

Countryside and Rights of Way (CRoW) Act 2000

REASSESSMENT OF OUTLINE DIRECTIONS TO RESTRICT ACCESS FOR THE PURPOSE OF FIRE PREVENTION

SUMMARY FOR PUBLIC CONSULTATION

Prepared by Natural England in conjunction with Cumbria County Council, Lancashire County Council, Lake District National Park Authority and Yorkshire Dales National Park Authority

1. INFORMATION ABOUT THE PUBLIC CONSULTATION:

Access Authority: Cumbria County Council, Lancashire County Council, Lake District National Park Authority and Yorkshire Dales National Park Authority.

Relevant Authority: Natural England, Lake District National Park and Yorkshire Dales National Park.

Local Access Forum: Cumbria, Lancashire, Lake District National Park and Yorkshire Dales National Park

Land Parcel Name:	Direction Ref.	Access Authority
Mallerstang Common	2007070003	Cumbria County Council
North of Howgills	2007070004	Cumbria County Council
North of Borrowdale	2007070009	Cumbria County Council
Crosby Ravensworth	2007070010	Cumbria County Council
Casterton and Middleton Fell	2008050342	Cumbria and Lancashire County Council

Natural England issued five outline directions, to restrict access under section 25(1)(a) of the CRoW Act for the purpose of fire prevention. These directions were given as 'outline' directions, meaning that they are only activated when conditions as measured by the Fire Severity Index (See Annex 1) are 'exceptional'. All of the directions indicated above were made to cover the period up to 31/12/2999.

When the existing directions were first considered, Natural England consulted with the relevant access authorities in order to ensure that the appropriate areas of access land at risk from fire were identified and to ensure that there was sufficient 'coverage' across the county. The criteria used for identifying land parcels susceptible to fire risk were as follows:

- Land characteristics likely to be relevant when determining whether restrictions are necessary due to exceptional conditions include:
 1. The fuel potential of the vegetation and substrate.
 2. Exposure to high wind speeds.
 3. Uniformity of vegetation.
 4. Topography.

- Contrasting land areas, in terms of either fire management or vegetation types are best contained in different parcels or groups of parcels.
- Large areas with the same characteristics, such as a single heath or moor, may be grouped together as appropriate.

Whilst there is no statutory requirement to review these directions, Natural England has taken the decision to reassess these directions now, in light of the revised boundary change to both the Lake District and Yorkshire Dales National Parks. Annex 2 contains general information about the reassessment process.

2. BACKGROUND INFORMATION:

Following the approval from the Secretary of State to amend the boundaries of both the Lake District and Yorkshire Dales National Parks on August 1st 2016, it has come to the attention of Natural England, as the Relevant Authority, that the following directions will now fall entirely into the revised boundaries of the Yorkshire Dales National Park:

- Mallerstang Common (2007070003);
- North of Howgills (2007070004);
- Casterton and Middleton Fell (2008050342); and

the following directions will now fall both inside and outside of the revised boundaries:

- Lake District - North of Borrowdale (2007070009); and
- Yorkshire Dales - Crosby Ravensworth (2007070010).

Under section 21(5)(a) of the CRoW Act, the respective National Parks would become the Relevant Authority where the restriction area falls wholly into the National Park. Where a current restriction area crosses two boundaries we will need to redesign the land parcels so that what is currently one restriction parcel becomes two or more, each with its own different Relevant Authority.

As Natural England is currently the Relevant Authority for the directions being considered in this reassessment we have been in discussion with Cumbria and Lancashire County Council, as the access authorities, and both National Parks concerned to ascertain their views and have agreed to undertake this reassessment in partnership with them.

Cumbria County Council

In relation to all the directions, Cumbria County Council considers they are no longer required. None of the directions have been activated since the introduction of Open Access rights and even though the plots are potentially susceptible, Cumbria County Council considers they are too big to be effectively closed, or have too many rights of way through it to make a closure workable.

Lake District National Park

The Lake District National Park Authority, following the introduction of CRoW carried out an extensive assessment of all the land within the National Park that was at risk of fire. Following the assessment of over 100 separate plots, they concluded that they would not make any outline directions for, amongst other reasons;

- The plot was too small to have any meaningful impact;
- The plot was landlocked amidst land that either would be unlikely to be susceptible to fire, or was not able to be closed being section 15 land;
- The plot was not of the vegetation type likely to be susceptible to wildfire;
- The plot was potentially susceptible but too big to actually be effectively closed, or to have too many rights of way through it to make a closure basically pointless.

In relation to direction 2007070009 the Lake District National Park considers that this parcel could fall into one of the latter two criteria. An initial desk top assessment concluded the area is mainly comprised of acid grassland rather than bracken or heather. A lot of it is east facing, and less likely to heat up. Following an onsite inspection to look at the vegetation of the area covered by this direction, the National Park have now concluded the area does tend to be grass dominated with patches of heather and peat-hags, much like the rest of the area which currently doesn't have outline directions.

In conclusion, the Lake District National Park consider that there is little likelihood that this area is at any particularly higher risk of fire than land to the west of the A6 which was already in the National Park and is therefore proposing to revoke the part of the direction that falls into the revised National Park area.

Therefore, Natural England, as the relevant authority for the remainder of the land parcel outside the revised national park boundary, needs to consider whether the restriction is still necessary for its original purpose.

Following further discussion with the access authority it was concluded that continuing to restrict the small section to the north and the section between the West Coast Main Line and the M6 Motorway would not serve any real purpose from a fire prevention perspective. Natural England is therefore proposing that these sections should also be revoked.

Yorkshire Dales National Park Authority

The Yorkshire Dales National Park Authority are currently considering the future of all the current fire directions within the National Park and have been in discussion with the Local Access Forum and other interested parties. In light of this the National Park has agreed to maintain the current directions that fall wholly within their boundary until this exercise has been concluded. As a result the National Park would become the relevant authority and access authority for the directions concerned.

Therefore, Natural England, as the relevant authority and Cumbria County Council, as the access authority, for the remainder of the land parcel under direction number 2007070010 falling outside the revised boundary, needs to consider whether this restriction is still necessary for its original purpose.

Following further discussion with the access authority it was considered that the areas falling outside of the revised boundary should remain in place pending the outcomes of the wider assessment being undertaken within the National Park. Natural England therefore proposes to vary the current direction to reflect the boundaries changes; creating two new restriction parcels at Hardendale and Crosby Ravensworth Fell. Natural England would be the relevant authority and Cumbria County Council the access authority for these restrictions. The area of the restriction falling within the revised boundary will keep the current case number of 2007070010.

Any further reassessment of the need for these new directions for fire risk will take place in conjunction with the Yorkshire Dales.

3. SUMMARY OF PROPOSED CHANGES TO EXISTING DIRECTIONS:

Land Parcel Name	Direction Reference	Proposed Changes
Mallerstang Common	2007070003	Change Relevant Authority from Natural England to Yorkshire Dales National Park Authority Change Access Authority from Cumbria County Council to Yorkshire Dales National Park Authority
North of Howgills	2007070004	Change Relevant Authority from Natural England to Yorkshire Dales National Park Authority Change Access Authority from Cumbria County Council to Yorkshire Dales National Park Authority
North of Borrowdale	2007070009	Revoke Direction
Crosby Ravensworth	2007070010	Vary the extent of the current direction and issue two new directions (case numbers 2016108246 and 2016108247) for the sections outside the revised boundary of the Yorkshire Dales National Park. Change Relevant Authority from Natural England to Yorkshire Dales National Park Authority for the revised direction under case number 2007070010 Change Access Authority from Cumbria County Council to Yorkshire Dales National Park Authority for the revised direction under case number 2007070010
Casterton and Middleton Fell	2008050342	Change Relevant Authority from Natural England to Yorkshire Dales National Park Authority Change Access Authority from Cumbria and Lancashire County Council to Yorkshire Dales National Park Authority

4. SUBMITTING COMMENTS ON THE REASSESSMENT:

If you wish to submit any comments please submit in writing to the Relevant Authority Case officer Kevin Vigars at kevin.vigars@naturalengland.org.uk, quoting the relevant case number(s).

We must receive any comments by 24th February 2017. Comments received after this date cannot be taken into account.

Using and sharing your consultation responses

In line with Natural England's [Personal Information Charter](#), any comments you make, and any information you send in support of them, will help us to determine the application and / or determine if the restriction is still necessary in relation to the review or reassessment of a current direction.

We may wish to pass such comments or information to others in connection with our duties and powers under the open access legislation. This may mean for example passing

information, including your name and contact details, to the Secretary of State or their appointees, the Planning Inspectorate or to the relevant access authority(s).

We do not plan to publish individual comments in full, but we may publish extracts from them when we report on our consultation(s).

There may also be circumstances in which we will be required to disclose your response to third parties, either as part of the statutory process for consideration of representations and objections about our decision, or in order to comply with our wider obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please explain clearly why you regard the information you have provided as confidential. However, we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on Natural England.

Annex 1

BACKGROUND INFORMATION ON HOW FIRE DIRECTIONS WORK

Under the CRoW Act, fire prevention restrictions aim to stop accidental fires from occurring when conditions are exceptional by suspending open access rights. They do not and cannot prevent all fires from happening.

Fires can and will occur at any time of year, either accidentally or most regrettably, by act of arson, and there will naturally be times of the year or times in the cycle of the vegetation when there is a higher risk of fire. Within the confines of the CRoW Act, it is the responsibility of the relevant authorities to make reasonable efforts to identify when exceptional conditions occur, beyond what is normally expected, and where known, suspend open access rights on vulnerable land when this occurs.

Fire Severity Index (FSI)

To inform decisions on a national scale, the Met Office were asked to develop a fire severity index (FSI), which would give an objective way to show when exceptional conditions occur. Based on extensive research the Canadian Daily Severity Rating (DSR) was identified as the most appropriate for England and Wales. The resulting Met Office Fire Severity Index gives a daily rating per 10 km grid square from 1 to 5 (very low to exceptional) on the potential severity of a fire should it occur. The index has been in place since September 2004.

Natural England has taken a proactive approach in providing outline non application directions for fire prevention on open access land particularly vulnerable to fire, which can be activated when exceptional conditions occur. The decision to give non application outline directions has been guided by the advice of local access authorities, who have advised us where they think restrictions may be necessary and, where possible, provided us with land owner contact details. Landowners are also able to make an application for an outline direction for fire prevention restrictions.

An outline direction can only be activated when one or more of the FSI grid squares covering the land parcels are at a level 5 for the current day (today) or the following day (tomorrow). It is possible that the majority of a land parcel in one FSI grid square and only a very small amount is in an adjacent grid square. So far as restrictions are concerned there is no weighting on how much land is covered by a grid; whichever one hits a 5 will prompt activation. Whilst it's tempting to look further ahead at the forecast, please bear in mind that this is provided for guidance only, and does not form the basis for a decision to activate a restriction.

Any activation of a restriction will be notified in writing to the relevant authority, the access authority and where known, the landowner(s).

Annex 2

REASSESSMENT PROCESS

In accordance with statutory guidance, Natural England has a duty to:

- review directions of a long-term character no later than their fifth anniversary; and
- revoke or vary directions where necessary.

In the case of an outline direction, a statutory requirement for review is only likely to exist in a case in which category (b) in section 27(3) of the CRow Act applies. This states that 'Where a direction under section 24, 25 or 26 in relation to any land by the relevant authority excludes or restricts access to land for part of every year or of each of six or more consecutive years, the authority shall review the direction not later than the fifth anniversary of the relevant date.'

What counts here is the duration of the *exclusion or restriction*, rather than the duration of the direction itself. Outline fire prevention directions will not be subject to the statutory review process if they have not been called off during six or more consecutive years, as is the case with the outline fire prevention directions in the areas listed above. This means it is not a statutory requirement for the relevant authority to undertake a formal review of these outline directions.

However, the absence of a statutory review requirement does not remove the relevant authority's responsibility to reassess the necessity for exclusion or restriction if new factors come to light that have a bearing on that. To ensure that these outline directions are still appropriate, Natural England is undertaking a reassessment of these outline directions for fire prevention. To keep relevant stakeholders and interested parties informed of Natural England's intentions it has been agreed that public consultation is appropriate at this juncture.

During the reassessment the relevant authority must, having regard to the interest of the public in having access to the land, consider whether the restriction is still necessary for its original purpose; and if so, whether the extent and nature of the restriction is still appropriate for the original purpose.

In reassessing these directions the relevant authority will consult:

- the relevant local access forums;
- the applicant or his successor in title, where reasonably practicable – for directions under section 24 or 25 made on application; or
- the relevant advisory body – for a direction made under section 26.

The relevant authority will also publish a notice on a website (and send a copy to statutory consultees) explaining that the relevant authority proposes to reassess the direction in question; where documents relating to the reassessment may be inspected and copies obtained; and that representations in writing with regard to the reassessment may be made by any person to the relevant authority by a date specified in the notice.

Once consultation is complete the relevant authority should have regard to any representations it receives before making a decision.