

# Information note on Schedule 2 to the Countryside and Rights of Way Act 2000: general restrictions

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# Background

1. Part I of the Countryside and Rights of Way Act 2000 (“the 2000 Act”) introduced a right of access for open-air recreation to ‘access land’. Access land means open country (mountain, moor, heath and down), registered common land and any land that has been voluntarily dedicated as access land in England. It does not include land that is excepted land or land which is treated by section 15(1) of the 2000 Act as being accessible to the public apart from that Act.
2. Part 9 of the Marine and Coastal Access Act 2009 (“the 2009 Act”) introduces a right of access to the English coast. 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. The 2009 Act amends Part 4 of the National Parks and Access to the Countryside Act 1949 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 coastal margin which, in addition to the margin of land in association with the route, includes the land covered by the route itself and any land voluntarily dedicated as coastal margin. However, the right of access to the coastal margin does not apply to excepted land (unless voluntarily dedicated as coastal margin), or to land which is treated by section 15(1) of the 2000 Act as being accessible to the public apart from that Act. The right of access to coastal land will come into force in stages, starting in 2012 with a stretch of the English coast between Rufus Castle, Portland and Lulworth Cove in Dorset.

4. Schedule 2 to the 2000 Act contains a number of general restrictions which must be observed by a person exercising the right of access to access land. The Annex to this information note reproduces the general restrictions listed in Schedule 2 to the 2000 Act and incorporates the changes to the general restrictions as they apply to the coastal margin, as amended by the Schedule to the Access to the Countryside (Coastal Margin) (England) Order 2010.
5. Section 2(1) of the 2000 Act allows a person to enter and remain on any access land or coastal margin for the purposes of open-air recreation as long as they observe the general restrictions in Schedule 2 to the 2000 Act. A person becomes a trespasser if they fail to comply with these restrictions and would be expected to leave the access land or coastal margin if asked to do so by the landowner or his representative. A trespasser may not return to that land or to any other land in the same ownership for 72 hours.
6. Trespass is a common law offence and an owner might decide to go to court to seek an injunction against a person trespassing in this way again. A breach of any resultant court injunction would be a matter for the police to deal with.
7. This information note is provided for guidance only and does not provide an authoritative interpretation of the legislation, which is a matter for the courts who would take into account all the facts relevant to an individual case.

## Open-air recreation

8. The right of access is a right for the purposes of open-air recreation on foot. People are not entitled to use the right to carry out activities which do not constitute open-air recreation. Examples of open-air recreation are walking, sightseeing, bird-watching, climbing, running and skiing (either cross-country or downhill) and snowboarding. The right of access cannot in our view be relied on to undertake such activities as political rallies, filming activities, professional dog-walking and kite-surfing but these activities may, nonetheless, be carried out with the landowner's permission. If a specific activity is causing a problem with disturbance to other people or may have an adverse impact on nature

conservation or heritage features, there may be a need for such access to be restricted or excluded in particular cases.

## Organised games

9. Paragraph 1(s) of the Schedule 2 to the 2000 Act specifies certain activities - organised games, camping, hang-gliding and para-gliding - which are not permitted under the right of access. In our view “organised games” include those which use a set pitch or defined area of play, organised starts and finishes and associated infrastructure, and which involves the participation of a number of people or a competitive element. On the other hand, we do not consider that a family group or a small group of friends engaging in an ad-hoc game of rounders or cricket, playing with a frisbee etc are “organised games” for the purposes of paragraph 1(s) of that Schedule.

## Activities having a commercial purpose

10. Paragraph 1(t) of Schedule 2 to the 2000 Act provides that the right of access cannot be exercised by anyone who “engages in any activity which is organised or undertaken (whether by him or another) for any commercial purpose”. As the 2000 Act does not define “commercial purpose” for the purposes of paragraph 1(t), the words bear their natural and ordinary meaning. The Concise Oxford English Dictionary, (9th edition) defines “commercial” as “having profit as a primary aim rather than artistic (etc) value”.
11. Any judgment about whether an activity is restricted by paragraph 1(t) of Schedule 2 to the 2000 Act will have to take account of the purpose of the person who is undertaking the activity and the purpose of the person or body who is organising the activity. The nature of the body organising the activity should also be considered. If, for example, the activity is organised by a charitable body or a public body then it is less likely that the activity will be organised for a commercial purpose. However, it does not follow that an activity organised by other bodies will necessarily be for a commercial purpose. In each

case the primary purpose of those undertaking and those organising the particular activity will need to be considered.

12. Visits by local interest groups for purposes such as natural history, bird watching, photography or walking groups or climbing clubs are, in our view, unlikely to be undertaken or organised for a commercial purpose. Activities organised for promoting or teaching an adventurous outdoor activity are also unlikely to be undertaken or organised for a commercial purpose. We take the same view of photography, gathering information, making maps and plans, where these activities are for purely private purposes, for example, for use by a society or club. If, however, they are for use in a commercial publication, for product promotion etc, it is likely they would be activities undertaken for a commercial purpose.

## Responsible access

13. The right of access is a right of responsible access. Many individuals and organisations using the countryside already follow best practice by consulting and informing landowners/farmers and other potential users before they carry out activities which might impact on others. We would encourage all countryside users or organisers of events to do this. In many cases this will be to the benefit of the user. For instance, if the landowner plans to restrict access on a particular day, or knows of another activity which is taking place, he will be able to pass on this information.

## Voluntary agreements

14. The general restrictions set out in Schedule 2 to the 2000 Act relate to the right of access conferred by Part I of that Act. Activities which are restricted by Schedule 2 to the 2000 Act can be carried out on access land with the permission of the landowner either by:

- virtue of a direction given by the relevant authority (under paragraph 7(1) of Schedule 2 to the 2000 Act); or

- by a simple permission given by the landowner outside the statutory framework (in which case the access is on a permissive footing, not by statutory right and so that the persons to whom permission has been given in this way will not be relying on the statutory right of access. So what they might do in relation to other users of the land will be simply governed by what the landowner allows).

15. Separate guidance has been issued for both relevant authorities and landowners on directions to remove or relax a general restriction under paragraph 7(1) of Schedule 2 to the 2000 Act. The guidance includes a model direction to remove or relax any such a general restriction.

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## Annex – general restrictions

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(6));**

**“official alternative route” has the meaning given by section 55J of the National Parks and Access to the Countryside Act 1949(7);**

**“relevant temporary route” means a route for the time being having effect by virtue of a direction under section 55I of that Act(8) to the extent that the line of the route passes over coastal margin.”**

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