

Public Rights of Way under the Highways Act 1980 and use of Access Land under the Countryside and Rights of Way Act 2000: Covid-19

The government's priority is to save lives and the best way to protect yourself and others from illness is to stay at home.

However, exercise is still important for people's physical and mental wellbeing, so the government has said people can leave their homes for exercise once a day.

NFU and CLA have told us that some landowners are still concerned about increased use of public rights of way on their property increasing the risk to livestock, such as instances of gates being left open and dogs not being controlled.

To help address this we will publish a supplementary video on social media in advance of this weekend, reminding people to follow the Countryside Code. This will be published on Twitter @DefraGovUK and Defra's Facebook page. We encourage you to share this with your members and networks.

Finally, further concerns have been raised by stakeholders that the use of public rights of way that run through gardens, farmyards and schools is increasing the risk of exposure to the coronavirus to residents and farm workers.

The risk of the coronavirus being passed on to others from people using public rights of way and other paths and trails is considered to be very low as long as people follow the Government's instructions to maintain social distancing.

Landowners do not have the legal right to block or obstruct public rights of way or access land. However, in very limited circumstances where large numbers of people are using such routes, landowners may consider the following measures:

- tying gates open if it is safe to do so, so that walkers do not need to touch the gate.
- temporarily displaying polite notices that encourage users to respect local residents and workers by following social distancing guidelines and consider using alternative routes that do not pass through gardens, farmyards or schools.
- Note: this is a polite request only, and there is no power under the Countryside and Rights of Way Act 2000 (CROW) or the Highways Act 1980 for landowners to close or obstruct a public right of way or use of access land
- offering an alternative route around gardens and farmyards only where it is safe to do so (you must gain permission from relevant landowners and make sure the route is safe for users and livestock) provided that the original right of way is maintained.

Key points to Note under the Countryside and Rights of Way Act 2000 and the Highways Act 1980

- Under Section 137 the Highways Act 1980 and section 14 of CROW it is an offence to obstruct the free passage along a public right of way or Access Land.
- It is an offence under Section 57 of the National Parks and Access to the Countryside Act 1949 to display a notice that contains “any false or misleading statement likely to deter the public from using” a right of way.
- It is also an offence under section 14 of CROW to display a sign which deters the public from exercising their right to use that access land
- It is an offence under Section 132 of the Highways Act 1980 to display on the surface of a public right of way or on any tree or structure within the public right of way any unauthorised sign or mark.
- Land owners may be liable for personal injury under section 2 of the Occupiers' Liability Act 1957 and Section 1 of the Occupiers' Liability Act 1984 if they are reckless or intend to create a risk – for example by offering a dangerous alternative.

This means that

- If a land owner offers an alternative route, they must ensure that it is safe to use and that the existing right of way or use of access land is maintained so that users with differing abilities have a choice.
- A notice must not imply that there is any doubt about the use of the existing right of way or use of access land.

These temporary measures must be lifted as soon as social distancing measures are relaxed.