



House of Commons  
Environment, Food and Rural  
Affairs Committee

---

# Countryside and Rights of Way Act 2000: Government Reply

---

**Fifth Special Report**

*Ordered by The House of Commons  
to be printed 4 June 2003*

**HC 748**  
Published on 10 June 2003  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## The Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Environment, Food and Rural Affairs and its associated bodies.

### Current membership

Mr David Curry (*Conservative, Skipton and Ripon*) (Chairman)  
Ms Candy Atherton (*Labour, Falmouth and Camborne*)  
Mr David Borrow (*Labour, South Ribble*)  
Mr Colin Breed (*Liberal Democrat, South East Cornwall*)  
David Burnside (*UUP, South Antrim*)  
Mr David Drew (*Labour, Stroud*)  
Patrick Hall (*Labour, Bedford*)  
Mr Michael Jack (*Conservative, Fylde*)  
Mr Mark Lazarowicz (*Labour/Co-op, Edinburgh North and Leith*)  
Mr David Lepper (*Labour, Brighton Pavilion*)  
Mr Austin Mitchell (*Labour, Great Grimsby*)  
Diana Organ (*Labour, Forest of Dean*)  
Mrs Gillian Shephard (*Conservative, South West Norfolk*)  
Alan Simpson (*Labour, Nottingham South*)  
David Taylor (*Labour, North West Leicestershire*)  
Paddy Tipping (*Labour, Sherwood*)  
Mr Bill Wiggin (*Conservative, Leominster*)

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the Internet via <http://www.parliament.uk>.

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at:

[www.parliament.uk/parliamentary\\_committees/environment\\_food\\_and\\_rural\\_affairs.cfm](http://www.parliament.uk/parliamentary_committees/environment_food_and_rural_affairs.cfm).

### Committee staff

The current staff of the Committee are Gavin Devine (Clerk), Tim Jarvis (Second Clerk), Richard Kelly and Dr Kate Trumper (Committee Specialists), Mark Oxborough and Darren Hackett (Committee Assistants), and Anne Woolhouse (Secretary).

### Contacts

All correspondence should be addressed to the Clerk of the Environment, Food and Rural Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3262; the Committee's e-mail address is: [efracom@parliament.uk](mailto:efracom@parliament.uk).

# FIFTH SPECIAL REPORT

The Environment, Food and Rural Affairs Committee reported to the House on *Countryside and Rights of Way Act 2000* in its Fifth Report of Session 2002–03, published on 18 March 2003 as HC 394. The Government's Reply to the Report was received on 21 May 2003 and is appended.

## Appendix

---

The Select Committee on Environment, Food and Rural Affairs took evidence on the Countryside and Rights of Way Act 2000 ('the Act') as part of its on-going oversight of the implementation of legislation by the Department for Environment, Food and Rural Affairs (Defra) and its Agencies. The Select Committee Report was published on 18 March 2003. This is the Government and Countryside Agency response.

The Government and the Agency both welcome the measured and thoughtful views expressed in the Committee's report on the implementation of the Act. We are particularly pleased that the Committee strongly supports the objectives of the Act and recognises our efforts to balance the sometimes competing demands of different interest groups.

The Committee identifies a number of key issues on the implementation of the legislation and on maximizing the benefits of the Act. As these issues directly concern both the Government and the Agency, this response is in the form of a joint memorandum from us.

### Delays to the mapping process

#### *Recommendation of the Select Committee*

**2. We note the Government's acknowledgement that it underestimated the size of the mapping project. We welcome the commitment to improve practice in mapping the other regions, and the new procedures adopted by the Countryside Agency. We trust that these will prove an adequate response to the earlier problems, and that the original target for completion of the exercise will be met (paragraph 22).**

#### *Government and Agency response*

The Government and the Agency remain committed to meeting both the Public Service Agreement target date for introducing the new right of access throughout England, and the initial target dates for regional commencement in northern and southern England. It is clear that the scale, and therefore the cost, of the remainder of the mapping project will depend on the volume of comments (on the draft maps) and appeals (against the inclusion of land on the provisional maps). The Agency has developed a predictive

model to help it plan and manage this work, and it will review the assumptions in this model regularly, in the light of experience in successive mapping areas. The Government and the Agency will work closely together to ensure that the necessary funding is made available to allow the completion of the mapping project to timetable.

## **Restrictions**

### ***Recommendation of the Select Committee***

**3. We urge the Department to finalise its proposals relating to restrictions as soon as possible. We also recommend that the Countryside Agency monitor carefully the success of these arrangements in the first two regions and make adjustments based on this experience before the new rights are introduced in the rest of the country (paragraph 23).**

### ***Government and Agency response***

The Government intends to lay regulations before the House very soon. We consulted widely on the proposals for draft regulations and are grateful for the many helpful comments and suggestions we received. These regulations are complex as they cover both land managers' statutory right to close or restrict access to their land for up to 28 days for any reason and their right to apply to a relevant authority for a direction to close land for reasons of land management, fire prevention and public safety, including appeals against the relevant authorities' decisions.

The Government and the Agency agree that it will be important to monitor the success of these arrangements in the early regions and apply lessons learned to subsequent regions. This was a major consideration in our decision to commence the new right of access on a region by region basis as the Conclusive Map for each area is finalized and all necessary restrictions are in place. We want to ensure that any teething problems with the restrictions system or any other aspect of the new right will be identified and resolved quickly: This is new territory for all the organisations involved and we want to ensure that we plan the roll out of the new right properly. Regional commencement offers the twin benefits of making access land available earlier than promised and allowing us to trial our systems in the first two areas, so that if problems emerge they can be dealt with and the processes fine-tuned as necessary.

## **Local Access Forums**

### ***Recommendation of the Select Committee***

**4. We recommend that the Department amend the statutory guidance on local access forums to include procedures covering the interviewing and selection of forum members (paragraph 24).**

### ***Government and Agency response***

Local access forums will act as independent advisory bodies with no executive functions. We agree that it is important that forums, which are not part of local government, are independent of their appointing authority. To reinforce their independence and to ensure that they have a wide-ranging and balanced membership, we have taken the following steps:

- restricted local authority membership. The Local Access Forums (England) Regulations 2002 limit the number of members of a district or county council or National Park Authority who may be appointed to a forum for any part of that authority's area to two for a forum of up to sixteen members and three for a forum of seventeen or more members;
- advised against the appointment of certain local authority employees. The Government's circular letter to all appointing authorities, issued on 26 July 2002, urged authorities to avoid appointing any local authority employee who had responsibilities for access or rights of way management because there might be a potential conflict of interest;
- required authorities to advertise widely. Vacancies must be advertised in local or regional newspapers, and on appointing authorities' websites if they have them. Authorities are also required to consult whichever bodies or individuals they consider appropriate in order, for example, to invite nominations for forum membership. The circular letter also suggested that authorities might wish to supplement the requirements of the regulations by advertising vacancies more widely;
- required a balanced membership. Authorities must ensure a reasonable balance on each local access forum between the number of members representing the interests of users of the new right of access to open country and users of local rights of way and those representing the interests of owners and occupiers of access land or land crossed by local rights of way. The circular letter encouraged each authority to consider carefully what other specific interests are relevant to their own area and how members representative of those interests might bring a fresh perspective to the work of the forum. The regulations require that each local access forum should have a minimum of ten members and a maximum of twenty-two; and
- required declarations of personal interest. Forum members must disclose any personal interests in a matter to be discussed at a forum meeting. Failure to do so can be grounds for being removed from the forum.

The Government is not aware of any general suggestions that those local highway authorities, or National Park authorities, which have already established forums in England, have acted other than in accordance with the regulations and the Government's guidance. We understand that the Ramblers' Association accepts that the appointment procedures of the Yorkshire Dales National Park and Oxfordshire County Council, which they raised with the Sub-Committee, have complied with both. [The Association is nonetheless concerned that members of the authorities who may serve on the forums are conducting selection interviews.]

The Government has left individual appointing authorities free to decide the process of appointing members to a forum because we think them best able to judge what is suitable in their circumstances. We would expect authorities to act within the statutory framework established by the Act and the regulations, and also to bear in mind the need for fairness, transparency, and compliance with policies on social inclusion and diversity. We are not aware of these requirements being breached: the practice adopted in the Yorkshire Dales and Oxfordshire is not dissimilar to central government procedures, where Ministers with most interest in a subject generally make the appointments to advisory bodies. The number of members of appointing authorities with sufficient knowledge and interest in access issues to conduct interviews is likely to be limited.

We have asked the Ramblers' Association to let us know of future cases where they have criticisms of appointment procedures. While the Government does not have any current plans to amend the guidance to appointing authorities, we would be prepared to revise the guidance if we became aware of justified concerns about the way that members have been appointed. In addition, the Government and the Agency will monitor how the local access forums work in practice

## **Liabilities**

### ***Recommendation of the Select Committee***

**5. We recommend that the Department confirm when they intend to lay regulations on landowner liabilities. In general terms, we do not believe that land managers should face any new liabilities as a result of the Act (paragraph 25).**

### ***Government and Agency response***

During the passage of the Act, we considered very carefully the representations on the liability of owners of access land towards someone who is legally on their land as a result of the CROW Act. As with all other aspects of the Act, we have struck a careful balance between the increased right of users of CROW access land and a reduction in the liability on occupiers. Section 13 of the Act amends the Occupiers Liability Act 1957 so as to cap the liability of occupiers of land towards those exercising the new right of access at the level normally owed to trespassers.

It further provides (by amending the Occupiers Liability Act 1984) that, at any time when the right is exercisable, occupiers of access land will owe no liability to those exercising the right of access, nor to trespassers, in respect of risks arising from: natural features of the landscape: trees, shrubs or plants of any description; any river, stream, ditch or pond; and the passage of any person across a wall, fence or gate (except by proper use of a gate or stile). Liability is not excluded in any of these circumstances if the risk arises from anything done intentionally or recklessly by the occupier – nor in relation to the occupier’s lawful visitors, such as tradesmen.

Furthermore, the Act provides that the courts, in determining whether any liability is owed to persons on access land under this Act, must have regard to certain additional considerations, including the fact that the existence of the new right of access should not place an undue burden (whether financial or otherwise) on the occupier.

The Act does not provide us with powers to lay regulations on landowners’ liabilities. Instead, section 42 of the Act allows us to develop regulations which will state, for prescribed cases, whether access land should be treated as a public place for the purposes of various other enactments, including the Mines and Quarries Act 1954. Under this Act abandoned metalliferous mines and quarries may be deemed a statutory nuisance by the local authority if they are not secured and they constitute a danger to the public by reason of their accessibility from a public place. We will be issuing a consultation paper on proposals for regulations under section 42 by the end of June.

## **Access across common land**

### ***Recommendation of the Select Committee***

**6. We urge the Government to monitor the effect of the new provisions relating to vehicular access across common land and ensure that the appropriate balance has been struck between those who own common land and those who need a right of access across it to reach their properties (paragraph 26).**

### ***Government and Agency response***

Regulations made under section 68 of the Act came into force in July 2002. They introduced new procedures to enable homeowners to secure a statutory easement giving them a permanent right of vehicular access to their premises. We considered at great length the effect of the measures on both the owner of the premises and the owner of the land crossed by the access way before we put the provisions to Parliament. In our view the regulations do strike an appropriate balance between the two parties.

We recognise this is a complex area of law and, in November 2002, we issued a detailed non-statutory guidance note to help people involved in the process. This provided advice on the purpose and operation of the Regulations and covered some of the most frequently asked questions about them. The guidance was circulated widely and we continue to provide informal advice in response to individual enquiries.

The Department is not directly involved in the application process prescribed in the regulations and we have no means of actively monitoring the operation of the procedures. Nevertheless, we continue to take a keen interest in this issue, and will carefully consider any evidence put to us to suggest that the regulations are not operating as Parliament intended.

## **Resources**

### ***Recommendation of the Select Committee***

**7. We are concerned that Defra is not able to identify funding for individual councils for rights of way duties. At the very least Defra should issue new guidance about best practice and the need to invest in the rights of way network. We recommend that Defra monitor the performance of local highway authorities against their rights of way improvement plans and, if necessary, use the powers under Section 71 of the Act to make regulations requiring authorities to publish reports on the performance of their functions relating to rights of way (paragraph 28).**

### ***Government and Agency response***

Alun Michael, Minister of State for Rural Affairs and Urban Quality of Life, has personally written to all highway authorities and asked them to share the Government's commitment to a clearer and stronger rights of way network. The Government and the Agency believe that rights of way improvement plans will be the best means of getting local authorities to invest in their rights of way network. Through the Agency, the Government is funding eight exemplar rights of way improvement plans and will use these to disseminate best practice. It is proposed that, from 2005, rights of way improvement plans will be incorporated into Local Transport Plans. It is expected that the Local Transport Plans will explicitly cover the rights of way programme and it is through this mechanism that the performance of local highway authorities against their rights of way improvement plans will be monitored.

In addition, the introduction of best value from 1 April 2000, by the Local Government Act 1999, means local authorities must seek continuous improvement in the way they carry out their functions and may see rights of way funding increased. The statutory best value performance management framework requires authorities to review their functions, publish annual plans showing past and promised future performance and be subject to an audit and inspection regime. There is currently one rights of way performance indicator measuring the ease of use of rights of way. When authorities publish data against the performance indicator, their performance can be measured and the public will be able to make an assessment of how its services can be improved. The Government and the Agency believe that the best value indicator is a vital tool in getting local authorities to resource their rights of way work adequately.

The Government believes that the powers in section 71 of the Act should be used sparingly to avoid imposing additional reporting burdens on local authorities, but it will be used if it proves necessary.

### ***Recommendation of the Select Committee***

**8. We recommend that the Government publish details of the increased allocation made to each local authority to meet its duties under the Act. If it is genuinely impossible to breakdown the local government settlement to provide this information the Department should consider an alternative form of funding which would be sufficiently transparent to hold individual authorities to account (paragraph 31).**

**9. The Department should also consider publishing a league table of local authorities showing which authorities are meeting their new obligations and which are not. If local authorities failed to perform or meet their responsibilities, there would be a compelling case for funds to be held centrally by the Countryside Agency who would then be responsible for allocation and monitoring (paragraph 31).**

### ***Government and Agency response***

The increased allocation made to local authorities for rights of way work and local access forums is subsumed in the unhypothecated Environment Protection and Cultural Services block, so we cannot say exactly how much has gone to individual authorities. This is in accordance with the approach favoured by the Local Government Association and the Government: the Minister of State, Alun Michael, confirmed with the leaders of all four groups on the LGA their agreement that this was the right approach for this funding. The Government believes that the key issue is how local authorities perform, and that rights of way improvement plans and the best value indicator are the best way of delivering improvements in the way that local authorities meet their rights of way obligations. If there is evidence that certain authorities are failing to do so, the Government will consider other options such as using section 71 of the Act to require local highway authorities to publish reports on their rights of way performance.

### ***Recommendation of the Select Committee***

**10. It is not clear that any additional funds have been made available to local highway authorities to exercise their new powers under the Act in relation to newly-created open-access land. We urge the Department to clarify how it expects the additional costs of using these new powers to be met (paragraph 32).**

### ***Government and Agency response***

We have funded local authorities to carry out the duty to establish local access forums for their area. Local authorities also have powers to:

make byelaws (under section 17),  
 appoint wardens (under section 18),  
 erect and maintain notices (under section 19),  
 improve means of access (under sections 35 to 39).

The Government and the Agency believe that the need to use these powers can only be judged at the local level and will depend on the nature and extent of the land that will be opened for access in each area. We expect local authorities to take into account that there should be benefits from the new right of access for local residents and in terms of tourism and attracting economic activity and to reflect this in their plans for promoting their regions. We intend to provide guidance to local authorities on these new powers before the end of 2003.

### ***Recommendation of the Select Committee***

**11. We are concerned that the Countryside Agency and the Department do not yet appear to have reached agreement on how the facilitation of the new rights of access should be funded. Public rights of way are indicated by easily recognizable signs. We recommend that the Countryside Agency produce a range of similar signs in a uniform style which would indicate the boundaries of newly-created open-access land. These should be provided free of charge to land managers. We also recommend that the Government confirm that it still intends to set up the National Countryside Access Database; how this will be funded; and when it will be completed (paragraph 35).**

### ***Government and Agency response***

The Government and the Agency are working closely with partners to look at what is needed to manage the new right of access and what existing funding streams are available. Once we have completed that work and identified whether or not there is a gap, we will jointly consider how to meet any requirements. This is not solely a matter for central government since regional economies and some landowners are likely to benefit from having more visitors attracted to the area because of the right of access. We also expect local people to benefit. We will encourage local authorities to be pro-active in managing access in their areas. The Agency, together with its counterpart in Wales, is carrying out a pilot project to develop some best practice examples.

We believe a National Access Database would bring significant benefits to both users and land managers. A feasibility study undertaken by the Agency has identified a number of options for such a database and we have been working with the Agency to develop proposals for a pilot scheme in one region. However, the Spending Review made no provision for this so that we shall have to find other sources of funding if the project is to be taken forward in the immediate future.

## **Report on Implementation**

### ***Recommendation of the Select Committee***

**12. We recommend that the Department publish an annual report which sets out progress to date on the implementation of the Act and a timetable for work still to be carried out (paragraph 36).**

### ***Government and Agency response***

The Government and the Agency already publish a range of information on implementation of the Act on their web sites. However, we assume that the Committee wishes us to publish a single report on progress in implementing access to open countryside and registered common land and the rights of way provisions in the Act. We will arrange for such a report to be placed on both web sites as soon as possible.

Department for Environment, Food and Rural Affairs  
May 2003