoot day to replace the current direction.

They believe that such a direction would be the lowest level of restriction necessary and is in line with the relevant authority guidance.

Natural England believes that even a small amount of disturbance could still have a significant effect on an intensive shoot and that the restriction should be continued as it has been previously.

Therefore after due consideration, Natural England now proposes to extend the direction for a further six years.

As we have decided to VARY by extending the direction (and are still proposing to make a long term direction) we are obliged to undertake a further round of consultation.

2. SUMMARY OF PROPOSED CHANGES TO EXISTING DIRECTIONS:

Details of restriction on original direction:	Proposed details for new direction	Reason for proposed direction
No Public Access 1 st July to 1 st February	No Public Access 1 st July 2015 to 1 st February every year until 1 st February 2021	To prevent disturbance to game and disruption to shooting

We must still review the direction no later than five years after its anniversary (or from the date of the last review).

i) Summary of proposal

At the time of the last review in 2010, Gurston Down shoot was known to be a pheasant and partridge shoot covering 324 ha's, of which 45 ha's is open access land and the subject of this restriction. 10 out of the shoot's 15 drives utilised the Open Access land. 7 of these drives were classed by the shoot as their signature drives, i.e. those that the reputation of the shoot is based on and are the principle attraction for customers. In 2010 the shoot was known to host about 34 days a season, which equates to about 2 a week, and a shooting day will normally comprise 4 or 5 drives, and at least 3 of these will be selected from those on the Open Access land. Two drives in particular on the Open Access land are used by the shoot on every shoot day.

Open Access land is generally used by pheasant and partridge in different ways and this is true at Gurston Down, where the open access land is utilised by the game birds from their release in July/ August through to the end of the shooting season. In 2010 pheasants were predominately released on the north side of the valley, being fed and encouraged to forage over the open access land to the feeding areas on the south side, before returning to roost in the release pens. This process allows the birds to develop a natural familiarity and affinity for their surroundings, which is essential for the running of the shoot. They also feed in game cover and roost in woodland adjacent to open access land. The partridge forage and rest on the open access land on a daily basis.

Game birds were found to use the open access land on both shoot and non-shoot days in a relatively consistent way.

There is only one legal access point onto the land from the byway, the Herepath. This entrance was used occasionally by people entering the land to admire the views but they rarely proceed any further as the land slopes steeply away into Gravely Valley. There is a more useful permissive route that the landowner lets people use to access the land outside the restriction period. Demand for access to the site is low with no parking facilities at any of the access points.

A site visit was undertaken with the landowner at the end of January 2015. At this visit it was confirmed that the shooting arrangements are unchanged from the time of the University of Reading's 'Centre for Agri-Environmental Research' survey of June 2007, and the last review of 2010.

ii) Why is a statutory restriction necessary?

The proposed restriction will be given under 3 main sections:

- Disturbance to quarry during the pre-season.
- Disturbance to the quarry during the shooting season on shoot and non-shoot days.
- Disruption to the shoot during the shooting season on shoot days and non-shooting days.

In determining an application or a review of an application to restrict or exclude Open Access Land Natural England follows its Relevant Authority Guidance (2010) (RAG).

Criteria Set 16.1: 'Released game bird management' and

Criteria Set 18: 'Shooting Live Quarry' are relevant to this application.

Disturbance to quarry during the pre-season.

Criteria Set 16.1 states:

Estates where game birds are released are carefully managed to maximise the number of birds at the drive on the day of the shoot and to encourage the birds to develop the flight characteristics of wild birds that are considered best for shooting. Gamekeepers achieve this by providing supplementary food and water at or near the drive and by minimising disturbance in the areas used by the birds, from the time they are released until the last shooting day of the season.

Disturbance cannot be eliminated altogether, but it can be managed by predator control and through the strategic location of game areas.

Partridge are put into pens from June onwards. Pens are normally sited in the area where the birds will be driven and shot later in the year, either in cover crops (where CROW access rights do not normally apply¹) or on open down or moor. Pheasant are normally put in pens in July or later. The pens are normally situated in woodland or other land with tree cover, which encourages birds to roost in trees where they are less vulnerable to predation.

Birds are held in the pens for two to four weeks and then released, but encouraged to remain in - or return daily to - the area where they will be driven and shot. Gamekeepers minimise disturbance in the four to six weeks following release, while the birds are establishing a strong bond (known as 'habituation') with the affected land.

In lowland environments partridge may forage on down adjacent to the cover crops and in upland settings over open moor, but they are encouraged with feed

¹ Land used for cover crops is excepted from CROW access rights for twelve months after ploughing or drilling (see Annex A) – but some game cover crops may be left standing for a second or third year during which access rights apply (see set 8).

to remain close to the area where they will be shot. Pheasants may be fed in the area of release or the gamekeeper may lay food trails leading from the release area to a nearby drive. This encourages them to return to the drives each morning from their roost. Partridge in particular may fly to nearby areas in search of food or in response to disturbance.

Visitors may disturb birds and cause them to leave a feeding area or drive, but once they are habituated to the land, they are more likely to return to it after a temporary absence. Gamekeepers can sometimes counteract occasional disturbance, using dogs to move the birds back to their drive or changing the location of the drive, but manage access where possible in ways that minimise the need for this. Occasional, temporary displacement of birds following habituation is therefore unlikely to be significant until the lead up to a shoot, when there is no time to change the location of the drive or to recover the birds if they fly off (see set 18.1).

Frequent disturbance may be damaging to shooting interests at any stage before the end of the shooting season, if it causes some birds to desert a drive altogether or significantly disrupts the daily movement of birds from their roosting site to the drive.

The need for access management will depend on:

- the management techniques employed by the estate;*
 - the times of release and shooting;*
 - the location of sensitive areas (pens, drives and areas managed for roosting and feeding); and*
 - the patterns, levels and frequencies of public access.*
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- Release pens should be situated where possible in cover away from areas and routes used by visitors in order to prevent disturbance to the birds while they are enclosed.*
 - In the long-term, disturbance can be minimised in both open and woodland settings by creating or improving ground cover for the birds - where this is in keeping with the overall management of the land and there are sufficient resources to implement it.*
 - Disturbance is more likely to occur from free-roaming dogs than by people, who often move quietly along predictable routes. Signs should be placed at site entrances from release until the end of the shooting season, encouraging visitors to keep their dogs under close control, and reminding them of the national requirement to keep dogs to leads from March 1st until July 31st (Schedule 2, paragraph 4).*
 - Some estates may be able to absorb occasional disturbance more easily, if in response birds are likely to fly to another drive managed by the same estate. On smaller estates, the number and positioning of the drives is less likely to*

allow such flexibility.

- *Access management is unnecessary for this purpose once shooting has finished for the season, until new birds are released the following summer.*
- *It may be necessary to restrict dogs to leads around pens, drives, and other roosting or feeding areas to prevent disturbance during sensitive periods.*

Further restrictions are unlikely to be necessary in areas visited only occasionally by the public (except in connection with shooting - see set 18), but may be necessary where:

- *informal measures to manage disturbance are inadequate or unavailable; and*
- *the public visit regularly - for example on estates used by local dog walkers - or at particular times when people are known to visit more often; and*
- *one or more of the following factors is present:*
 - *Visitors are likely to pass close to the pens during the first four to six weeks following release;*
 - *Routes favoured by visitors bring them into close proximity with the game;*
 - *The direction of any disturbance is likely to cause birds to move off the estate;*
 - *Neighbouring land outside the control of the gamekeeper provides alternative suitable habitat that is likely to attract significant numbers of birds if they are disturbed;*
 - *Cover is sparse and the birds are more likely to seek alternative habitat in response to regular disturbance;*
 - *A small estate has fewer drives and is so less able to absorb regular disturbance.*

Disturbance can have a significant effect around the time of habituation for the 4 to 6 weeks after the partridge are released from their pens, and it is dogs off leads that are the main concern. Patterns of access and game bird management were again examined and although access levels are low, and dogs running free are the major factor in disturbance, disturbance was still a possibility from people accessing the downland. Birds can be lost off the estate to another shoot to the north, and there is little cover on the downland to prevent birds seeking alternative habitat if they are disturbed. For these reasons a further restriction is to be proposed during the pre-season.

Disturbance and Disruption during the Shoot Season

Criteria Set 18 states:

Employers and the self-employed whose undertakings involve use of guns have a legal duty under health and safety at work legislation to take all reasonably practicable steps so that no-one is put at risk as a result. The use of firearms is also licensed under the Firearms Act and the Games Licences Act, and is guided by well-observed codes of practice.

It is well established that the primary responsibility for preventing injury lies with the user of the gun. Consequently it is extremely rare for countryside visitors to be injured as a result of shooting. However visitors in the vicinity of a shoot are potentially disruptive because:

- *they can disturb the quarry, making it difficult to locate or to drive towards the guns – particularly if they bring dogs; and*
- *those shooting can be distracted from their sport by the need for extra vigilance to prevent any risk of accidental injury to visitors.*

Access management techniques will often be necessary to minimize any such disruption.

It may be necessary to manage public access during and immediately prior to a shoot for three reasons, each of which is considered separately.

- *18.1 - to prevent disturbance to the quarry;*
- *18.2 - to prevent danger to the public; or*
- *18.3 - to prevent disruption to the shoot.*

i) Disturbance to the Quarry

The RAG in Criteria Set 18.1 states:

- *Visitors may cause quarry to leave an area where a shoot is planned to take place, if by passing through they disturb it. This is most likely if they bring dogs and their dogs run freely.*
- *Disturbance is more critical in the twenty-four hours before a commercial driven shoot where the timing of the shoot, the position of the guns and of the quarry are all predetermined to provide the best shooting conditions, and where future business may depend on presenting sufficient birds to the guns.*
- *Gamekeepers can sometimes counteract disturbance to game birds, using dogs to move them back to their drive or changing the location of the drive, but only where there is sufficient time before the shoot to do so, and where the quarry has moved to an area managed by the same estate.*
- *The need for access management will also vary according to the density of vegetation cover and the patterns of visitor use. Quarry will usually remain still in good cover, but are easily disturbed in poor cover where they feel more vulnerable. Visitors almost always prefer to follow clear routes with short*

vegetation and are therefore less likely to disturb quarry in dense cover, though their dogs may be attracted to it.

- *Notices may be used requesting visitors to keep their dogs on leads during the shooting season, in order to prevent dogs from flushing the quarry.*
- *Restrictions for the purposes of land management may be necessary before a shoot takes place. This is most likely to be necessary before a driven shoot:*
 - *where access routes pass through or very close to the area of the drive;*
 - *the quarry is likely to respond by moving away from the drive; and*
 - *it is impractical for the shoot organisers to recover the quarry or relocate the shoot before it takes place.*

The access point from the Herapath byway does give access legally to the site, although it has been noted that access into the site from this point is low. However as these drives on the Open Access land are generally used around twice a week, even a low level of use of the site could have a significant detrimental effect on the shoot. If the birds were disturbed they could easily be lost to the shoot to the north and would be unlikely to return in time for the days shooting.

This is compounded by there being a lack of vegetation cover on the downland and that of the shoots 15 drives 10 use the open access land and 7 of these are signature drives. Also two of these drives are shot twice a week, on every shoot day. Therefore this fairly intensive use of the downland is susceptible to disturbance so it is proposed to continue some form of restriction.

ii) To Prevent Danger to the public

Criteria Set 18.2: 'Shooting live quarry: danger to the public'
states:

- *Shooters have to assume that members of the public may be present and take all necessary precautions, even at times when they are unlikely to encounter visitors.*
- *People using shotguns should be able to see the whole area where their shot could fall and must not shoot if anyone enters that zone of risk.*
- *These standard precautions are normally sufficient to reduce risks to the public to an acceptable level. Further precautions may be necessary where the topography, vegetation cover or other obstacles obstruct the views of shooters over the zone of risk.*
- *Signs, flags or lookouts ('stops') may be used to let visitors know when*

shooting is taking place and recommend safe routes through or around the affected area. Night visitors can be advised to wear a reflective strip on their clothing to make it easier for shooters to spot them quickly.

- *Restrictions to prevent danger to the public will only be necessary where shooter's views over the area of risk are obstructed. The area of risk will depend on sightlines in the direction(s) of fire, and the gun and ammunition used. Relevant authorities may take advice from the police or another recognised shooting body to determine its precise extent.*

In this case lines of sight are clear over the Open Access downland so no restrictions are required for this reason.

iii) To prevent disruption to the shoot:

Criteria Set 18.3: 'Shooting live quarry: disruption to the shoot' states:

- *Disruption can be effectively avoided if shooting can be timed to avoid days and times when visitors are likely to be present.*
- *People engaged in informal recreational shooting (e.g. rough shooting, wildfowling) and shooting for population usually choose quiet times*
- *Commercial shooting enterprises (often driven shoots) are less flexible in this respect, since shooting is timed for the convenience of their clients.*
- *Signs at entry points and other local publicity can be used to alert the public to when and where shooting is taking place and encourage behaviour that will avoid disruption to the shoot (e.g. keeping dogs on leads). Lookouts are an established and effective means to alert visitors to a drive and to seek their co-operation by waiting for it to pass or using a different route.*
- *Such techniques are most likely to be effective where there are safe and clearly marked rights of way or other routes that people can use through or around the area affected without causing significant disruption.*
- *Restrictions for the purpose of land management may be necessary where:*
 - *the timing of the shoot unavoidably coincides with times when visitors are likely to be present; and*
 - *it is not practical to manage the passage of visitors effectively through the area while the shoot takes place.*

The access point from the byway would bring people quite close to the guns but this access point could be managed using banksmen. However if people chose to ignore these requests and went on to enter the land they would cause significant disruption to the high quality signature drives. Therefore some form of restriction is proposed necessary for disruption to the shoot.

iii) What is lowest level of restriction required?

Disturbance to quarry during the pre-season.

Criteria Set 16.1 states:

Exclude people from sensitive areas only in the circumstances indicated at step 6.

In this case that refers to:

- *The direction of any disturbance is likely to cause birds to move off the estate;*
- *Neighbouring land outside the control of the gamekeeper provides alternative suitable habitat that is likely to attract significant numbers of birds if they are disturbed;*
- *Cover is sparse and the birds are more likely to seek alternative habitat in response to regular disturbance;*
- *A small estate has fewer drives and is so less able to absorb regular disturbance.*

These are all factors affecting the shoot at this site, therefore on balance it is thought again that the risk of a small amount of disturbance causing a significant detrimental effect to the shoot weighed in favour of having a full exclusion during the pre-shooting season.

Once the birds have habituated they are less prone to disturbance but Natural England has no way of pre-determining at what point the birds are habituated and when a restriction could be lifted. Therefore an exclusion was given for the whole pre-shooting season.

Disturbance and Disruption during the Shoot Season

i) Disturbance to the Quarry

- *It will often be sufficient to restrict dogs to leads from noon on the preceding day until the shoot is over. Longer restriction periods may be necessary where there is frequent disturbance (see criteria set 17).*
- *On some shoots a favoured drive may be shot more than once a week. This intensive use may make birds more sensitive to disturbance on intervening days. In areas that are shot regularly, relevant authorities may therefore elect to restrict dogs to leads throughout the season, both to minimise disturbance and in the interests of clarity for the visiting public.*
- *Full exclusions may occasionally be necessary where game cover is sparse. Leave residual routes or areas open to the public wherever practicable to do so. Remember that rights of way are unaffected.*

The intensive use of the downland where game cover is sparse suggests a full exclusion for the whole shoot season is necessary.

ii) To prevent disruption to the shoot:

- *Exclude people from the affected area while driving or shooting are in progress or earlier, where necessary to ensure that visitors are not present when the shoot begins.*
- *Leave residual routes or areas open to the public whenever safe and practicable to do so. Remember that public rights of way will be unaffected.*
- *Relate the timing and number of any restrictions to what is actually planned or likely, given the legal and practical constraints. Annex P explains the legal aspects.*
- *Give an outline direction where the exact dates and times of shooting are not known. Recreational shooting will not usually exceed 15 days per year on any particular area of access land, but the relevant authority may give further restrictions where the applicant can demonstrate more intensive use.*

Due to the byway access point onto the open access land and the gun pegs, a total exclusion would be proposed on shoot days to prevent disturbance to the shoot. This however is already covered by the proposed exclusion required to prevent disturbance to the game over the whole shoot season.

iv. Restriction Signage

Signage on the ground is always the most important form of access management, and can be backed up by a statutory restriction where necessary. If people are to be prevented from entering the land during the excluded periods they must be made aware of the closure at legal access points. The importance of signage was discussed with the applicant at the last review in 2010, and restriction signage was being used at the Herepath access point at the time of the site visit in January 2015. The option of signage being used at a couple of other points where the land passes near public rights of way but there are no legal access points was also discussed.

3. SUBMITTING COMMENTS ON THE REVIEW:

If you wish to comment on the review of this direction then you must do so before 8th May 2015 directly to:

Richard Thomas
Lead Adviser Open Access
Mail Hub Block B,
Whittington Road,
Worcester
WR5 2LQ
Richard.thomas@naturalengland.org.uk

A map accompanies this notice and is attached and can be seen on the [Consultation Pages](#) of the Government's Website².

² 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 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 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.