

Regulatory Appraisal

The Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003

Introduction

1. The Countryside and Rights of Way Act 2000 (the Act) provides a new statutory right of public access on foot to open country (defined as mountain, moor heath and down) and registered common land. This land is already used for a variety of important agricultural purposes – and also contains significant wildlife habitats and important historic and archaeological sites. In recognition of this, the Act makes provision for public access to be restricted in certain circumstances.
2. Land may be restricted in a number of ways under the Act :-
 - The landowner/tenant have the discretion to restrict access for up to 28 days in any year, subject to certain limitations (section 22).
 - Access to land with dogs can be restricted where such restrictions are necessary in connection with lambing or the management of the land as a grouse moor (section 23).
 - A person interested in the land may apply to the relevant authority (normally the Countryside Council for Wales or the relevant National Park authority) for a direction to exclude or restrict access to that land for land management purposes (section 24).
 - The relevant authority may give a direction excluding or restricting access to any land for the avoidance of risk of fire or danger to the public (section 25).
 - The relevant authority may give a direction excluding or restricting access to any land for the purpose of nature conservation or heritage preservation (section 26).
 - The Secretary of State may give a direction excluding or restricting access to any land if satisfied that it is necessary to do so for the purpose of defence or national security (section 28).
3. These Regulations cover the main procedures to be followed in implementing restrictions. Any appeal arising as a result of the relevant authority rejecting an application for a restriction, or acting otherwise than in accordance with advice given to it by a relevant advisory body, will be handled in line with the procedures in the Countryside Access (Appeals Procedures) (Wales) Regulations 2002 (S.I. 2002/1794 (W.169)).

Purpose

4. Sections 23 and 32 of the Act allow for regulations to be made setting down the procedures to be followed in implementing exclusions or restrictions on access. These Regulations aim to make it as straightforward as possible for restrictions on access to be introduced by

land managers where there are good reasons for them and where they will help avoid potential conflict between access and other land uses.

Assessment of risk

5. The new right of access is expected to affect thousands of individual farms/land holdings. It is important that there are clearly defined and consistent procedures in place for the relevant authorities and land managers to follow in the administration of the application for restrictions. This will help ensure consistency across Wales in the way that applications for restrictions are dealt with and provide clarity both to land managers and to walkers and other 'users' of the countryside. It is also important that timely and accurate information is provided to the public on what land may be subject to restrictions at any time.

Options

6. A non-statutory option, i.e. to cover these procedures in guidance, is not available since the Act requires that restrictions operate in accordance with Regulations. By its very nature, however, guidance lacks statutory force and can lead to an inconsistent approach. The Regulations define the essential legal procedures to be followed (other associated matters will be covered in accompanying guidance) and will ensure a strong degree of consistency and equity in the way restriction applications are processed.

Costs

7. The costs of the access restrictions regime covered in these Regulations fall on three main parties :-
 - a. The relevant authorities will incur costs in setting up and administering the restrictions system. The CCW, which will handle the bulk of the applications, estimate that establishing an effective system will cost about £150,000, with ongoing administration costs depending on the actual volume of applications coming forward;
 - b. The land managers will incur some costs, mainly in the preparation of the restriction application and appropriate notification to the relevant authority. There will also be some responsibility on the land manager to inform the public of restrictions in place though model signs will be produced to assist in this. The costs involved are expected to be minimal.

If the land manager were to appeal against the decision of the Relevant Authority then some additional costs would be accrued. The majority of appeals are expected to be handled via written representations or local hearing method. In both cases, costs to the appellant should be minimal (photocopying and postage only in relation to written representations); with the additional costs associated with travel and attendance at a local hearing. In a minority of cases - where complex issues are raised - the

Planning Inspectorate may decide that a more formal local inquiry should be held. In these cases the appellant may need to attend the inquiry for one day and may wish to instruct a solicitor or other agent to provide advice and represent his/her interests, which could incur legal costs of £1,000 or more. As noted, though, full inquiry cases are expected to be rare.

- c. The Planning Inspectorate will incur costs in administering any appeals, estimated at c£1,000 per appeal.

The costs of the relevant authorities and those of the Planning Inspectorate are being catered for in the resources provided to them by the National Assembly.

Benefits

8. The main benefits are that the Regulations will enable appropriate restrictions to be imposed so that the balance between recreational interests and those of working farmers and other land managers is preserved. Clear, standardised procedures will assist in the efficient processing of applications.

Consultation

9. Public consultation has been undertaken with a wide range of interests about the proposed procedures covered in the draft Regulations. Some improvements are being made as a result of the consultation – but overall, the restrictions regime proposed has been endorsed as sensible and proportionate by the key interest groups. The costs likely to fall on individual land managers as a result of these Regulations are not expected to be significant and therefore no separate consultation is being arranged on the potential impact on business interests.

Review

10. The operation of the procedures in the Regulations will be monitored closely by the CCW, National Park Authorities and the Welsh Assembly Government and a more formal review being undertaken after five years of the Regulations coming into force.

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Welsh Assembly Government**