

EXPLANATORY MEMORANDUM TO
THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 (REVIEW
OF MAPS) (ENGLAND) REGULATIONS 2013

2013 No. 514

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Section 10(2) of the Countryside and Rights of Way Act 2000 (“the CROW Act”) prescribes the time limits by when Natural England (as the appropriate countryside body in relation to England) is required to review the conclusive maps prepared under the Act showing all open country (mountain, moor, heath and down) and registered common land in England (excluding inner London). The same provision applies to the Countryside Council for Wales in respect of the conclusive maps for all such land in Wales.

2.2 These Regulations amend section 10(2) of the CROW Act in relation to England, while preserving the existing time limits in relation to Wales. Specifically:

- a. section 10(2)(a) of the Act requires the first such review of any such conclusive map to be undertaken not more than ten years after its issue. In relation to England only, that period is now extended by regulation 2(2) to not more than fifteen years; and
- b. section 10(2)(b) of the Act requires any subsequent such review to be undertaken not more than ten years after the previous review. In relation to England only, that period is now extended by regulation 2(3) to not more than twenty years after any previous review.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 A right of public access on foot for open-air recreation is provided for in Part 1 of the CROW Act to any land shown as open country and registered common land in England on the eight conclusive maps published by the Countryside Agency over 2004 and 2005. About 900,000 hectares of land in England were mapped.

4.2 Section 10(2) of the CROW Act requires Natural England (as the appropriate countryside body in relation to England) to review the conclusive map within ten years and not less frequently than every ten years thereafter (or any other periods specified by the Secretary of State by regulation). The review must consider both whether land shown on the existing conclusive map as open country or registered common land remains of that description, and whether other land should be shown as open country or registered common land.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales in line with Parliamentary Counsel’s preference that primary legislation should not be amended with less than its existing extent or application so as to avoid having two or more different versions of the “same” provision.

However, the substance of the amendments only changes the law as respects England, while additional text is necessary to make it clear that the existing time limits continue to apply as respects Wales.

6. European Convention on Human Rights

Richard Benyon, the Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs, has made the following statement regarding Human Rights:

In my view the provisions of the Countryside and Rights of Way Act 2000 (Review of Maps) (England) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The right of public access on foot for open-air recreation under Part 1 of the CROW Act applies to any land which has been mapped as open country or registered common land. Section 10(2)(a) of the CROW Act requires the first review of any such conclusive map in England to be undertaken not more than ten years after its issue. Section 10(2)(b) of that Act requires any subsequent such review to be undertaken not more than ten years after the previous review.

7.2 The Department for Environment, Food and Rural Affairs has decided that priority cannot be given at the moment to all work that it considers useful and important including the review of the conclusive maps. Neither the Department nor Natural England has allocated any staff or programme resources to carry out the review. The decision to defer the review has therefore been taken in the light of other priorities and the budgetary situation. A delay in the review will allow time for the Department and Natural England to consider the scope and extent of any regulations necessary on the procedures to be followed on a review under section 10 (see section 11(1) and (2)(k)) of the CROW Act.

7.3 Part 1 of the Commons Act 2006 requires commons registration authorities to update the commons registers to take account of events affecting the registers since the 1970s which have not been recorded. Registration of common land and village greens under Part 1 of the 2006 Act has been implemented in seven commons registration authorities.

7.4 In March 2012 the Department published the results of the Red Tape Challenge which contains a commitment under the Environment theme to fully implement Part 1 of the 2006 Act to introduce modern provisions throughout England, improve consistency and accessibility, and improve the protection and management of commons. It will also mean that the first review of the conclusive maps under the CROW Act should be able to include the more accurate mapping of common land boundaries as a result of the updating of the commons registers.

8. Consultation outcome

8.1 The Department for Environment, Food and Rural Affairs did not carry out a public consultation about the deferment of the review of the conclusive maps. However the Department and Natural England held discussions with the British Mountaineering Council, Open Spaces Society and the Ramblers and these organisations accepted the decision to delay the review in order to allow a thorough inspection of the areas currently mapped as open country and registered common land to be carried out, and for a proper investigation of those areas where mapping errors and discrepancies in the initial conclusive maps may have been identified. The delay in undertaking the review will also enable a detailed examination of the

benefits and problems of how to approach the mapping review to be carried out and the development of a mapping methodology to identify the boundaries of mapped areas.

9. Guidance

9.1 No guidance will be published.

10. Impact

10.1 There will be no regulatory requirements placed on business, charities or the voluntary sector as a result of this instrument.

10.2 A separate Impact Assessment has not been prepared in respect of these Regulations. In so far as these Regulations have effect in relation to the right of public access on foot for open-air recreation under Part 1 of the CROW Act no impact on the private, voluntary or public sector is foreseen.

11. Regulating small business

11.1 The right of public access on foot for open-air recreation under Part 1 of the CROW Act applies to any land which has been mapped as open country or registered common land. Under Part 1 of Schedule 1 to the CROW Act there are seventeen categories of land - referred to as "excepted land" - that, because of their location or use, are not subject to the new right. This would apply to any small business where land used by a business was "land covered by buildings or the curtilage of such land" (paragraph 2 of Part 1 of the Schedule) or "land (other than coastal margin) within 20 metres of a dwelling" (paragraph 3 of Part 1 of the Schedule).

12. Monitoring & review

12.1 The Department has asked Natural England to hold further discussions with the British Mountaineering Council, Open Spaces Society and the Ramblers along with the National Farmers' Union and Country Land and Business Association (as the leading representative organisations for farmers, land owners and managers) on the scope and extent of the first review. These discussions will be held well in advance of Natural England beginning work on the review in accordance with the revised deadlines. The Department for Environment, Food and Rural Affairs will consider the scope and extent of any regulations necessary on the procedures to be followed on a review under section 10 (see section 11(1) and (2)(k)) of the CROW Act, and in due course carry out a public consultation on any necessary regulations.

13. Contact

Richard Hepburn at the Department for Environment, Food and Rural Affairs Tel: 0117 372 3553 or email: richard.hepburn@defra.gsi.gov.uk can answer any queries regarding the instrument.