

**National Assembly for Wales**  
Research paper

**Countryside access in the UK:  
a review of associated legislation and  
policy**

April 2014

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**National Assembly for Wales**  
Research paper

# Countryside access in the UK: a review of associated legislation and policy

April 2014

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This paper gives an overview of the different types of countryside access, provides a background to the associated legislation, discusses related policy and highlights the differences between the different UK countries.

The Research Service acknowledges the parliamentary fellowship provided to Miss Orford by the Natural Environment Research Council, which enabled this paper to be completed.

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## Summary

Countryside access in this paper refers to the right of the public to access and participate in outdoor recreation in the natural environment. Rights of way, open access and permissive access are discussed and compared between the UK countries.

Rights of way are highways that allow the public a legal right of passage. Wales has the greatest length of rights of way per square km (1.59km/sqkm) followed by England (1.46km/sqkm), Scotland (0.19km/sqkm) and Northern Ireland (0.01km/sqkm). The network of public rights of way is significantly bigger in England and Wales as the principle “once a highway, always a highway” means that it is the responsibility for local highway authorities to record the legal existence and location of rights of way routes if use as a highway can be shown. In Scotland and Ireland this does not apply so that after a period of disuse old routes cannot be reclaimed.

Access to areas of land known as ‘access land’ without the use of paths is described as ‘open access’. The extent of open access differs between the UK countries due to differences in legislation. Scotland’s *Land Reform (Scotland) Act 2003*<sup>1</sup> permits free access anywhere that is not specifically excluded. The *Countryside and Rights of Way Act 2000*<sup>2</sup> in England and Wales limits open access to certain areas that are mapped. In Northern Ireland there is no formalised right of open access to unenclosed land as although the *Access to the Countryside (NI) Order 1983*<sup>3</sup> includes provision for access to open country no related agreements or orders have been made by district councils.

Permissive access also exists in all of the UK countries where landowners may allow the public access to their land for walking, cycling or riding.

This research paper synthesises and summarises the legislation associated with countryside access across the UK. Several policies have been introduced to facilitate access to the countryside which are also reviewed. Examples include the Welsh Coast path in Wales, the ‘Paths for Communities’ initiative in England, the ‘Paths for All’ initiative in Scotland and Forest Service efforts in Northern Ireland to facilitate access to forested land.

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<sup>1</sup> [Land Reform \(Scotland\) Act 2003](#) (asp 2) [accessed 24 January 2014]

<sup>2</sup> [Countryside and Rights of Way Act 2000](#) (Chapter 37) [access 24 January 2014]

<sup>3</sup> [Access to the Countryside \(Northern Ireland\) Order 1983](#) (No. 1895) [accessed 31 January 2014]



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## 1. Introduction

Countryside access in this paper refers to the right of the public to access and participate in outdoor recreation in the natural environment. This includes access to open country, registered common land and coastal access as well as inland waterways such as rivers, lakes and reservoirs. Access is discussed with reference to; rights of way (highways that allow the public a legal right of passage), open access (access to areas of land known as ‘access land’ without the use of paths) and permissive access (where landowners may allow public access).

Legislation associated with countryside access differs between the UK countries. By way of a brief comparison, Scotland’s *Land Reform (Scotland) Act 2003*<sup>4</sup> (*‘LRS Act’*) permits responsible free access anywhere that is not specifically excluded. Access legislation in England and Wales is comparatively more restrictive where free access is limited to certain areas that are mapped under the *Countryside and Rights of Way Act 2000*<sup>5</sup> (*‘CRoW Act’*). In Northern Ireland, the *Access to the Countryside (NI) Order 1983*<sup>6</sup> (*‘Access NI Order’*) was introduced to improve the limited opportunities for outdoor access, however it is widely acknowledged that ‘legislation in Northern Ireland does not provide the same level of access as in other parts of the UK’<sup>7</sup> with no formalised right of open access to unenclosed land.

This paper gives an overview of the different types of countryside access, provide a background to the associated legislation, discuss related policy and highlight the differences in countryside access between the different UK countries.

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<sup>4</sup> [Land Reform \(Scotland\) Act 2003](#) (asp 2) [accessed 24 January 2014]

<sup>5</sup> [Countryside and Rights of Way Act 2000](#) (Chapter 37) [access 24 January 2014]

<sup>6</sup> [Access to the Countryside \(Northern Ireland\) Order 1983](#) (No. 1895) [accessed 31 January 2014]

<sup>7</sup> Northern Ireland Assembly, Research and Information Service Briefing paper, [Access to the countryside in Northern Ireland – occupiers’ liability](#) December 2012 [access 24 January 2014]

## 2. Wales

### 2.1. Types of access

#### 2.1.1. Rights of way

Public rights of way are highways that allow the public a legal right of passage. In Wales there are around 33,000 km of public rights of way<sup>8</sup> (Table 1). Types of rights of way include:

- footpaths - right of way is on foot only;
- bridleways - for pedestrians, horse riders and cyclists (who must give way to people on foot or horseback);
- byways open to all traffic (BOATs) - open to walkers, cyclists, horse-riders, horse-drawn vehicles and motor vehicles; and
- restricted byways - can have rights for all traffic except motorised vehicles.<sup>9</sup>

Table 1: Public Rights of Way (PROW) in the UK

Country	Total area (sqkm)	Length of PROW (km)	Length of PROW per sqkm
Wales	20,767	33,000	1.59
England	130,373	190,000	1.46
Scotland	78,775	15,000	0.19
Northern Ireland	14,120	198	0.01

Source: SNH (2001), Natural England Website, Welsh Government (2013), Sport NI (2009), Encyclopedia of the Nations<sup>10,11,12,13,14</sup>.

#### 2.1.2. Open access

Certain areas of land across Wales can be accessed without having to use paths. This land is known as 'access land'. Access land includes open country (mountain, moor, heath and down), registered common land and areas of dedicated public forests (where owners such as the Natural Resources Wales (NRW) allow free access). One fifth of Wales is mapped as 'access land'.<sup>15</sup> This covers 360,000 hectares of open country and registered common land (plus 100,000 hectares of

<sup>8</sup> Welsh Government [Rights of Way](#) [accessed 11 February 2014]

<sup>9</sup> Welsh Government [Rights of Way](#) [accessed 11 February 2014]

<sup>10</sup> SNH [Rights Of Way In Scotland](#) [accessed 29 January 2014]

<sup>11</sup> Natural England [Types of Public Rights of Way](#) [accessed 29 January 2014]

<sup>12</sup> Welsh Government [Rights of Way](#) [accessed 29 January 2014]

<sup>13</sup> Sport NI, [Bridging the Gap](#), May 2009 [access 24 January 2014]

<sup>14</sup> [Encyclopedia of the Nations](#) [accessed 6 February 2014]

<sup>15</sup> NRW [Open Access Land](#) [accessed 28 January 2014]

NRW land) spread across Wales, some of which is within the National Parks.<sup>16</sup> All 22 unitary authorities in Wales have access land in their areas.<sup>17</sup>

There are some activities that cannot, in most circumstances, be undertaken on access land known as ‘general restrictions’.<sup>18</sup> They include horse riding, cycling, fishing, camping, taking animals other than dogs onto the land, driving a vehicle and water sports.

A comparative analysis of the area of access land between the UK countries is not possible as with rights of way due to the different legislation (discussed later).

### *2.1.3. Permissive access*

Some landowners may allow the public access to their land for walking, cycling or riding. This is known as ‘permissive access’. Access may be restricted at specific times of the year, for example to protect ground nesting birds. Landowners have a responsibility of care for those using permissive access across their land.

Permissive access is not covered by the *CRoW Act*<sup>19</sup> but common law provisions do apply. Some landowners may enter into an agreement with a public authority to allow the public to gain access to their land. In these instances the terms and agreements of any contract signed would apply. An example of this is Agri-environment schemes; Glastir in Wales provides relevant farmers/land owners with the opportunity to provide permissive access to otherwise inaccessible land in return for payment.<sup>20</sup>

## *2.2. Existing legislation requirements*

The existing legislation for Wales in relation to countryside access is summarised below.

### *2.2.1. Countryside and Rights of Way Act 2000*

Coming into force in Wales on 28 May 2005, the *CRoW Act*<sup>21</sup> is the most significant piece of legislation relating to countryside access in Wales (and England).

In relation to public rights of way, the *CRoW Act* includes the following key requirements:

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<sup>16</sup> Welsh Government [Countryside and coastal access](#) [accessed 24 January 2014]

<sup>17</sup> Welsh Government [Implementation of New Access Provisions under the Countryside and Rights of Way Act 2000](#) [accessed 10 February 2014]

<sup>18</sup> [Countryside and Rights of Way Act 2000](#) (Chapter 37) [access 24 January 2014]

<sup>19</sup> [Countryside and Rights of Way Act 2000](#) (Chapter 37) [access 24 January 2014]

<sup>20</sup> Research Service Research Paper 11/0329 [An introduction to Glastir and other UK agri-environment schemes](#) February 2011 [accessed 11 February 2014]

<sup>21</sup> [Countryside and Rights of Way Act 2000](#) (Chapter 37) [access 24 January 2014]

- local highway authorities are responsible for protecting and maintaining rights of way including maintaining the surface and preventing obstructions;
- local highway authorities are required to publish 'Rights of Way Improvement Plans';
- local highway authorities are required to map rights of way on Definitive Maps and Statements; and
- the statutory right to apply for orders to permanently extinguish or divert certain public rights of way, and the associated rights of appeal to the Secretary of State (Welsh Ministers in Wales) are covered by the *CRoW Act*.

The *CRoW Act* introduces a general right of public access on foot to certain land, 'access land', for open-air recreation. The *CRoW Act* gives local authorities powers to ensure adequate access is provided by landowners. Under the *CRoW Act* 'access land' means any land which:

- is shown as open country on a map in conclusive form issued by the appropriate countryside body (NRW in Wales);
- is shown on such a map as registered common land;
- is registered common land in any area outside Inner London for which no such map relating to registered common land has been issued;
- is situated more than 600 metres above sea level in any area for which no such map relating to open country has been issued; or
- is dedicated for the purposes of this Part under section 16.<sup>22</sup>

There are a number of circumstances in which land that would otherwise be access land is excepted and access rights do not apply. This includes access land:

- less than 20 metres away from people's homes;
- that is being used to grow food; and
- land used for railways or golf courses.

Landowners can close off their land to the public for up to 28 days a year, or more if needed, for land management, fire prevention or public safety. The landowner must give notice to NRW or, in the case of National Parks, the National Park authority. They may consider using informal management techniques, such as putting up a notice asking people to avoid an area. The landowner (or the farm tenant) can also exclude, at their discretion, dogs from managed grouse moors and lambing enclosures.

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<sup>22</sup> [Countryside and Rights of Way Act 2000](#) (Chapter 37) [access 24 January 2014]

NRW and the National Park authorities also have the power to restrict or exclude public access to land for the purposes of nature conservation and heritage preservation.

The *CRow Act* requires the appointing authority for any area to establish for that area, or for each part of it, an advisory body to be known as a local access forum. A forum must consist of members who represent:

- users of local access land and local rights of way;
- owners and occupiers of access land and land with rights of way; and
- other interests especially relevant to the area.

The *CRow Act* amends the *Wildlife and Countryside Act 1981*, *Highways Act 1980*, *Countryside Act 1968* and *National Parks and Access to the Countryside Act 1949* (see below).

### 2.2.2. *Marine Coastal Access Act 2009*

The *Marine Coastal Access Act 2009*<sup>23</sup> makes provision in relation to marine functions and activities which includes coastal routes and rights of access to land near the coast. The Act originally included provisions to enable the Assembly to introduce an Assembly Measure covering:

- the establishment and maintenance of a route (or a number of routes) for the coast to enable the public to make recreational journeys; and
- securing public access to relevant land for the purposes of open-air recreation.<sup>24</sup>

However, since the referendum in 2011 this provision has become redundant as the Assembly now has the power to introduce a Bill on coastal access should it wish to do so. It is important to note that to date the coastal path in Wales has been developed on the basis of a largely voluntary approach.

### 2.2.3. *Wildlife and Countryside Act 1981*

*Wildlife and Countryside Act 1981*<sup>25</sup> (as amended by the *CRow Act*) amends the law relating to ascertainment of public rights of way. It provides for a duty to keep Definitive Maps and Statements under continuous review and reclassify roads used as public paths. The Act provides for Orders to create, extinguish or divert footpaths and bridleways.

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<sup>23</sup> [Marine Coastal Access Act 2009](#) (Chapter 23) [accessed 24 January 2014]

<sup>24</sup> *ibid*

<sup>25</sup> [Wildlife and Countryside Act 1981](#) (Chapter 69) [accessed 27 January 2014]

#### 2.2.4. *The Highways Act 1980*

*The Highways Act 1980*<sup>26</sup> (as amended by the *CroW Act*) enforces duties regarding rights of way including the creation and signposting of footpaths and bridleways.

#### 2.2.5. *Countryside Act 1968*

*The Countryside Act 1968*<sup>27</sup> (as amended by the *CroW Act*) amends the law relating to access to open country including rivers, canals and woodlands, access orders to agricultural land and access agreements by land owners (and others) to prevent conversion of land into excepted land. The Act also addresses signposting, stiles etc. and ploughing of footpaths and bridleways, public path amendments and permits riding of bicycles on bridleways.

#### 2.2.6. *National Parks and Access to the Countryside Act 1949*

*The National Parks and Access to the Countryside Act 1949*<sup>28</sup> (as amended by the *CroW Act*) makes provision for the recording, creation, maintenance, improvement, diversion and closure of public paths, bridleways and other highways. 'Long distance routes' (now 'National Trails') are designated under the Act. It makes provision for secure access to open country.

#### 2.2.7. *Active travel (Wales) Act 2013*

*The Active Travel (Wales) Act 2013*<sup>29</sup> which became law in Wales on 4 November 2013 places a requirement on local authorities to continuously improve facilities and routes for walkers and cyclists and to prepare maps identifying current and potential future routes for their use. The Act also requires new road schemes to consider the needs of pedestrians and cyclists at design stage.

#### 2.2.8. *Other relevant legislation*

- *Natural Environment and Rural Communities Act 2006*<sup>30</sup>;
- *Town and Country Planning Act 1990*<sup>31</sup>;
- *Cycle Tracks Act 1984*<sup>32</sup>;
- *Allotments Act 1950*<sup>33</sup>; and
- *Small Holdings and Allotment Act 1908*<sup>34</sup>.

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<sup>26</sup> [Highways Act 1980](#) (Chapter 66) [accessed 27 January 2014]

<sup>27</sup> [Countryside Act 1968](#) (Chapter 41) [accessed 27 January 2014]

<sup>28</sup> [National Parks and Access to the Countryside Act 1949](#) (Chapter 97) [accessed 27 January 2014]

<sup>29</sup> [Active Travel \(Wales\) Act 2013](#) (anaw 7) [accessed 3 April 2014]

<sup>30</sup> [Natural Environment and Rural Communities Act 2006](#) (Chapter 16) [accessed 28 January 2014]

<sup>31</sup> [Town and Country Planning Act 1990](#) (Chapter 8) [accessed 11 February 2014]

<sup>32</sup> [Cycle Tracks Act 1984](#) (Chapter 38) [accessed 27 January 2014]

<sup>33</sup> [Allotments Act 1950](#) (Chapter 31) [accessed 27 January 2014]

<sup>34</sup> [Small Holdings and Allotments Act 1908](#) (Chapter 36) [accessed 27 January 2014]

## 2.3. Implementation of legislation

### 2.3.1. Rights of Way Improvement Plans

As set out above, the *CRoW Act* places a duty on each highway authority in Wales to publish a Rights of Way Improvement Plan (RoWIP).<sup>35</sup> Twenty three ROWIPs have been completed covering Wales which set out the strategic plans for each authority area specifying needs, priorities and actions for improving access to the countryside.<sup>36</sup>

### 2.3.2. Local Access Forums

There are 29 Local Access Forums (LAFs) in Wales that have been established (under the *CRoW Act*) to advise local authorities (including local highway authorities, or National Park authorities) and NRW about improving public access to land in their area. The LAFs maintain contact with each other through the annual Chairs Meeting, and the Annual Conference.<sup>37</sup> NRW receives annual reports from all LAFs.

### 2.3.3. Mapping

In Wales there is a legal responsibility for local highway authorities to record the legal existence and location of rights of way on a Definitive Map and Statement under the *CRoW Act*.<sup>38</sup> Additionally NRW works with landowners, tenants and other interested parties to produce accurate maps of all open access land. These open access maps must be reviewed at least every ten years.<sup>39</sup> A review is underway and the all Wales conclusive map is expected to be published in September 2014. A draft map was issued for public consultation in July 2012.<sup>40</sup>

### 2.3.4. National Trails

The *National Parks and Access to the Countryside Act 1949* introduced the general provision for National Trails (amended by the *CRoW Act*). National Trails are long-distance routes that allow the public to make journeys on foot, horseback or bicycle.<sup>41</sup> Three exist in Wales; Glyndwr's Way (213 km), Offa's Dyke Path (283 km) and Pembrokeshire Coast Path (299 km). Maintenance of the paths is undertaken by various bodies, including the National Park Authorities, local highway authorities and volunteers with funding from NRW.

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<sup>35</sup> NRW [Rights of Way Improvement Plans and funding](#) [accessed 28 January 2014]

<sup>36</sup> *ibid*

<sup>37</sup> NRW [Local Access Forums](#) [accessed 30 January 2014]

<sup>38</sup> NRW [Definitive Maps](#) [accessed 30 January 2014]

<sup>39</sup> NRW [Open Access Land](#) [accessed 11 February 2014]

<sup>40</sup> *ibid*

<sup>41</sup> National Trails [The National Trails](#) [accessed 11 February 2014]

## 2.4. *Potential future legislation*

In 2013 the Welsh Government announced a review of existing legislation and guidance relating to access and outdoor recreation.<sup>42</sup> The Welsh Government's aim is:

... to secure better access to the outdoors for recreation, modernise and simplify the current regulatory framework, and provide clarity and certainty over where people can go and what they can do there. This will enable us [Welsh Government] to take forward the Programme for Government commitments to improve access to the outdoors and to legislate for the amount of land that is available for allotments.<sup>43</sup>

The review is focusing on three main areas to: 1) increase access to the outdoors, both in urban and rural areas; 2) improve the public path network; 3) increase the amount of land available for allotments and community gardening. The green paper consultation was expected to be published December 2013<sup>44</sup> but has been delayed.

## 2.5. *Policy*

### 2.5.1. *Coastal and inland water access*

The Wales Coast Path<sup>45</sup>, a continuous 1400 km path around Wales, was completed and opened on 5 May 2012. This was part of the Welsh Government's Coastal Access Improvement Programme (CAIP) in which the Welsh Government has invested in access improvements around the Welsh Coast since 2007 via (now) NRW.

Access rights laid out in the *CRoW Act* do not include access to inland water however the Welsh Government is encouraging access to water via the Splash fund (Water Recreation Challenge Fund for Wales). The fund, set up in 2008 and managed by NRW, provides funding to public, private and third sector organisations to deliver greater recreational opportunities across Wales's lakes, rivers, canals, reservoirs and coast. £460,000 of funding was made available in 2013/14.<sup>46</sup>

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<sup>42</sup> Welsh Government [Review of Access and Outdoor Recreation Legislation](#) [accessed 27 January 2014]

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*

<sup>45</sup> NRW [The Wales Coast Path](#) [accessed 11 February 2014]

<sup>46</sup> NRW [Splash grant funding scheme](#) [accessed 12 February 2014]



### *2.5.2. National Access Forum*

In addition to the Local Access Forums, Wales also has a National Access Forum.<sup>47</sup> Unlike the Local Access Forums, it is not statutory and individuals cannot apply for membership, instead member organisations nominate representatives. The National Access Forum for Wales brings together representatives of landowners and managers, countryside access user groups, public bodies and voluntary sector organisations to consider countryside access issues in Wales. It advises NRW and the Welsh Government and NRW administer and chair the Forum.

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<sup>47</sup> NRW [National Access Forum](#) [accessed 7 February 2014]

### 3. England

#### 3.1. *Types of access*

The public have the same rights relating to countryside access in England as in Wales with a few exceptions (highlighted below). The English public have access to approximately 190,000 km of rights of way<sup>48</sup> (Table 1), 865,000 hectares of open access land<sup>49</sup> (including 156,000 hectares of Forestry Commission land)<sup>50</sup> as well as permissive access rights.<sup>51</sup>

#### 3.2. *Existing legislation requirements*

Legislation in England largely mirrors that outlined above for Wales (historically legislation has been made on an England and Wales basis). Accordingly the *CRoW Act* is the most significant legislation regarding countryside access in England.

##### 3.2.1. *Marine and Coastal Access Act 2009*

Access legislation under the *Marine and Coastal Access Act 2009*<sup>52</sup> differs in England to that in Wales as mentioned previously. Under the Act the Secretary of State and Natural England have a duty to secure a long distance walking route around the coast of England, together with an associated margin of accessible land, for people to use for the purposes of open-air recreation.<sup>53</sup>

##### 3.2.2. *The Access to the Countryside (Coastal Margin) (England) Order 2010*<sup>54</sup>

Section 303 of the *Marine and Coastal Access Act 2009* includes provision for an Order to be made to amend the public right of access provided under the *CRoW Act* to apply to English coastal land. The draft Order was approved by both Houses on 24 February 2010.

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<sup>48</sup> Natural England [Types of public rights of way](#) [accessed 5 February 2014]

<sup>49</sup> Natural England [Open Access land](#) [accessed 28 January 2014]

<sup>50</sup> This means that 6.5% of England is open access land (compared to 20% in Wales).

<sup>51</sup> UK Government [Protecting and improving people's enjoyment of the countryside](#) [accessed 5 February 2014]

<sup>52</sup> [Marine Coastal Access Act 2009](#) (Chapter 23) [accessed 24 January 2014]

<sup>53</sup> *ibid*

<sup>54</sup> [The Access to the Countryside \(Coastal Margin\) \(England\) Order 2010](#) No. 558 [accessed 18 February 2014]

### *3.3. Implementation of legislation*

#### *3.3.1. Rights of Way Improvement Plans*

Like in Wales, it is a duty, under the *CRoW Act*, for all local highway authorities in England to produce Rights of Way Improvement Plans. This is on-going in England. As a demonstration project in the South East, Hampshire County Council is producing plans for the Forests of Bere and Eversley, focusing on the issue of equestrian use.<sup>55</sup>

#### *3.3.2. Local Access Forums*

England has 83 Local Access Forums (LAFs).<sup>56</sup> Natural England has responsibilities set out in the *CRoW Act* to receive annual reports from all LAFs. The most recent report<sup>57</sup> of the LAF's achievements in England, includes details on local consultations regarding highway Orders, the public rights of way network and projects, disabled access, gating orders and green infrastructure strategies. National consultations included National Coastal Access Trail, National Park Partnership Plans, National Planning Policy Framework consultation and Public Forest Estate consultations. Unlike in Wales a National Access Forum does not exist in England.

#### *3.3.3. Mapping*

Like in Wales, there is a legal responsibility under the *CRoW Act* for local highway authorities in England to record rights of way on a Definitive Map and Statement. Natural England (like NRW in Wales) has produced conclusive maps of England outside of inner London to show all registered common land and open country, a statutory duty under the *CRoW Act*. As in Wales there is a requirement to keep these conclusive maps under review. Regulations that came into force on 6 April 2013 in England have now deferred the deadline for completion of the first review of the conclusive maps by five years under Section 10 of the *CRoW Act*.<sup>58</sup> This means that the eight conclusive maps covering England will need to have been reviewed by 2019 and 2020.

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<sup>55</sup> Natural England [Rights of Way Improvement Plans](#) [accessed 11 February 2014]

<sup>56</sup> Natural England [LAFs](#) [accessed 7 February 2014]

<sup>57</sup> Natural England [Local Access Forum Annual Report 2011/2012](#) [accessed 30 January 2014]

<sup>58</sup> Natural England [CROW Map Review Project](#) [accessed 7 February 2014]

### 3.3.4. National Trails

Today there are 13 National Trails in England with funding provided by Natural England for their upkeep.<sup>59</sup> The first Trail was the Pennine Way, opened in 1965.<sup>60</sup> Like in Wales it is the duty of local highway authorities and National Park authorities to maintain the trails.

### 3.3.5. Coastal and inland water access

Creation of the England Coast Path is underway. In England this is a duty (under Section 296 of the *Marine and Coastal Access Act 2009*) of the Secretary of State and Natural England (whilst in Wales the path is implemented through a non-legislative approach). When complete the England Coast Path will be the longest of the National Trails in England at 4,400 km.<sup>61</sup> The new rights of access will be brought into effect at different times around the coast, although they are already in place along a section of coast at Weymouth.<sup>62</sup> Alignment of the path is a joint activity between Natural England, county councils, land owners and occupiers.

Like in Wales, access rights under the *CRoW Act* do not include access to inland water.

## 3.4. Potential future legislation

One of the aims of the *CRoW Act* was to address the incompleteness of the Definitive Maps of public rights of way that previously existed. The *CRoW Act* provides for a cut-off date in 2026 so that unrecorded pre-1949 public rights of way would cease to exist if not added to the maps by this date. Natural England has argued that ‘the prospects of achieving that are bleak as things stand, because of the lengthy and convoluted nature of the recording processes’.<sup>63</sup>

Consequently a Stakeholder Working Group was set up by Natural England to make recommendations to improve the situation surrounding ‘historic rights of way’.<sup>64</sup> The key recommendations of the report have been incorporated into the Draft Deregulation Bill<sup>65</sup> which was published in July 2013 containing clauses focused on improving the legislation and process around historic rights of way.

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<sup>59</sup> National Trails [The National Trails](#) [accessed 12 February]

<sup>60</sup> *ibid*

<sup>61</sup> National Trails [England Coast Path](#) [accessed 11 February 2014]

<sup>62</sup> Natural England [Coastal Access](#) [accessed 5 February 2014]

<sup>63</sup> Natural England Commissioned Report NECR035 Stepping Forward, [The Stakeholder Working Group on Unrecorded Public Rights of Way: Report to Natural England](#) March 2010 [accessed 30 January 2014]

<sup>64</sup> Natural England [Stakeholder Working Group on Unrecorded Rights of Way](#) [accessed 7 February 2014]

<sup>65</sup> [Draft Deregulation Bill](#) Cm 8642 1 July 2013 [accessed 30 January 2014]

### 3.5. Policy

In England there are several policy initiatives to enhance opportunities for countryside access to all members of communities with a focus on disadvantaged people.

#### 3.5.1. 'Access to Nature'

'Access to Nature' is a scheme run by Natural England and funded by the Big Lottery Fund with an aim to encourage more people to enjoy the outdoors, focusing on those who face social exclusion or those that have little or no contact with the natural environment.<sup>66</sup> One of the objectives is to invest in access to natural places and networks between sites and associated activities include:

- providing green infrastructure e.g. multi-use paths, cycle routes, trails, boardwalks etc;
- creating, managing or promoting greenways, green corridors and access links between sites;
- land purchase (where there is no other method of securing a site for public use/access);
- green transport links; and
- providing new access.<sup>67</sup>

#### 3.5.2. National Outdoors for All Working Group

A National Outdoors for All Working Group has been set up by Natural England, bringing together users and providers of services for the benefit of communities to ensure opportunities for countryside access.<sup>68</sup> This group was established following results from the Diversity Review (2005)<sup>69</sup> which showed that certain people are less likely to use the natural environment. The group commissions studies to collect evidence of the requirement and priorities for access to the natural environment, and barriers to access and designs innovative projects to improve the provision of existing access services or to deliver new services.

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<sup>66</sup> Natural England [Access to Nature](#) [access 11 February 2014]

<sup>67</sup> Natural England [Access to Nature Outcomes and targets](#) [access 17 February 2014]

<sup>68</sup> Natural England [Outdoors for all](#) [accessed 30 January 2014]

<sup>69</sup> Natural England, [Research carried out by the diversity review](#) [accessed 5 February 2014]

### 3.5.3. 'Paths for Communities'

The 'Paths for Communities'<sup>70</sup> initiative was part of the UK Government's Rural Economy Growth Review<sup>71</sup> announced in November 2011. A £2 million grant fund was opened for applications from local communities with an aim to develop and enhance the network of public rights of way to deliver benefits to rural areas in England.<sup>72</sup>

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<sup>70</sup> Natural England [Paths for Communities](#) [accessed 7 February 2014]

<sup>71</sup> Defra [Rural Economy Growth Review](#) [accessed 30 January 2014]

<sup>72</sup> Defra [Paths for Communities](#) [accessed 7 February 2014]

## 4. Scotland

### 4.1. *Type of access*

There is significantly more formalised open access in Scotland compared to England and Wales. Free access is permitted anywhere that is not specifically excluded, provided responsible behaviour, under the *Land Reform (Scotland) Act 2003*<sup>73</sup> (hereafter *The LRS Act*), whilst in England and Wales free access is restricted to certain mapped areas under the *CRoW Act*. Scotland has a significantly smaller network of rights of way (15,000km) than in England and Wales (Table 1) as the principle “once a highway, always a highway” means that routes can be added to the map if use as a highway can be shown in England and Wales, whilst in Scotland this does not apply so that after a period of disuse old routes cannot be reclaimed.

### 4.2. *Existing legislation requirements*

#### 4.2.1. *Land Reform (Scotland) Act 2003*

The *LRS Act*<sup>74</sup> and the accompanying *Scottish Outdoor Access Code*<sup>75</sup> is the primary legislation relating to outdoor access in Scotland. The associated statutory right of access came into effect on 9 February 2005.

Part 1 of the *LRS Act* establishes statutory public rights of access to land and inland water for recreational, educational and other activities. The rights specifically exclude any kind of motorised activity (unless for disabled access), hunting, shooting and fishing.

The rights apply over all of Scotland including urban areas, hills, farmland, forests, beaches, canals, lochs and rivers. However, the rights of access do not apply within buildings, structures or their immediate surroundings, to houses and gardens, and to crop land (grass is not deemed to be a crop unless it is grown for hay/silage), though access to field margins is allowed.

The emphasis of Part 1 of the *LRS Act* is on the management of access at a local level providing local authorities and National Park authorities with powers to manage access in their area. The *LRS Act* requires local authorities to establish Local Access Forums. The *LRS Act* provides that access authorities (local authorities and National Park authorities) can temporarily exempt a particular area of land and/or inland water from access rights by way of a section 11 order.

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<sup>73</sup> [Land Reform \(Scotland\) Act 2003](#) (asp 2) [access 24 January 2014]

<sup>74</sup> *ibid*

<sup>75</sup> [The Scottish Outdoor Access Code](#) [access 24 January 2014]

The LRS Act lays out a duty for the local authority to draw up a plan for a system of paths ('core paths') sufficient for the purpose of giving the public reasonable access throughout their area.

#### 4.2.2. *The Land Reform (Scotland) Act 2003 (Modification) Order 2013*

The *Land Reform (Scotland) Act 2003 (Modification) Order 2013*<sup>76</sup> came into force on 20 December 2013. The Order amends the *LRS Act* to provide for the temporary exemption of core paths from access rights. The circumstances in which the draft order applies are:

- in the event of an outbreak of animal disease; and
- where exemptions from access rights are sought under section 11 orders.

#### 4.2.3. *Countryside (Scotland) Act 1967*

The *Countryside (Scotland) Act 1967*<sup>77</sup> (amended by the *LRS Act*) was the first attempt to make legal provisions for countryside access in Scotland. It provides for the establishment of a Countryside Commission for Scotland (now Scottish Natural Heritage (SNH)) and for the improvement of recreational and other facilities. It aims to extend the powers of local planning authorities with respect to land in their districts. This includes a duty to 'assert, protect and keep open and free from obstruction or encroachment any public right of way' and to make financial provision with respect to the above matters. The Act also provides for long distance routes (now 'Scotland's Great Trails').

#### 4.2.4. *Other relevant legislation*

- *The Nature Conservation (Scotland) Act 2004*<sup>78</sup>
- *The National Parks (Scotland) Act 2000*<sup>79</sup>
- *Town and Country Planning (Scotland) Act 1997*<sup>80</sup>
- *Water (Scotland) Act 1980*<sup>81</sup>
- *Occupiers' Liability (Scotland) Act 1960*<sup>82</sup>

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<sup>76</sup> [The Land Reform \(Scotland\) Act 2003 \(Modification\) Order 2013](#) [accessed 18 February 2014]

<sup>77</sup> [Countryside \(Scotland\) Act 1967](#) (Chapter 86) [accessed 29 January 2014]

<sup>78</sup> [Nature Conservation \(Scotland\) Act 2004](#) (asp 6) [accessed 30 January 2014]

<sup>79</sup> [National Parks \(Scotland\) Act 2000](#) (asp 10) [accessed 30 January 2014]

<sup>80</sup> [Town and Country Planning \(Scotland\) Act 1997](#) (Chapter 8) [accessed 29 January 2014]

<sup>81</sup> [Water \(Scotland\) Act 1980](#) (Chapter 45) [accessed 29 January 2014]

<sup>82</sup> [Occupiers' Liability \(Scotland\) Act 1960](#) (Chapter 30) [accessed 29 January 2014]



## 4.3. Implementation of legislation

### 4.3.1. Core Paths Plans

'Core paths' are the basic framework of main routes that tie together the 'wider paths network' in Scotland. Each access authority has a duty under the *LRS Act* to draw up a Core Paths Plan<sup>83</sup> in their area to facilitate access rights. Unlike under the *CRow Act*, local authorities do not have a duty to improve, promote or maintain core paths, only to make a plan. In some places Community Path Groups have formed to improve and maintain local paths.

### 4.3.2. Access Forums

Similar to in England and Wales, Local Access Forums provide the access authority with advice and assistance in performing their duties and functions in Scotland, a duty under the *LRS Act*. Every access authority has one or more forums for their area. Members of these local access forums will be appointed by access authorities who are required to ensure a balance between land management and recreational interests on each forum.<sup>84</sup>

### 4.3.3. Scotland's Great Trails

Similar to National Trails in England and Wales, Scotland's Great Trails (SGTs) are nationally promoted long distance paths provided for under the *Countryside (Scotland) Act 1967*. Each is waymarked, largely off-road and has a range of visitor services. They are at least 40 km in length, and collectively the 26 different routes cover over 2,736 km of paths across Scotland.<sup>85</sup>

### 4.3.4. Coastal and inland water access

There are 8 Great Trails that allow access to the Scottish coast, however there is no inclusive coastal path initiative like in England and Wales. Access rights under the *LRS Act* apply to all inland waters, unless excluded, allowing more access to waterways than in England and Wales under the *CRow Act* where access rights do not apply.

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<sup>83</sup> Paths for All [Core Paths Plans](#) [accessed 7 February 2014]

<sup>84</sup> Scottish Government [Public Access to Land in Scotland-Local Access Forums](#) [accessed 12 February 2014]

<sup>85</sup> SNH [Scotland's Great Trails](#) [accessed 4 February 2014]

### 4.3.5. Code of behaviour

The right of access may be exercised subject to the responsibilities set out in the *Scottish Outdoor Access Code*<sup>86</sup>. The difficulty of enforcing responsible behaviour consistent with the Code is a key concern of Scottish access authorities.<sup>87</sup> Publicity and education is on-going to attempt to reinforce the Code by SNH.<sup>88</sup> Although the Code provides guidance on access rights and responsibilities, it is not an authoritative statement of the law. However SNH has a duty to keep the Code under review.

## 4.4. Policy

### 4.4.1. Scottish Natural Heritage: strategies and priorities

SNH has set out its strategies and priorities for 2012-2015<sup>89</sup> for improving countryside access and resulting well-being in line with their Corporate Strategy<sup>90</sup> and consistent with the current priorities of the Scottish Government of social inclusion, health and sustainable development.

There is a community focus in SNH's strategies for increasing outdoor access. Founded by SNH 'Paths for All' is a partnership of 26 organisations representing the public sector and national representative bodies committed to developing path networks in Scotland.<sup>91</sup> The initiative has now become a mandatory duty of local authorities. The Paths for All vision is to 'encourage less active people to walk more, support communities to develop welcoming and safe routes and promote active travel for everyday journeys.'<sup>92</sup> It includes initiatives such as 'Local People Local Paths'.<sup>93</sup>

### 4.4.2. Scottish Outdoor Access Network

Scottish Outdoor Access Network (SOAN)<sup>94</sup> coordinates over 200 people working on outdoor access. It was established as The Scottish Countryside Access Network (SCAN) in 1995 by Rights of Way Officers, Countryside Project Officers, Countryside Rangers, Countryside Planners, Access Officers and others with an initial aim to share advice with access staff and provide support and guidance to policy makers prior to the *LRS Act*. SOAN continues this work and organises two national networking events every year, plus occasional workshops and events on topical access issues.

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<sup>86</sup> SNH, Scottish Outdoor Access Code *Influencing behaviour and managing people* [accessed 4 February 2014]

<sup>87</sup> National Assembly for Wales *Access rights and responsibilities - Differences Between England and Wales, and Scotland* [accessed 29 January 2014]

<sup>88</sup> SNH, Scottish Outdoor Access Code *Influencing behaviour and managing people* [accessed 4 February 2014]

<sup>89</sup> SNH *Strategy and Priorities 2012 to 2015* [accessed 4 February 2014]

<sup>90</sup> SNH *Corporate Strategy 2008-2013* [accessed 4 February 2014]

<sup>91</sup> *Paths for all* [accessed 4 February 2014]

<sup>92</sup> *ibid*

<sup>93</sup> Paths for all *Local People Local Paths* [accessed 4 February 2014]

<sup>94</sup> *Scottish Outdoor Access Network* [accessed 4 February 2014]

### 4.4.3. Mapping

In England and Wales there is a legal responsibility of local authorities to create and review a Definitive Map and Statement of rights of way. Scottish local authorities are not legally responsible for recording rights of way. Scottish Rights of Way and Access Society (Scotways) which is a charity promoting access to the Scottish countryside helps to record and signpost rights of way.<sup>95</sup> Scotways has compiled a catalogue of all the known routes in Scotland (over 7,500 routes) comprising two parts: a computer database with information about each route, and digital maps at a scale of 1:50,000.<sup>96</sup>

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<sup>95</sup> [Scottish Rights of Way and Access Society](#) [accessed 4 February 2014]

<sup>96</sup> *ibid*

## 5. Northern Ireland

### 5.1. *Types of access*

Like in England, Wales and Scotland public rights of way allow access to the countryside in Northern Ireland (NI), however the network of paths is significantly smaller in NI (198 km)<sup>97</sup> (Table 1). Unlike in England, Wales and Scotland there is no formalised right of open access to unenclosed land in NI as although the *Access to the Countryside (NI) Order 1983* (hereafter the ‘*NI Access Order*’) includes provision for wider access to open country no related agreements or orders have been made by district councils. Generally, this type of ‘freedom to roam’ in NI is currently only available in National Trust lands, country parks, forest parks etc. However, on much of the open land in NI there has been de-facto access whereby landowners turn a blind eye.<sup>98</sup> Permissive paths exist in NI that the public may use.

### 5.2. *Existing legislation requirements*

#### 5.2.1. *Access to the Countryside (Northern Ireland) Order 1983*

The key piece of legislation governing access to the countryside in NI is the *NI Access Order*<sup>99</sup>. It places a duty on district councils to ‘assert, protect and keep open and free from obstruction or encroachment any public right of way’. Councils are also required to compile records of public rights of way in their area, signpost paths, and contribute at least a quarter of the cost of maintaining stiles and gates. Councils have the right to establish new rights of way by agreement, and make orders to divert, extinguish or create paths and authorise the erection of new stiles and gates. It also gives district councils responsibility to propose long distance routes and the power to secure access to open country for recreation by agreement or order and to map access land.

#### 5.2.2. *Occupiers’ Liability Legislation*

Occupiers of land have a ‘duty of care’, towards people who come on to their land. Two pieces of legislation affect this duty of care:

- *Occupiers’ Liability (Northern Ireland) Act 1957*<sup>100</sup>
- *Occupiers’ Liability (Northern Ireland) Order 1987*<sup>101</sup>

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<sup>97</sup> Sport NI, *Bridging the Gap*, May 2009 [access 24 January 2014]

<sup>98</sup> Sport NI *Policy Position on Access to the Natural Environment in Northern Ireland for Sport and Physical Recreation* [accessed 13 February 2014]

<sup>99</sup> *Access to the Countryside (Northern Ireland) Order 1983* [accessed 31 January 2014]

<sup>100</sup> *Occupiers’ Liability Act (Northern Ireland) 1957* (Chapter 25) [accessed 31 January 2014]

<sup>101</sup> *Occupiers’ Liability (Northern Ireland) Order 1987* No. 1280 (N.I. 15) [accessed January 2014]

### 5.2.3. *The Recreation and Youth Service (Northern Ireland) Order 1986*

*The Recreation and Youth Service (Northern Ireland) Order 1986*<sup>102</sup> includes creation of permissive path agreements between district councils and landowners. District councils may agree to provide insurance cover to landowners in respect of the route.

## 5.3. *Implementation of legislation*

### 5.3.1. *Open access land*

The *NI Access Order* includes provision for access to open country. However to date no related agreements or orders have been made by district councils and hence no formalised open access has been implemented in NI.

### 5.3.2. *Mapping*

Like in England and Wales local councils compile and preserve maps of the rights of way in their area, a duty under the *NI Access Order*.

### 5.3.3. *Waymarked Ways*

As mentioned the *NI Access Order* gives district councils responsibility to propose long distance routes. The route may comprise a makeup of various types of access types, i.e. existing rights of way and permissive paths. The councils submit proposals to the Department of the Environment (DOE) who may approve, approve with modifications or reject the proposals.<sup>103</sup>

Waymarked Ways (WWs) have been created throughout NI which are long distance footpaths ranging between 40 – 65 km and currently 10 WWs exist.<sup>104</sup> The Ulster Way is a route essentially encircling NI using several of the Waymarked Ways.<sup>105</sup> The WWs initiative was developed by Countryside Access and Activity Network (CAAN) (now Outdoor Recreation NI<sup>106</sup>) in partnership with district councils and landowners.

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<sup>102</sup> [The Recreation and Youth Service \(Northern Ireland\) Order 1986](#) No. 2232 (N.I. 25) [accessed 7 February 2014]

<sup>103</sup> Northern Ireland Assembly, Research and Information Service Briefing paper, [Access to the countryside in Northern Ireland – occupiers' liability](#) December 2012 [access 24 January 2014]

<sup>104</sup> Discover NI [Waymarked Ways](#) [accessed 13 February 2014]

<sup>105</sup> The Long Distance Walkers Association [Ulster Way](#) [accessed 28 March 2014]

<sup>106</sup> [Outdoor Recreation NI](#) is an umbrella organisation which contributes to the provision of walking and cycling facilities and off-road horse riding and is responsible for the strategic development and management of countryside recreation across NI.

#### 5.3.4. Coastal and inland water access

Some of the WWs including the North Down Coastal Path, The Causeway Coast Way and the Lecale Way provide access to the coast. The Council for Nature Conservation and the Countryside (CNCC) has recommended in its position paper to the NI Government the development of a coastal path similar to England and Wales.<sup>107</sup>

There is limited access to inland water in NI. Consequently Sport NI in a policy position paper states that ‘all navigable inland waterways should be afforded open access for non-motorised sustainable recreation as is the case with the marine environment’.<sup>108</sup>

#### 5.4. Potential future legislation

The CNCC states that there is concern relating to the lack of up-to-date access legislation in NI with doubt in some district councils regarding the current relevance of aspects of the *Access NI Order*.<sup>109</sup>

In 1999 the DoE carried out an access consultation which addressed the question of whether a ‘right to roam’ policy should be applied in NI. There was strong opposition, due to widespread concern amongst landowners that increased access would come with increased liability under Occupiers’ Liability Legislation, and hence the DoE discounted the proposal.

In 2007 a case was made for a legislative review by the CNCC in a position paper which included 12 recommendations.<sup>110</sup> However, to date the NI Executive has not introduced any new access legislation.

Sport NI’s Countryside Recreation Strategy Review in 2009 concluded that ‘There is clearly an identified need for continued advocacy for increased access to the countryside for outdoor recreation’.<sup>111</sup>

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<sup>107</sup> Council for Nature Conservation and the Countryside, [Position Paper on access to the Northern Ireland countryside](#) 2007 [accessed 12 February 2014]

<sup>108</sup> Sport NI [Policy Position on Access to the Natural Environment in Northern Ireland for Sport and Physical Recreation](#) [accessed 13 February 2014]

<sup>109</sup> Council for Nature Conservation and the Countryside, [Position Paper on access to the Northern Ireland countryside](#) 2007 [accessed 12 February 2014]

<sup>110</sup> *ibid*

<sup>111</sup> Sport NI, [Review Countryside Recreation Strategy](#) 2009 [accessed 28 March 2014]

## 5.5. Policy

### 5.5.1. Regional Development Strategy

The NI Government's Regional Development Strategy for Northern Ireland 2025 (RDS)<sup>112</sup> seeks to facilitate access opportunities for more active lifestyles. This includes creating networks of community greenways in cities and towns, developing cycling and pedestrian networks, and facilitating access to the countryside taking account of the Northern Ireland Countryside Recreation Strategy<sup>113</sup>.

The DoE's Northern Area Plan 2016 Strategic Plan Framework: Transportation Public Transport, Walking and Cycling plan contributes to the objectives of the Strategic Planning Guidelines of the RDS with an aim to deliver a comprehensive network of footpaths and cycle ways over its lifetime.<sup>114</sup>

### 5.5.2. The Forest Service

The Forest Service encourages access to and use of NI forests by creating maps, apps, guides and booklets with information about various walks, trails and activities. It is the largest local landowner with an estate widely spread throughout NI and provides 90% of total land owned that is used for outdoor recreation in NI.<sup>115</sup>

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<sup>112</sup> Department of the Environment [Regional Development Strategy for Northern Ireland 2025](#) [accessed 3 February 2014]

<sup>113</sup> The Countryside Recreation Working Group [The Northern Ireland Countryside Recreation Strategy 1998](#) [accessed 31 January 2014]

<sup>114</sup> DoE [Northern Area Plan 2016 Strategic Plan Framework: Transportation Public Transport, Walking and Cycling](#) [accessed 6 February 2014]

<sup>115</sup> CAAN, [Accessibility of publicly owned land across Northern Ireland for outdoor recreation](#), August 2010, p67 [accessed 28 March 2014]