



**A Nuffield Farming Scholarships Trust**

**Report**

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**A comparison of Public Access Provisions  
and methods of mitigating  
impacts of Public Access on Agriculture**

**Andrew Gillett**

**July 2017**

**NUFFIELD UK**

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# A

## Nuffield (UK) Farming Scholarships Trust Report



*"Leading positive change in agriculture.  
Inspiring passion and potential in people."*

Date of report: July 2017

Title	A comparison of Public Access Provisions and methods of mitigating impacts of Public Access on Agriculture
Scholar	Andrew Gillett
Sponsor	National Trust
Objectives of Study Tour	To compare access provisions in countries with similar a) population density, and b) agricultural land use to determine: i) How the current access provisions in the UK compare, and ii) to find examples of methods of mitigating impacts to the key problems that public access can raise.
Countries Visited	England and Wales, Scotland, Ireland, Netherlands, France and America
Messages	<ul style="list-style-type: none"><li>• Government to provide mechanisms encouraging provision of permissive rights of way and access agreements to land and water:<ul style="list-style-type: none"><li>○ encouraging collaboration between user groups, landowners and local communities</li><li>○ new users, and</li><li>○ fostering new farm diversification.</li></ul></li><li>• Public education programme on dogs in countryside, with particular attention to sheep attacks</li><li>• New mechanism needed to temporarily divert public rights of way where livestock involved</li><li>• Amendment to existing Occupiers Liability Act 1984 to include recreational user category as in Ireland</li><li>• New Recreational Use Act showing clear intention that those providing permissive access will not be unduly burdened.</li></ul>

## EXECUTIVE SUMMARY

The debate about the extent and nature of public access provisions in England and Wales is long running and ongoing: the subject has always had the potential to provoke strong views on all sides. As a result, there are many representative bodies with an interest in this area working either on behalf of those that use access or those that use the land that is subject to the access. Government is routinely lobbied to increase access provision.

My key objectives were to get an idea of how England and Wales compared with other similar countries and whether there were mechanisms in other countries that would mitigate some of the issues that are often reported here.

Of the countries visited, England and Wales' public rights of way provision was significantly more extensive by km per km<sup>2</sup>. Some of the problems experienced here, such as sheep worrying and injuries to the public by livestock, were not experienced to the same extent in other countries as they do not have the same density of public access provision within farm land. These problems could be ameliorated by:

- 1) The adoption of an effective public education scheme as has been seen in Scotland which could help tackle issues relating to dogs and public access.
- 2) Introduction of a new power to temporarily divert public rights of way where livestock are present which would allow for farmers to keep livestock away from the public improving safety and reducing fatalities and also keeping members of the public's dogs away from sheep.

Our current system of public rights of way provision is confrontational and expensive. In other countries there is greater emphasis on collaboration between user groups, Government, local communities and landowners. Our current confrontational system could be improved. Key suggestions to foster a collaborative environment:

- 3) An amendment to s31 Highways Act 1980 to bring it in line with the example in the Netherlands which provides for a 30-year period of use before a public right of way can be claimed and also a 30 year extinctive prescriptive period, making the system more balanced.
- 4) An amendment to current legislation and guidance encouraging Surveying Authorities to take a neutral stance on Definitive Map Modification Order applications that do not have sufficient public benefit. Currently applications that meet the legal test receive significant public funding. Such a change would not prevent claims that had little public benefit but would mean they would not be brought at the public's expense.
- 5) The addition of a Recreational Use Statute along the lines of the appended example in Alabama. This would encourage landowners to provide permissive access to land and water.
- 6) Government should look for mechanisms to encourage permissive access agreements between users, local government and landowners as is seen in Netherlands and France, allowing for more flexibility and less expense. Such access agreements should encompass caves and water/rivers.

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## Chapter 1 Introduction

I live in rural Dorset with my wife, Frances and two young children Olivia and Felicity. I completed a law degree at the University of Reading and qualified as a solicitor in 2008. I have spent the last six years working for the CLA based in London.

A significant part of my role is providing legal advice to members on a variety of issues but predominantly on the law relating to public rights of way, public access and advising on the liability that farmers and landowners may owe to others accessing their land as a result of the condition of their property or of the livestock they keep. I also spend time lobbying and responding to Government consultations.

Outside of work I enjoy spending time with the family and friends, also cooking and brewing and when I can, getting out on the south coast, either walking or in the kayak.

I am incredibly grateful to my sponsor the National Trust for providing me with the opportunity to undertake a Nuffield Faming Scholarship.

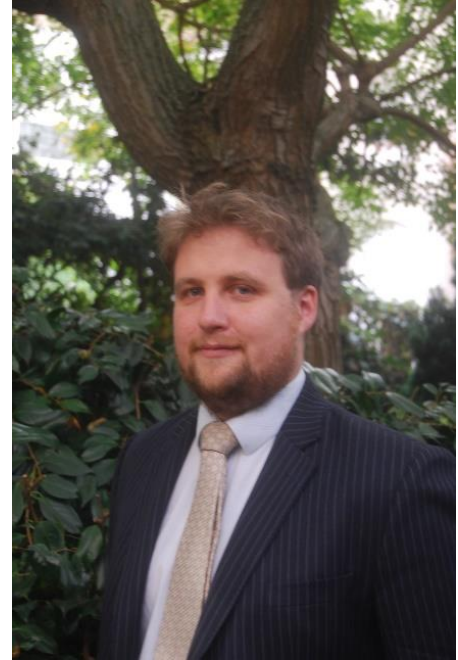


Figure 1: the author, Andrew Gillett





## Chapter 2 Background to my Study

I have worked as a solicitor in the CLA's legal department for over 6 years advising landowners, farmers, rural businesses and professionals on a variety of issues including public rights of way, public access and issues relating to liability. With such a broad membership, the legal questions that arrive are diverse but there are patterns and questions that are asked more regularly than others. It was with the advantage of this insight that I chose my Nuffield topic.

Public rights of way and access can give rise to contention. Particular problems arise **where new rights of way are claimed** and the landowner is obliged to defend a publicly funded claim and also **where there is a need to change the network** to suit modern farming practices.

As an example of the expense involved in claims for new rights of way, the Stepping Forward Report<sup>i</sup> suggested that the cost to Local Government per Order was, in 2002 on average £4,500 for an unopposed order and for an opposed order this rose to £9,000, but, merely as a result of inflation, these figures would have risen to £6,876 and £13,752 respectively. Conservatively these figures could be doubled where a landowner has to instruct an adviser to defend a claim. One figure reported was that there were 4,000 such applications waiting to be processed in 2013<sup>ii</sup>; this figure is likely to have increased since then with cuts to Local Authority budgets and new claims coming in. The time frame for these claims where they are opposed can be extremely long; at the time of writing Somerset County Council alone had 341 new claims on its open modifications register.

Where a **diversion of a public right of way** is sought, the process can also be long and costly and the outcome for the landowner is far from certain. It is hoped that some of these issues will be improved as a result of regulations yet to be implemented under the Deregulation Act 2015<sup>iii</sup> but more can and should be done.

Further specific issues that are often raised deal with concerns where **livestock are in areas where the public have access**. In England and Wales, between April 2000 and March 2017 there have been 74 fatalities involving cattle, of which 18 involved members of the public<sup>iv</sup>. Attacks by dogs on sheep are also a serious problem: these cause significant welfare concerns, can have a substantial impact both emotionally and financially on farmers involved and can place the farmer in an unenviable position of being forced to shoot a dog to protect the sheep. An estimate from Sheepwatch suggests that there are around 15,000 sheep killed each year as a result of such attacks.

The last area that I was keen to look at was ways in which the **liability owed to those that access land could be mitigated**. Those using public rights of way are not seen as visitors for the purposes of the Occupiers' Liability Act 1957 or trespassers for the purposes of the Occupiers' Liability Act 1984. Counter-intuitively though, where someone is undertaking such a recreational activity and wanders off the line of the public right of way they become a trespasser and the occupier potentially owes them a higher level of care.

It is also the case that where occupiers have been approached asking whether they would be prepared to offer a permissive right of way or permissive access, **the complexity of the law** in this area can be a factor in determining not to allow such access.

With all of the above concerns it would be useful to compare the position in other countries, both the extent of the access they offer and the ways they have evolved to mitigate some or all of these issues.

*Note- all footnote references in the text are to be found in the last section of the report*



## Chapter 3 My study tour

The countries visited were Ireland, Scotland, Netherlands, France and the USA. The report aims to compare both rights of way and public access and whether there are methods of mitigating some of the problems experienced in England and Wales.

A few simple criteria were used with the aim of selecting countries that would provide useful comparisons, such as population density, land use and similar economic development. These factors are discussed in more detail in Chapter 4: Introduction of this report.

I visited Scotland first for two weeks in April 2016, starting off with Anne Gray at the Scottish Land & Estates who organised meetings with various members. Scotland was my first stop as it has relatively recently undergone a significant change in the way in which it provides access. This would mean that much of the guidance and challenges such provisions raise would have been looked at in the recent past.

The next point on my travels was the Netherlands for two weeks in June which has a similar population density and, I knew from speaking to a Nuffield farming scholar from the Netherlands, that it had an interesting approach towards the provision of new access which I was keen to assess. My first interview was arranged for the day that the new right in question was opened to the public, both the event and subsequent discussions with the parties involved proved to be a great insight.

On 12 July 2016 I also interviewed Antoinette Sandbach MP at Westminster who represents a rural constituency and has a background in farming and was able to raise a number of useful points to consider.

In October I spent a week in France and interviewed a member of the legal team from Fédération Française de la Randonnée Pédestre (FFRandonee).

In December I spent 2 weeks in Ireland speaking with a broad range of user groups both with a farming background and with a background of promoting access. From the research that I had done already and from speaking to Irish Scholars on the subject, I knew that Ireland had a different approach to the provision of access which was largely on a permissive basis.

Lastly, I spent a week and a half in America in February. I did not include America's access provisions in my research but wanted to speak to someone about the perceived benefits of the Recreational Use Statutes. These were enacted to encourage landowners to open their land for permissive access.



## Chapter 4 Introduction

### Reasons for choice of countries visited

#### Population Density

The United Kingdom (UK) has a relatively high population density of people per square kilometre (sq km). Population density has an impact on the demand for, and the ability to supply, recreational access and can lead to competing demands for land use. Amongst the countries visited the population density is particularly high in the Netherlands and England (Figure 2).

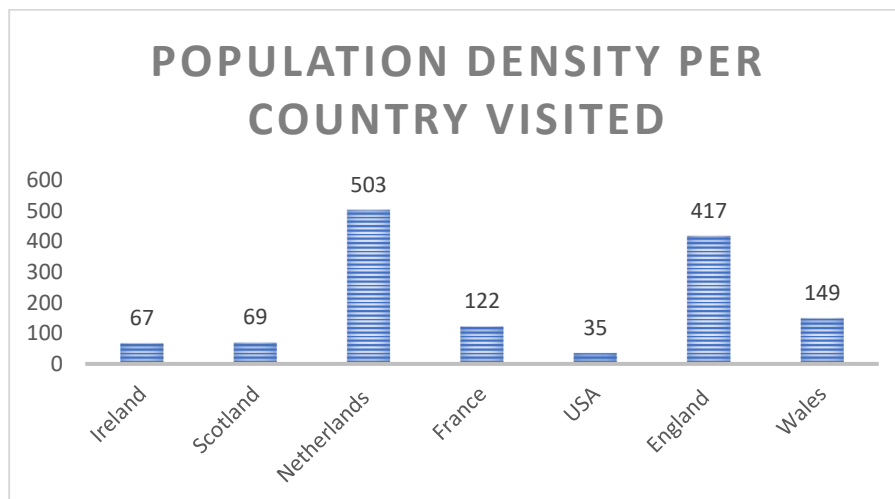


Figure 2: Population Density per Country Visited in people per square kilometre (sq km).  
(Data sources: World Bank<sup>v</sup> and Office of National Statistics<sup>vi</sup>).

#### Land Use

Land use will also influence accessibility. By selecting countries to visit with both similar land use and population density, it was more likely that those countries would face similar access issues as in England and Wales. (Note in Figure 3 the data is for the UK, not England and Wales.)

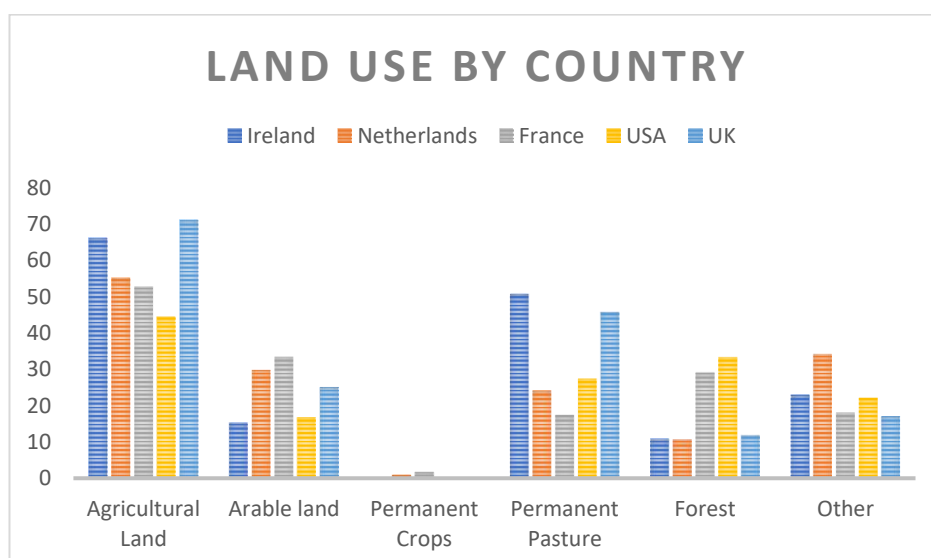


Figure 3: Land Use by Country by percentage (Data source CIA World Factbook<sup>vii</sup>)



Amongst the countries visited, Ireland and the UK are notable for having comparatively high percentages of both agricultural land and permanent pasture.

### **Similar level of development**

The level of development of a country was considered in a broad-brush way to identify populations with roughly the same time and resources necessary to support a similar demand for recreational public access as the population in England and Wales. Simply looking at GDP or GDP per capita may have been too narrow a criterion, so the United Nations Development Programme's Human Development Index<sup>viii</sup> was used. All the countries visited are considered by this index to have very high human development.

With the countries chosen to visit, the next chapter gives a brief overview of their legal systems and constitutional property rights.



## Chapter 5 Background: Legal Systems and Constitutional Protection of Property Rights

This section is a brief overview and serves to highlight some of the relevant differences in the legal systems of all of the countries visited when compared to England and Wales. The legal systems within each country differ considerably both in terms of historical evolution and, specifically in relation to this study, the type of public access and public rights of way that are created, their method of creation and the protections that are offered to property owners.

### 1. Ireland

There are some similarities within the legal systems of the UK and Ireland because the Irish legal system was integrated into the legal system of the United Kingdom by the Union with Ireland Act 1800<sup>ix</sup>. The Constitution of the Irish Free State (Saorstát Eireann) Act 1922<sup>x</sup> created the Irish Free State comprising 26 counties and transferred all UK law into Irish law. Whilst this Act was far wider in its scope, there are similarities between this Act and the intention, at the time of writing, of the Repeal Bill<sup>xi</sup> for the withdrawal of the UK from the EU.

Ireland now has a common law legal system, a written constitution<sup>xii</sup> (Bunreacht na hEireann) which provides for a parliamentary democracy. Importantly in relation to this research, the Constitution contains a set of fundamental rights and the Irish courts can issue binding decisions that legislation is unconstitutional if it breaches these fundamental rights. Article 43 provides for protection of private property rights within Ireland's constitution:

*1 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.*

*1 2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.*

*2 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.*

*2 2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.*

During discussions I had when I was in Ireland, it was explained that the inclusion of property in the fundamental rights of the written constitution had had a significant impact on the development of access legislation. Whatever the views of the Government of the time, in order to amend the constitution it would require agreement of both Houses of Parliament and then for the amendment to be put to a referendum.

### 2. Scotland

Scotland has a mixed legal system containing elements of common law and civil law. It derives from a number of different sources including Roman, Canon and Feudal law. The laws of Scotland and that of England and Wales were brought closer with the accession of James IV to the English throne in 1603 and later with the Acts of Union in 1707 and this union has also had an influence on the Scottish legal system. The European Union has also exerted a significant influence too. In modern



times since the Scotland Act 1998<sup>xiii</sup>, Scotland has had its own Parliament at Holyrood in Edinburgh in addition to the Parliament of the United Kingdom in Westminster. The Act sets out at section 1(1) *“There shall be a Scottish Parliament.”* and then goes on to set out amongst other things its legislative competence.

The Land Reform (Scotland) Act 2003<sup>xiv</sup> sets out in Part 1 statutory rights of access to most land and water in Scotland for recreational and educational activities. It also allows commercial activity if an *“activity which the person exercising the right could carry on otherwise than commercially or for profit.”*



Figure 4: Cows and access interacting on Isle of Kerrera

Similar to England and Wales, Scotland currently does not have a codified constitution, see section 6 on England and Wales below.

### 3. Netherlands

The Netherlands is a civil law country. Historically the country's independence from Spain and the Holy Roman Emperor in 1648 left a Roman Law tradition. This was altered at the beginning of the 19<sup>th</sup> century and most notably in 1811 when the Netherlands was annexed to the French Empire and the French Civil Code was adopted. Following the independence of the Netherlands there have been a number of further Codes with influences from both France and the earlier Roman-Dutch tradition. The Netherlands has a written constitution known as *“The Constitution of the United Kingdom of the Netherlands 2008”<sup>xv</sup>* which includes within Chapter 1 Fundamental Rights, Article 14 relating to the protection of private property rights, which seemed to have an impact on the way in which new public rights of way evolved:

#### *Article 14 Property*

- 1. Expropriation may take place only in the public interest and on prior assurance of full compensation, in accordance with regulations laid down by or pursuant to Act of Parliament.*
- 2. Prior assurance of full compensation shall not be required if in an emergency immediate expropriation is called for.*



*3. In the cases laid down by or pursuant to Act of Parliament there shall be a right to full or partial compensation if in the public interest the competent authority destroys property or renders it unusable or restricts the exercise of the owner's rights to it.*

#### 4. France

France also has a codified system that developed out of the Roman law tradition and the first of these “civil codes” was set out in 1804 by Napoleon I. This original text has been updated many times to reflect the changing needs of society over the years. The French system relies on these civil codes and there is no reliance on the setting of precedent by higher courts which is found in the common law systems, each case is decided on its facts based on the civil code and how that code is interpreted by the judge. Again, France has a written constitution which contains strong protections for private property which have had an impact on the way in which recreational public access has developed:

*Article 2. The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression.*

*Article 17. Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.*

#### 5. United States of America (USA)

The legal system in America is relatively complex being based on a number of sources including constitutional law, statute, treaties, regulations and common law. Individual states retain the power to create new laws except in an area of law that the constitution reserves to Congress. As such, the law in areas such as property which is within state control, differs considerably from one state to another. The American Constitution does contain reference to the protection of private property in what is called the “takings clause” of the Fifth Amendment:

*Amendment V*

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

#### 6. England and Wales

The law of the UK has a number of sources such as statute law, common law, law from the EU and lastly the law from the European Convention of Human Rights. One key aspect of the law in England and Wales is the doctrine of “*stare decisis*” in which courts will adhere to precedents set by higher courts where cases contain a similar set of facts. The Supreme Court will on occasion depart from





the precedent set by a previous decision where it appears right for it to do so. Whilst the UK is made up of four countries the focus of this report will involve looking at the jurisdiction of England and Wales. It is notable that the UK does not have a codified constitution i.e. no one document setting out the fundamental rules. However, it is perhaps best to describe it as uncoded rather than unwritten as such uncoded constitution as we have can be found within various statutes, court judgments and also custom and practice built up over many years. One impact of this uncoded nature is that there is no check on the supremacy of Parliament. In other countries where fundamental rights that are contained within a written constitution are being impacted upon, the courts may have the power to determine them to be unconstitutional.

## 7. Summary

The absence of a written constitution in the UK, that would allow for incompatible primary legislation to be struck down, was particularly notable when comparing public access provisions in France, Netherlands and Ireland: there the protection of private property rights within the constitution seemed to have had a significant influence both historically and on the views of all involved on the way to promote new access. From many of those interviewed, the impression was given that the protection provided by the written constitutions appeared to assist in fostering a collaborative approach between competing interests rather than simply lobbying for the imposition of further or extended rights of access on private land.

Moving on from a comparison of the legal background, the next chapter looks at the actual provision of public rights of way and public access.





## Chapter 6 Public Rights of Way

It is not easy to compare the countries that were visited either in relation to the extent of public rights of way and public access or the level of demand and use of those rights. I met with a number of experts in each country who were able to provide insights into their national situation and also signpost relevant case law and data in the area.

The UK position relating to public rights of way:

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>.

xvi

### Ireland:

#### Rights of way provisions

There are few public rights of way in Ireland: recreational routes are generally permissive. It was suggested by David Walsh that this could in part be ascribed to the historic form of land occupation in parts of Ireland known as the Rundale system<sup>xvii</sup> and the historic evolution of the population density. This system involved often self-contained and remote clusters of tenants farming an area to whom it was leased jointly. At one time or another if the land was abandoned, the tenants would leave the land and it was returned to the landowner and any minor highways would be lost. The English and Welsh system by contrast often contained villages and hamlets with villagers often travelling out to farm and interconnecting routes that were not subsequently abandoned.



Figure 5: At an interview with David Walsh, solicitor and Notary Public with expertise in public access



The Roads Act 1925 in Ireland provided a system for roads to be recorded and maintained but there was no obligation to record all routes of all classes, and whilst there were benefits in recording “roads” there may have been little perceived benefit at that time in recording footpaths and bridleways.

Michael Carroll of Keep Ireland Open suggested looking at the Supreme Court decision in *Walsh & anor v Sligo County Council*<sup>xviii</sup> which recently looked at the current evidence required to claim a new public right of way in Ireland. This case reviewed in detail the way in which public rights of way can be formed. The following extracts provide a useful summary:

*A public right of way can arise in a number of ways: it may be shown to arise from use from time immemorial or may be created by statute. Finally, a public right of way may be established by proof of long user by the public as of right, leading to express or implied dedication by the owner of the ground over which it passes and acceptance of such dedication by the public.*

*The common law of dedication continues in force in Ireland. It requires consideration of all the facts: the duration, extent, nature and context of public user, and the possibility of inferring or presuming that the landowner has dedicated the way to the public. Mere proof of public user does not suffice to create the right.*

*These legal principles ensure that an appropriate balance is struck between public and private rights. Depending on the circumstances, user may provide compelling evidence of dedication to the public, or may more properly be ascribed to tolerance or liberality of the landowner. The landowner will not, by respecting a tradition of generosity and openness be deemed to have encumbered his land with public rights. The law does not convert such acts into legal obligations.*

There are currently 44 National Trails within Ireland and in a recent programme for Government there was an agreement to increase these from 40 to 80. In 2004 Comhairle na Tuathe (the Countryside Council) was set up to focus on three key areas:

- a) access to the countryside
- b) developing a countryside code
- c) developing a countryside recreation strategy

The Council is comprised of state bodies with an interest or responsibility in the Irish Countryside, recreational user groups and representatives of farming organisations. From the interviews conducted it appeared that there was a strong emphasis on working together to create new recreational access although such an approach was not universally accepted<sup>xix</sup>. This approach can be compared with the often confrontational approach of recognising public rights of way in England and Wales through documentary evidence or long use.

In relation to new walking routes the focus is to work together and for landowners to provide permissive routes but to gain some benefit from doing so. Mountaineering Ireland provides the following information in relation to the walks scheme<sup>xx</sup>:



### *The Walks Scheme*

*Under the Walks Scheme, launched in March 2008 by Minister Éamon Ó Cuív, participating landholders receive a payment for the development, maintenance and enhancement of National Waymarked Ways and Looped Walking Routes that pass through their land. The payment is based on a detailed work plan and a five-year contract.*

*The scheme is not available nationwide; it was initially rolled out in the 12 areas of the country where Rural Recreation Officers are employed. At the end of 2010 the scheme extended to 49 approved walking routes with a total of 1,819 landowners receiving an average annual payment of approximately €1,100.*

### **Extent of paths in Ireland**

There were no figures available for the total distance of permissive trails from the National Trails Office of Ireland. The Irish Government's Open Data Portal provides a data set for the National Trails Register as at 2 November 2016. The total length of all the routes recorded the total permissive trails recorded on the data set were added together and amounted to 13,445.27 km. Using the figure above and the total area of Ireland at 70,273 km<sup>2xxi</sup> this provides a figure of 0.191km per km<sup>2</sup>. Ireland also has 6 national parks covering a total of 635 km<sup>2xxii</sup>. This represents around 0.90% of the total land area.

### **Comparison with England and Wales:**

Ireland has a lower population density than in England and Wales, it also has a significantly lower proportion of rights of way per km<sup>2</sup> than in England and Wales. Historically this may in part be as a result of patterns of land ownership. It is also perhaps because the development by statute in the Rights of Way Act 1932<sup>xxiii</sup> which applied in England and Wales did not apply to Ireland. The effect of the Act was to codify the common law position which was considered complex and which led to disparities, however it could be argued that the codification in England and Wales led to a greater burden on landowners. Historically Ireland appears not to have had legislation along the lines of National Parks and Access to the Countryside Act 1949 which provided for the recording of public rights of way in England and Wales.

### **Scotland:**

#### **Public access provisions**

Public access in Scotland changed significantly following the Land Reform (Scotland) Act 2003<sup>xxiv</sup>. Access users may undertake any activity on access land provided access rights are exercised in a way that is lawful and reasonable. The Act also specifically excludes things from this, such as vandalism, dropping litter, disturbing wild birds, hunting and shooting, motorised activities and being on land with a dog that is not under proper control. Scottish Natural Heritage were charged with developing the Scottish Outdoor Access Code, public consultations were undertaken and advice was provided by the National Access Forum which includes a wide variety of organisations with an interest in national access issues in Scotland.



The inclusive approach that has been taken in the development of the Scottish Outdoor Access Code and the continuing work of the Scottish National Access Forum was considered to have had a positive impact.



Figure 6: Headquarters of Scottish Natural Heritage

In the interviews undertaken there were particular issues that were raised where problems were occurring:

As in England, there is a problem of **dog attacks** on sheep. Scottish Natural Heritage in partnership with a number of other stakeholders have been undertaking a public education campaign, setting out clear information to members of the public, the following is a link to the campaign:

<http://www.outdooraccess-scotland.com/Practical-guide/public/dog-walking>

It contains links to radio clips giving the public advice on how to keep livestock and dogs safe when using outdoor access. These were done from the point of view of the dog itself which may have helped it stick in people's minds. It also provides guidance on dealing with dog mess and seasonal issues such as ground nesting birds, these are in the format of video clips from farmers that have seen the harm dogs can cause.

The issue of **wild camping** was raised as a concern, one landowner representative suggesting there were 80 tents on a privately owned area of land over one weekend. The main objection to this was not the imposition of the tents but the clean-up effort that is routinely needed following such busy weekends with a great deal of general rubbish, toilet roll and human faeces. It was suggested that the average "wild camper" camps 29 metres from their car. Many who have no experience of camping in the wild do not realise there will be no toilets and often fail even to bring a trowel.

There were concerns around **commercial access and the maintenance of tracks**: where landowners invest considerable sums maintaining tracks, particularly in the uplands, and commercial groups make use of these for free. The example given was of a riding school that was heavily utilising a track and it seemed inequitable that there should be no contribution towards upkeep.



It seemed to be recognised that those landowners that were not on the **urban fringes or in recognised beauty spots** often did not find the provision of open access caused problems. However, those around areas of high population density were more likely to have to adapt the way they used the land to fit with public access. One person interviewed reported that they had largely had to stop a commercial shoot, which had previously brought in revenue, as it was not feasible to continue given the extent of the public's use of the area.

There was a suggestion that some landowners, both public and private, had been able to provide access tracks and maintain these as a result of grants from various public sources. There was a feeling that this **grant funding** was not as readily available now.

**Access along rivers with canoes** was a key issue that has raised concerns as private fishing rights can be of significant value and the activity can be interrupted by canoeists. There has been work done to find the best method of sharing the rivers see **Appendix 1**. It was suggested that there is at least an argument that the current provisions are not compliant with Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>xxv</sup>.

### Level of recreational use

I discussed the level of recreational use in Scotland with Rob Garner, Access and Policy Adviser to Scottish Natural Heritage and others. The following graph from Scottish Government<sup>xxvi</sup> indicates that the views of those that were interviewed were correct and there had not been a significant uptake in outdoor recreation:

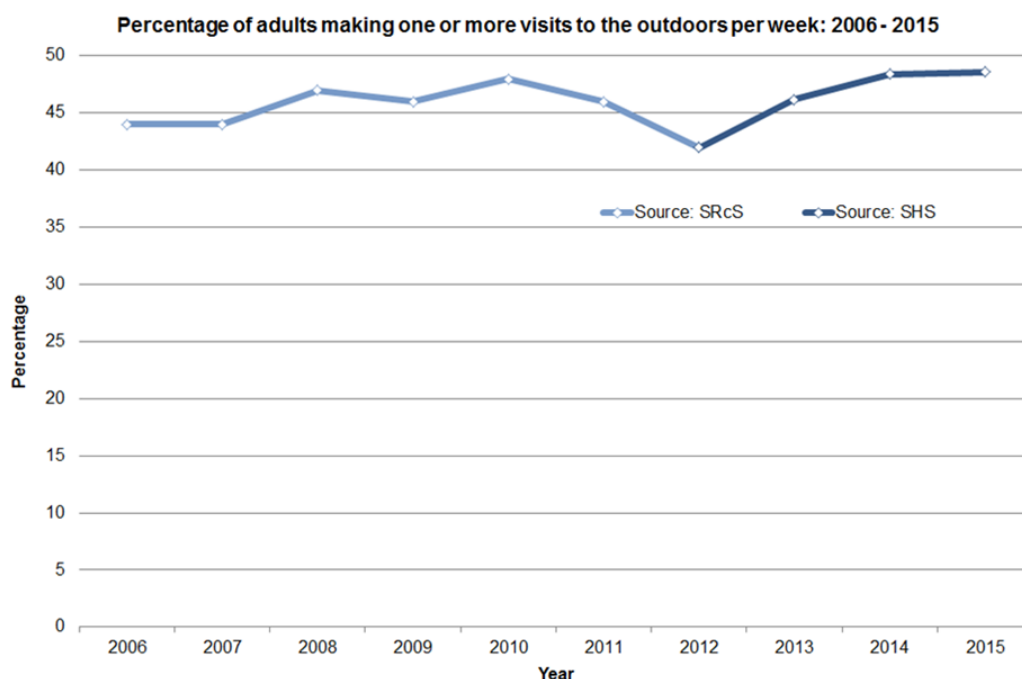


Figure 7: Adult visits to the outdoors per week in Scotland

The situation prior to the Land Reform (Scotland) Act 2003, relating to access, particularly to uplands (suggested to equate to 84% of Scotland) was not widely known. It was possible to get an interdict against a person coming on to your land in certain circumstances but it was little used and a costly





process. Historically there was a tradition of “Munroe-bagging”<sup>xxvii</sup> suggesting that, for the most part, upland access was widely tolerated.

### Extinctive Presumption (expiry of rights of way)

In Scotland, public rights of way are also subject to an extinctive presumption meaning that a period of non-use by the public results in the way being extinguished, the current iteration of the legal mechanism that causes this can be found in the Prescription and Limitation (Scotland) Act 1973<sup>xxviii</sup> section 7:

*(1) If, after the date when any obligation to which this section applies has become enforceable, the obligation has subsisted for a continuous period of twenty years—*

*(a) without any relevant claim having been made in relation to the obligation, and*

*(b) without the subsistence of the obligation having been relevantly acknowledged, then as from the expiration of that period the obligation shall be extinguished:*

### Extent of rights of way

The total figure given by Scottish Natural Heritage for public rights of way<sup>xxix</sup> is 16,563.7 km. Using the figure of 77,925 km<sup>2xxx</sup> this provides a figure of 0.213 km per km<sup>2</sup>. It was not possible to find a figure for Scotland’s area of land subject to open access but based on the figures of 3% subject to urban or rural development<sup>xxxi</sup> a figure of 95% was used for illustrative purposes.

**Comparison with England and Wales:** Perhaps because Scotland was not included within Part IV of the National Parks and Access to the Countryside Act 1949 and its local authorities were therefore not required to record public rights of way in their area, the level of recorded public rights of way in Scotland are lower than in England and Wales. The effect of the access provisions appeared similar to those experienced with the Countryside and Rights of Way Act 2000 in England and Wales, but there has not been the predicted uptake and increase in access, except in hotspot areas. As a result of unchanged levels of access, the problems that many predicted have not materialised.

However, there were problems experienced around urban areas where there was a higher population density or where there are particular scenic attractions. Should levels of population density and recreational activity increase in the future, the experience of landowners might also change and it is not unreasonable to expect that the problems experienced in the hotspots would then be replicated more widely. Scotland’s population density is only 16.5% of England’s: the last time England had a population density similar to that of Scotland today was around 1806<sup>xxxii</sup>.

## Netherlands:

### Network of public rights of way

Between the period from 1945 to the 1990’s it was suggested that the process of land reclamation and the enclosure of agricultural land led to the disruption and loss of some of the network of old public rights of way. Nearly 80% of the Netherlands was subject to such change. The Netherlands has a hierarchical system of local authorities roughly equivalent to that in England and Wales. Below national Government they have the provincial and municipal layers of Government (Ryk, Provincie and Gemeente respectively). The municipal layer is responsible for the “Wegenlegger”, in some ways this can be considered as an equivalent to the Definitive Map and Statement. It shows the status



and maintenance requirements for all roads and footpaths outside urban areas in the municipal area and provides legal evidence of these routes.



Figure 8: A presentation at the opening of a right of way at Djûke van der Maat Boerderij Nieuw Slagmaat

### Acquiring or changing rights

Wandlenet is one of the key walking organisations in the Netherlands, they have several goals including developing and managing long distance and regional trails and generally defending the interests of walking in the Netherlands. The system of acquiring new rights of way is set out in the “Wegenwet” or Roads Act<sup>xxxiii</sup>. It provides for a similar prescriptive right to that found in section 31 Highways Act 1980:

#### Article 4

##### 1. A road is public:

- I. if, after the date of thirty years before the entry into force of this Act, has been accessible to everyone for thirty consecutive years;
- II. if, after the date of ten years prior to the entry into force of this Act, for ten consecutive years has been for everyone and also during that time has been maintained by the government, a province, one municipality or water;
- III. where the owner has given the destination of revealing road.

2. The provisions of I and II are subject to exception when, during the period of thirty or ten years, it has been clearly stated on the spot for a period of at least one year that the road is accessible only to everyone with permission.



3. Making this known can be done by making inscriptions like: private road and the like, or by other brand marks.

An extinctive prescription period is also set out at article 7:

#### Article 7

*A road has ceased to be public:*

- I. *if it has not been accessible to everyone for thirty consecutive years;*
- II. *when it is withdrawn from public circulation by the competent authority.*

#### Engagement with Landowners

It was notable, whilst conducting interviews both with landowners and users, that the process for finding new public routes involved a constructive collaboration between user groups, the local government of the area, local communities and landowners. On visiting the opening of one of these routes at Djûke van der Maat in Boerderij Nieuw Slagmaat the result of this collaboration appeared to be well designed routes that would be maintained through the work of local volunteers.



Figure 9: An example of Dutch festivities at the opening of a right of way at Djûke van der Maat Boerderij Nieuw Slagmaat

As it involved their co-operation and permission landowners were happy with the routes and they can be designed to go past areas such as farm shops or cafes, encouraging diversification, benefiting the landowner and providing an added interest to the users too. Routes are often over agricultural land and the main contract is between the municipal government and the landowner, with the municipal government providing an indemnity and the landowner receiving a sum per metre of path provided.

The following was a further description of why the projects are often perceived to be a success:

17

*A Comparison of Public Access Provisions and methods of mitigating impacts of Public Access on Agriculture*  
by Andrew Gillett

A Nuffield Farming Scholarships Trust report ...generously sponsored by the National Trust





*One factor that makes the Klompenpaden a great success, is the local initiative. It's always a group of local people (volunteers, people who like hiking, farmers) who present their idea to us. We help them making their idea reality.*

*I think that is a major influence on landowner's willingness to cooperate; the fact that they know it is supported by their 'neighbours' and that those people [are] also going to use/enjoy it (apart tourists also).*

*It's doing something good for their own community.<sup>xxxiv</sup>*



Figure 10: Evelien Kenbeek, Senior adviseur routes en vrijwilligerswerk Landschap Erfgoed Utrecht

Evelien Kenbeek provided the quote above and the specimen agreements for permissive paths in Netherlands between Users, Landowners and Local Government

An example of the two agreements involved in such a collaboration were kindly supplied by an organiser of a Klompenpaden, a translation of these agreements is at **Appendix 2** and **Appendix 3**.



Figure 11: Following the opening of a new Klompenpaden my daughter, Olivia was given the opportunity of assisting with owl conservation

### Utrecht te Voet

One programme that was particularly interesting, which was highlighted by Hans van der Voet, was the development of walking routes from the city centre of Utrecht.

“Utrecht te Voet” (<http://www.utrechttevoet.nl/>) has 13 hiking trails from the city centre to scenic areas in the countryside ranging from 4 to 17km. This was done with the idea of improving access from the city to the countryside and the routes have been specifically developed to connect to places where public transport is available enabling longer walks with a short ride home. Each route is colour coded and detailed instructions to follow the routes can be downloaded from the website above, see **Appendix 4**.

### Trespass

It was highlighted by Andreas Dijkhuis, a Rentmeester, that in the Netherlands trespass is a minor criminal offence, whereas in the UK it is generally considered a civil wrong:

#### Article 460

*He who, without being entitled to do so, is on any ground strewn, forested or planted, or to seeding, foresting or planting is prepared, or during the months of May through October in some pastures or hay meadows, is punishable by a fine of the first category.*

#### Article 461

*He who, without being entitled to do so on another's land to which access in a manner apparent to him is forbidden by the owner, whether or not there is cattle, shall be punished by a fine of the first category.*



### Extent of public access

Looking at the extent of public access provisions in the Netherlands, from the figures obtained<sup>xxxv</sup> there were 8,491km within the national walking network, 1,090km of other routes designated and an estimated 7,000 km of “other regional walking routes”. This amounts to a total distance of 16,581km. Using the figure of 41,850 km<sup>2xxxvi</sup> for the area of the Netherlands this provides a figure of 0.396 km per km<sup>2</sup>. There are also 20 National Parks in Netherlands amounting to 1320.3 km<sup>2</sup> which makes up 3.2% of the total area<sup>xxxvii</sup>.

### Comparison with England and Wales

What was most striking from the interviews was the difference in attitude between user groups and landowners, which was supported by local Government. The emphasis seemed to be on working together to find new routes that benefited everyone. Where new permissive routes were created local volunteers undertook inspections of the route regularly to pick up litter and the local authority provided the landowner with a small payment for the permissive route on a per metre basis and also provided a full indemnity.

### France:

Hiking is a popular pastime in France and it is promoted actively by FFRandonnée<sup>xxxviii</sup>, the French Federation of Hiking. Starting as an organisation in 1947, in 1985 it was recognised as a sports federation by the French Government. As a delegate of the Ministry of Sport it has the power to both represent and control the sport of hiking within a framework agreed between it and Government. They list their principle missions as 1) producing the Topo Guides edition - a reliable and essential tool, 2) promoting hiking and increase those participating, 3) creating and marking out hiking nature trails, and 3) protecting, maintaining and preserving access to nature trails.

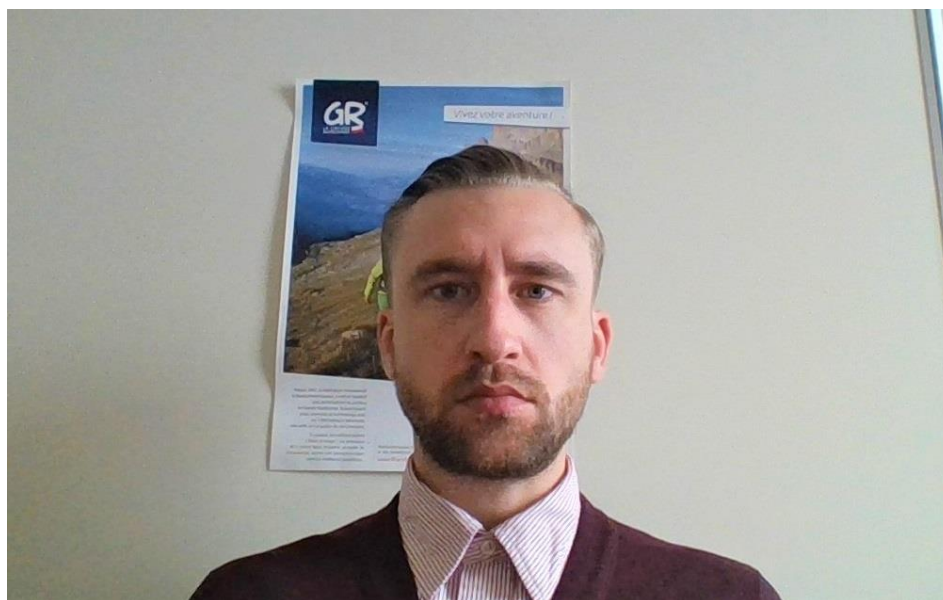


Figure 12: François Attenoux, Responsable juridique Fédération Française de la Randonnée Pédestre

There are different designations of routes, GR, which stands for grande randonnée or great hiking trail, which are routes that will take several days or weeks to walk and many cross European borders. GR Pays, grande randonnée de pays or country hiking trail, which are shorter routes, often



looped with various “bridges” to the loop which allow the length to be changed to fit the hiker. Lastly there are PR routes les chemins de promenade et randonnée or walking and hiking routes.

*GR2013<sup>xxxix</sup> is a metropolitan trail forming a rough figure of eight through the Marseille region, in all it stretches to 365 km linking the urban to the rural and the industrial to the agricultural.*

A “hikers charter” has been widely promoted, setting out what hikers should do to protect the environment and preserve biodiversity and respect the countryside, set out in **Appendix 5**.

The following extract provides a summary of the rules relating to dogs being off the lead in France<sup>xl</sup>:

*There is no legal or regulatory requirement to keep a dog on a leash in the wild.*

*What is prohibited is the wandering of a dog, that is, its presence outside the sight or voice of its owner. It is the stray or stray dogs that are forbidden. A dog is considered a wanderer if he is no longer under the effective supervision and control of his master, at a distance estimated at 100 m, or delivered to his instinct alone (ministerial decree of 16 March 1955 and article R428-6 Of the Environmental Code). With hunting action, the wandering comes under a fine of class 4 (135 euros).*

It was suggested by François Attenoux that “public rights of way” are predominately on public land although such public land can be either publicly or privately owned by the public body. Where a landowner agrees to a new permissive route being placed over private land FFRandonnée have a specimen agreement: this was kindly provided, see **Appendix 6**.



Figure 13: Headquarters of Fédération française de la randonnée pédestre in Paris

### Extent of public paths

There are 180,000 km of walking routes and an area of 543,965km<sup>xli</sup> which equates to 0.331 km per km<sup>2</sup>. No up to date figures for the area of land within France that was subject to open access were



found. Whilst there are figures for area of the “parcs nationaux” and the “parcs naturels regionaux” these were not used, as even for areas of land designated as such this does not necessarily mean it is subject to open access.

### Comparison with England and Wales

It was suggested that there was no equivalent to s31 Highways Act 1980 as in England and Wales, meaning that there was no ability to claim a public right of way based on a period of use. The reverse of this was true in that if a private landowner were to take over an area of land subject to such a right and use it, in certain circumstances it would be possible for the landowner to claim the area by prescription and that may have the effect of removing the public’s right. Whilst there are less rights through agricultural fields than in England and Wales, France does maintain an extensive and well used rights of way network.

### USA:

The visit to the USA was undertaken in order to evaluate the effect of the various Recreational Use Statutes in place. My research was limited to this area because the relatively low population density making any answers garnered arguably of little relevance. Also considered was the complexity of collecting data from all 50 states, which differ in many aspects of property law.

### Summary

The extent of public access routes has been set out by country visited in the study (Figure 14).

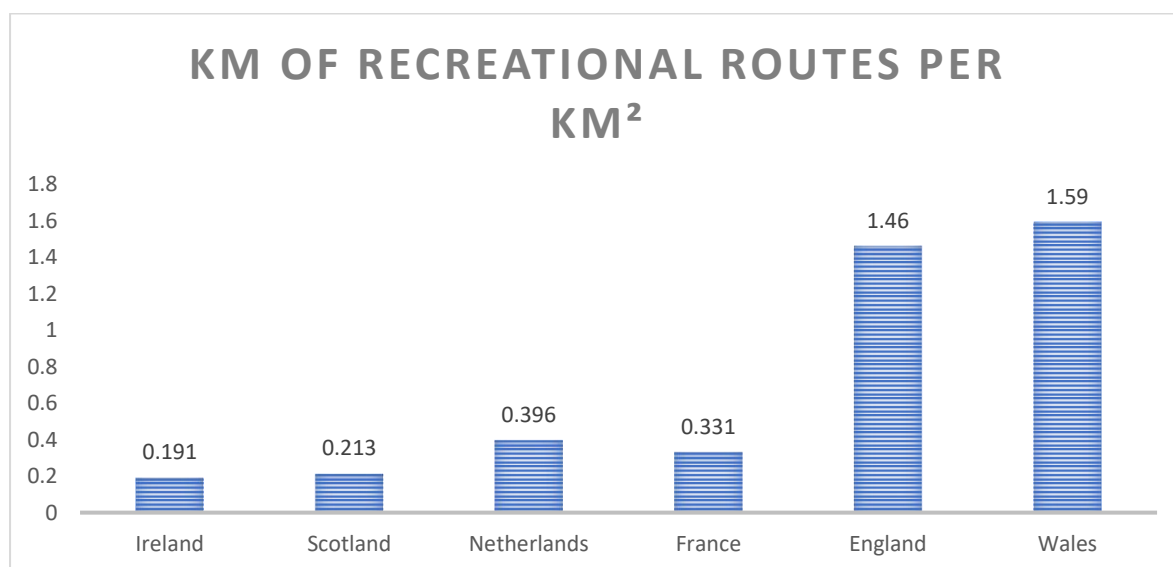


Figure 14: Public recreational routes in countries visited on a km per km<sup>2</sup> basis.

It should be noted that the open access provisions in Scotland (95% of land) make the figures for Scotland largely irrelevant. Figures for Ireland (0.9%), Netherlands (3.2%) and France include routes that are open with the permission of the landowner whereas the figures for England (6.6%) and Wales (22.2%) relate to public rights of way. The data for England and Wales subject to open access



were taken from figures in the “*National Assembly for Wales Research paper- Countryside access in the UK: a review of associated legislation and policy*”<sup>xlii</sup>.

The next chapter takes a look at various countries’ legislation dealing with the liability of landowners.





## Chapter 7 Occupiers' liability associated with public access

Statutory provisions relating to liability in Ireland<sup>xliii</sup> are at **Appendix 7**, provisions relating to Scotland are at **Appendix 8** and an example of a Recreation Use statute from Alabama in the USA is at **Appendix 9**. They have been appended in full to allow for their direct comparison. The following are brief synopses of the relevant provisions and how they differ to those in England and Wales:

### Ireland:

Whereas in England and Wales there is the Occupiers' Liability Act 1957 and 1984 dealing with visitors and non-invitees respectively, in Ireland the Occupiers' Liability Act 1995 deals with both and a third category of "recreational user".



Figure 15: Meeting with Michael Carroll Membership Secretary/Treasurer at Keep Ireland Open

In summary, the occupier's duty to a recreational user is: *"Not to intentionally injure or damage the property of the person, nor act with reckless disregard for the person or the property of the person"*<sup>xliv</sup>. This assists in ensuring that occupiers are not under an undue burden relating to recreational users. Useful guidance for recreational users and landowners setting out information on property rights and detailing the duty of care owed by landowners can be found at the following link:

<http://www.mountaineering.ie/files/Recreation%20in%20the%20Irish%20Countryside%20booklet%20-%20Sep%202013.pdf>

### Scotland:

The Occupiers' Liability (Scotland) Act 1960 differs in some respects to that in England and Wales. Firstly, a similar duty of care is owed to all those entering the premises whether they have been invited or not. In England and Wales a distinction is drawn between those that are invited and non-invitees.

In the Occupiers' Liability (Scotland) Act 1960 it also specifically sets out at 2(3):

*Nothing in the foregoing provisions of this Act shall be held to impose on an occupier any obligation to a person entering on his premises in respect of risks which that person has willingly accepted as his; and any question whether a risk was so accepted shall be decided*



*on the same principles as in other cases in which one person owes to another a duty to show care.*

This is largely a codification of the legal principle of “Volenti non fit injuria”, to one who is willing, no harm is done.



**Figure 16: Views from the top of Arthur's Seat** (following a meeting with Robert Scott-Dempster, Head of Land and Rural business department, law firm Gillespie Mac Andrew)

Scottish Natural Heritage have produced a detailed guide to this issue titled “A Brief Guide to Occupiers’ Legal Liabilities in Scotland in relation to Public Outdoor Access” which can be found here: <http://www.snh.gov.uk/docs/B54968.pdf>

### USA:

As with the law relating to property, Recreational Use Statutes vary significantly from one state to the next, but the intention behind the statute remains. The purpose of these statutes is broadly to encourage occupiers to allow recreational activities on their property. This is achieved by largely shifting the burden of liability from the occupier to those undertaking the recreational activity. Generally, this relates both to the duty to keep the property in a safe condition and also to warn of dangerous conditions. Another feature of the American statutes of the various states is that many contain what is referred to as a legislative intent clause. The purpose of such clauses is to describe the underlying policy behind the statute. This gives a steer to the courts when interpreting specific provisions of the statute, particularly in cases of ambiguity. As an example of such a clause the following is from Florida’s Recreational Use Statute<sup>xlv</sup>:

*(1) The purpose of this act is to encourage persons to make available to the public land, water areas and park areas for outdoor recreational purposes by limiting their liability to*





*persons going thereon and to third persons who may be damaged by the acts or omissions of persons going thereon.*

It would be possible to include such a provision within a statute for England and Wales which on this side of the Atlantic might be called a “purpose clause”, or it would be possible to include such a statement as part of the long title. From a statutory interpretation viewpoint, such a statement carries more weight if it is within the actual text of the Act rather than within the explanatory notes, as per Lord Simon in *Black-Clawson International Ltd. V Papierwerke Waldhof-Aschaffenburg*<sup>xlvi</sup>

*The statutory objective is primarily to be collected from the provisions of the statute itself. In these days, when the long title can be amended in both Houses, I can see no reason for having recourse to it only in case of an ambiguity—it is the plainest of all the guides to the general objectives of a statute.*

Whilst the Recreational Use Statutes contain many variations, an example from Alabama is set out at **Appendix 9**. This state’s statute was chosen as:

- a) At 35-15-20 it has a well set out legislative intent clause.
- b) At 35-15-4 it clearly states that it does not provide a general right to access private land.
- c) At 35-15-21 it differentiates between commercial and non-commercial but it allows for goodwill and maintenance payments for opening such land provided it is not done commercially.
- d) At 35-15-28 it provides that an owner must establish that the land is being open for recreational use, again allaying any potential fears that this could lead to users accessing land without permission.
- e) Allows for specific time and use restrictions to be determined by the owner.
- f) At 35-15-28 it also states that permitting recreational use will not lead to a dedication, either express or implied.

### **Comparison with, and possible adaptations for, England and Wales:**

From experience of advising CLA members, occupiers are often concerned about their liability. In England and Wales an occupier that provides permission for recreational users to enter their land will owe them the duty of care owed to visitors under the Occupiers’ Liability Act 1957. Whilst there is the defence of “Volenti non fit injuria” in England and Wales, meaning “to a willing person no injury is done” the courts are not always willing to completely absolve the occupier, instead finding some level of contributory negligence. In England and Wales it is also possible to effectively exclude liability for some things in some instances, but attempts at excluding liability are not effective in all situations such as for death or personal injury. This process adds further complexity.

It could be argued that an occupier would be more willing to provide land for recreational use, particularly to sports such as caving or rock climbing, if they had the advantage of a reduced level of liability provided for in the Irish Occupiers’ Liability Act 1995 or the Recreational Use Statutes. It would make the law simpler and remove the necessity of putting up notices attempting to exclude liability towards recreational users. Such a reduced level of risk could also have an impact on the cost of insurance premiums.

New legislation along the lines of a Recreational Use Statute from America would provide a clear statement of Parliament’s intent that occupiers would not be penalised for providing access. The



legislative intent clause in Alabama's Recreational Use Statute sends a message of encouragement to landowners within the state:

*It is hereby declared that there is a need for outdoor recreational areas in this state which are open for public use and enjoyment; that the use and maintenance of these areas will provide beauty and openness for the benefit of the public and also assist in preserving the health, safety, and welfare of the population; that it is in the public interest to encourage owners of land to make such areas available to the public for non-commercial recreational purposes by limiting such owners' liability towards persons entering thereon for such purposes; that such limitation on liability would encourage owners of land to allow non-commercial public recreational use of land which would not otherwise be open to the public, thereby reducing state expenditures needed to provide such areas.*

In England and Wales exceptions to occupier' liability have been made by the legislature in relation to access land, most recently in land subject to coastal access by an amendment to Occupiers' Liability Act 1984 in the Marine and Coastal Access Act 2009. Although Government do not generally produce detailed guidance they have linked to guidance on the subject produced by the author for the CLA members<sup>xlvii</sup>. Creating a similar regime in relation to permissive rights would seem entirely reasonable.



## Chapter 8 Discussion

There a number of points that arise from this study and these are now explored.

Of the countries that were compared, Wales then England have significantly more extensive public rights of way networks on a by km per km<sup>2</sup>. In Ireland, Netherlands and France many of the rights were permissive whereas in England and Wales the routes are public rights of way. The system in England and Wales where since 1949 the Local Authority is responsible for recording the public rights of way network means that the historic network is largely retained. From the interviews undertaken, it seemed that many countries had lost much of their historic network of minor highways, especially the Netherlands and France.

It was interesting to note the protective effect of a written constitution on property rights, particularly in Ireland, Netherlands and France.

In Ireland, France and the Netherlands there was a collaborative approach to developing new routes with the consent of the landowner. For instance, “klompenpaden” in the Netherlands and permissive routes in France are designed and developed to suit both the users and the landowners. The routes can then be maintained by volunteers and an indemnity is offered to the landowner. These can be tailored to suit landowners and users allowing for the provision of facilities and parking making them well suited to families and those with limited mobility.



Figure 17: An example of a ferry crossing on a Klompenpaden in the Netherlands

By contrast, the way that new routes arise in England and Wales is generally more contentious. The process is long and costly and the resulting network is less flexible, making it difficult to adapt it. A new collaborative system may complement the existing network developing new routes at community level, the provision of facilities such as parking and farm shops may encourage new farm



diversification and also those that do not currently utilise the public rights of way network, increasing use overall. The following two suggestions would reduce the cost of the current system:

- a) Amending s31 Highways Act 1980 would reduce cost and contention. The example provided by the Article 4 and Article 7 of the Wegenwet from the Netherlands would provide for a more balanced system and an introduction of such an extinctive principle would also end the significant uncertainty produced by the maxim “once a highway always a highway”. If a route has not been used for 30 years there is little justification in it retaining it as a public right of way.
- b) The cost of the current system in England and Wales is significant. It is suggested that to reduce costs and foster a collaborative approach, legislative amendments and new guidance should allow for local authorities to take a neutral stance where an application for a new right does not have sufficient public benefit. This would not prevent such claims but mean they would not be brought at the public’s expense.

The understanding of how best to target resources to provide a system that is accessible to as many people as possible should be improved. As an example of the problems with the current approach to the provision of public access, some of the assumptions that were made in the Welsh Government’s consultation document in 2015 “Improving opportunities to access the outdoors for responsible recreation”<sup>xlviii</sup> relating to the benefits of outdoor recreation did not sufficiently consider whether or where new access was needed and how this could be delivered.

The consultation document summarised the current position and mentions that “*since 2005 there has been a threefold increase in the amount of land accessible by right by the public through implementation of the statutory right of access on foot...*” but later states, “*While some rights of access have increased over the last decade, the Wales Outdoor Recreation Survey (Natural Resources Wales) suggests that the proportion of Welsh residents undertaking outdoor recreation frequently has remained fairly flat, at around 27%.*” This figure has since dropped significantly to 22%<sup>xlix</sup>. It would suggest that simply increasing land subject to public access does not automatically lead to higher levels of participation and health benefits.

There is little up to date data that can be used to compare the percentage of people regularly using recreational access between countries. Whilst there is some data it is not easily comparable as each country uses different metrics. From the examples of both Wales and Scotland however, where levels of public use have remained flat despite significant increases in the amount of land subject to public access, it is suggested that there is little correlation between imposing new access rights and increasing the level of public participation in outdoor recreation.

The examples of “Utrecht on foot” pointed out by Hans van der Voet and GR2013 mentioned by François Attenoux in France provide an interesting mechanism to encourage walking in urban areas where traditionally there haven’t been as many “recreational” public rights of way. It also serves to join up the city to the rural environment.



,Figure 18: The leaflet for the walking Network Utrecht te Voet provided by Han van der Voet

It was notable from those that were interviewed, that in the Netherlands and France the problems that arise in England and Wales regarding livestock and public rights of way were not present to the same degree, as they did not tend to cross agricultural fields. In England and Wales between April 2000 and March 2017 there have been 74 fatalities involving cattle, of which 18 involved members of the public<sup>1</sup>. From the statistics, it appears that a large proportion of these fatalities involving members of the public involved cows with calves and lone walkers with dogs.

In Ireland, most rights of way are permissive allowing farmers to plan where the routes should run around their farming activities. In France, François Attenoux suggested that most routes do not run through actively farmed fields. In the Netherlands, there is an emphasis on creating new rights of way through agreements between user groups, local government and landowners. Dogs are not generally allowed on these routes and as they are permissive they can be designed to cause the least amount of disruption to agricultural activity.

The public rights of way network in England and Wales is largely based on historic routes. Because of this in some instances routes are not designed for the needs of modern agriculture. It can be a long and expensive process to attempt to divert these routes. Whilst the Health and Safety Executive have produced helpful guidance titled “*Cattle and public access in England and Wales Advice for farmers, landowners and other livestock keepers*” accidents can and do happen. At **Appendix 10** I have set out a suggested draft of a mechanism to allow for the temporary diversion of public rights of way in England and Wales where livestock will be in the vicinity which could be inserted into the Highways Act 1980. This suggestion was as a result of my findings from this report and helpful comments from the CLA’s Legal, Parliamentary and Property Rights National Committee. There is a more detailed explanation set out in an extract of a paper that was put to the CLA’s Legal, Parliamentary and Property Rights National Committee which can be found at **Appendix 11**.

Allowing farmers to temporarily divert public rights of way, subject to time limits and safeguards for the public rights of way network, would make walking safer and hopefully reduce the number of fatalities and injuries by reducing the time walkers were in the vicinity of cattle.





Figure 19: Discussing best practice at the Inhand Livestock Managers Annual Meeting

There is an ongoing problem in England and Wales of dog attacks on sheep. It has been estimated by Sheepwatch<sup>li</sup> that 15,000 sheep die from attacks by dogs each year. Anne Gray provided me with information and feedback on an effective campaign, developed in Scotland alerting the public to the problem of dogs attacking sheep<sup>lii</sup>. From the interviews, it appeared that these were well received and had a positive impact but it was suggested that this was an ongoing process and that public education needed to be ongoing. The IFA in Ireland have produced a helpful 10-point protocol, providing advice for farmers whose sheep have been attacked.<sup>liii</sup> The draft of a mechanism to allow for the temporary diversion of public rights of way in England and Wales at **Appendix 10** would also be of assistance in preventing sheep attacks.

The current system of occupiers' liability in England and Wales acts as a disincentive to providing permissive access, it would be useful to amend the existing legislation. The model provided in the Irish legislation that differentiates between a "visitor" and a "recreational user" could be utilised. Replicating this would provide more certainty to landowners in particular where users stray from the route.

The Recreational Use Statutes from America provides a clear intention from the legislature that landowners providing permissive access should not be found liable. It was clear from Kevin Colburn of American Whitewater that these statutes were a useful tool in persuading landowners to provide



permissive access. Something similar in England and Wales could encourage further permissive access agreements.

It is possible that any replacement to the Common Agricultural Payments system could include an option for payments for voluntarily opening routes and areas for recreational purposes for permissive use. This should be designed widely to allow for access to water, cliffs and below ground cave systems. It should also allow for payments for access to be on a pro rata basis if not open all year so that where land or water is not used for certain periods access provisions may apply.



## Chapter 9 Conclusions

**The public rights of way network in England and Wales is significantly more extensive than in other countries visited. However, the current system is inflexible, and particularly in achieving new public rights of way is often contentious and costly both for landowners and Government.**

### 1. Extent

This could be improved with an amendment to s31 Highways Act 1980 to increase the period for making a right of way claim and the addition of an extinctive prescriptive period as in the Netherlands. Also, amending legislation and guidance to allow local authorities to take a neutral stance when a definitive map modification order application does not have sufficient public benefit would improve the current arrangements.

### 2. New Access

Greater emphasis should be placed on achieving new routes and areas of access through consensus utilising permissive agreements. This could be encouraged by Government agreeing to indemnify occupiers who take this step and through providing payment for such access. In the United States of America, the Recreational Use statutes have led to an increase in provision of permissive access which has benefited amongst other activities, kayaking and mountain biking.

### 3. Temporary Diversion

Provision of a mechanism to allow for a temporary diversion, would lead to improvements relating to injuries and deaths to the public involving cattle by providing a mechanism to allow for a temporary diversion. It would also assist farmers in keeping people and dogs away from fields with sheep, reducing the number of sheep attacks each year.

### 4. Education

A properly funded and ongoing system of public education would assist in improving the situation arising from the number of incidents of sheep attacks.

### 5. Liability

Enacting legislation akin to the Recreational Use Statute mentioned above, would encourage landowners to provide areas for permissive access. An amendment to the Occupiers' Liability Act 1984 to reduce liability and to include "recreational users" in line with the model in Ireland would provide certainty and remove anomalies.





## Chapter 10 Recommendations

Lobby and work with Government to:

Amend s31 Highways Act 1980 to increase the period required to bring a right of way claim to 30 years and an additional provision providing for an extinctive prescriptive period.

Amend legislation and guidance to allow local authorities to take a neutral stance when a definitive map modification order application does not have sufficient public benefit.

Provide a mechanism for occupiers to temporarily divert public rights of way where livestock are involved subject to the recommended time limits and safeguards for the integrity of the public rights of way network. This would lead to a safer and more pleasant experience for walkers.

Work with relevant stakeholders to produce an ongoing public education programme on dogs in the countryside along the lines of the model in Scotland.

Amend Occupiers' Liability Act 1984 to include the definition of "recreational user" and bring the level of liability in line with the Occupiers' Liability Act 1995 in Ireland.

Enact a Recreational Use Act using the example of Alabama Recreational Use Statute to send a message to landowners and occupiers that those providing permissive access will not be unduly burdened.

Develop a suitable mechanism to provide payments for providing permissive access to further encourage such provisions.



## Chapter 11 After My Study Tour

After seeing the flexibility inherent in many of the other countries when compared to the rigid nature of the public rights of way system in England and Wales, I drafted a proposed addition to the Highways Act 1980 to attempt to provide a small degree of flexibility that would allow for temporary diversions to public rights of way where livestock are present.

I was invited to the All-Party Parliamentary Group for Animal Welfare on 21 March 2017 in Parliament looking at Livestock Worrying and Dog Control. I mentioned my research and the suggestion of a new right to temporarily divert public rights of way. The work of the All-Party Parliamentary Group for Animal Welfare is ongoing.

I intend to work with CLA colleagues and others interested to lobby for:

- a) Greater flexibility in the network. Adjusting the focus from a more costly and contentious process to a process of greater flexibility.
- b) Also amending aspects of liability to remove anomalies and encourage the provision of permissive access.
- c) A public education scheme related to dogs in the countryside with an emphasis on sheep attacks.



Figure 20: Enjoying some of Scotland's Access Provisions



## Acknowledgements

I would like to thank my wife for her support in keeping things going and looking after the children whilst I went travelling and her patience while I was putting the report together.

I would also like to thank the National Trust for their generosity, both in providing the finance for my research and for their support throughout. Attending their two day discussions at their Inhand Livestock Managers Annual Meeting on Managing Livestock and Public Access was informative and a showcase in good practice. I would particularly like to thank Rob Macklin, Alison Rickett of National Trust and also Liz Evans who spoke at the event.

It would not have been possible to undertake the research without those that I interviewed kindly agreeing to give up their time to assist me. As such I would like to say a big thank you to the following:

Antoinette Sandbach MP, Anne Gray at Scottish Land & Estates Senior Policy Officer (Land Use & Environment), John Goffin, Mauldslie Farm/Arniston Estate, Guy Wedderburn, Callendar Estate, Rob Garner, Access and Policy Adviser to Scottish Natural Heritage and Secretary to National Access Forum, Robert Scott-Dempster, Head of land and rural business department, law firm Gillespie Macandrew, Peter Ord, Past Factor of Balmoral Estate and chairman of Cairngorms Outdoor Access Trust, Angus McNicol Factor, Invercauld Estate, Yvonne Christie, solicitor for Loch Lomond & The Trossachs National Park, Djûke van der Maat, Evelien Kenbeek, Senior adviseur routes en vrijwilligerswerk Landschap Erfgoed Utrecht, Andreas Dijkhuis, Rentmeester, Han van der Voet, François Attenoux, Responsable juridique Fédération française de la randonnée pédestre, Michael Carroll Membership Secretary/Treasurer at Keep Ireland Open, Gerry Gunning, IFA Rural Development Executive Irish Farmers Association, Helen Lawless, Hillwalking, Access & Conservation Officer Mountaineering Ireland, David Walsh, Solicitor and Notary Public and Kevin Colburn, American Whitewater.

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Lastly I would like to thank all those involved in the Nuffield Farming Scholarship Trust for providing such a great opportunity.

**Andrew Gillett**





## Appendices

### Appendix 1: Access along rivers (Spey Fishery Board Guidance)

# MONTHLY BRIEFING

Spey  
Fishery  
Board

April 2008

[www.speyfisheryboard.com](http://www.speyfisheryboard.com)

## PADDLERS ON THE RIVER SPEY: GUIDANCE FOR ANGLERS



The River Spey, as well as being one of the world's finest salmon fishing rivers, is also popular with other water sports users, including canoeists and rafters.

In 2003 the Land Reform (Scotland) Act gave recreational access rights to the general public to most land and water within Scotland. This right applies to recreational, commercial and educational activity, including walking, cycling, horse-riding and canoeing. In 2005 the Land Reform Act confirmed the right of reasonable and responsible pedestrian access (including walkers, cyclists, horses) over land (except curtilage and cropped field) and to non-motorised craft over water.

Guidance on responsible behaviour for both recreational users and land managers is contained within the Scottish Outdoor Access Code, a copy of which is available online at [www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com)

Furthermore, the Scottish Canoe Association has produced detailed guidance under the "Paddler's Access Code" (available from [www.canoescotland.com](http://www.canoescotland.com)), about which the majority of canoeists and rafters are aware. Paddler guidance, specific to the Spey, is available online at [www.speyguide.co.uk](http://www.speyguide.co.uk)

Anglers on the River Spey are quite likely to see canoeists and rafters when they are fishing, approaching anglers from upstream. The Spey Fishery Board continues to work with the Scottish Canoe Association to try to ensure that both anglers and paddlers experience as little disruption as possible to their sport. To facilitate this the Board and the Association have produced the Guide for Anglers printed overleaf. It is hoped that this will allow both anglers and paddlers to enjoy their respective sports with the minimum of disruption. The key to harmony on the river is mutual respect as well as courtesy between all river users.

### SPEY FISHERY BOARD RESEARCH OFFICE

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# MONTHLY BRIEFING

Spey  
Fishery  
Board

## Anglers can reasonably expect that:

- ☐ The leader of the paddling group will endeavour to ensure that anglers are aware of their presence, either by shouting or blowing a whistle that can be heard above the water noise.
- ☐ Once contact has been established, the leader will request the angler's preferred line of passage for the paddling group.
- ☐ The paddlers will wish to cause minimum noise and disturbance to the angler and will move in the direction indicated, water depth and obstructions permitting. Where the angler is standing on the bank, the direction indicated to the paddlers may include going towards the opposite bank, towards the angler and even under the rod. If the angler is wading, canoeists will be happy, where possible, to pass behind the angler i.e. between the angler and the bank.
- ☐ Paddler group leaders will endeavour to have their group pass in fairly close formation, allowing for a reasonable, safe distance between each boat, thus minimising the time taken to pass.
- ☐ If an angler is playing a fish, paddlers normally wait upstream until the fish is landed or until there is an indication from the angler or ghillie that it is safe to pass in the angler's preferred direction.
- ☐ In the event of an inadvertent capsize, paddlers will do their utmost to affect efficient rescue and refloat the upturned canoe as soon as possible. Anglers will know that the River Spey is fast-flowing and its currents can catch out even the most experienced paddlers!
- ☐ Once past the angler, the paddler group will quietly continue on their way downstream. Paddlers will not "loiter" unnecessarily or "play" in a pool where someone is fishing.

## Anglers are requested to:

- ☐ Acknowledge that they are aware of the presence of the paddlers.
- ☐ Carefully consider which line is most practical for both angler and paddler.
- ☐ Give clear direction as to the preferred route the craft should take.
- ☐ Refrain from casting whilst boats pass by (although it is not always necessary to take in line).
- ☐ Only resume fishing once the boats have completely passed the angler.

(Issued jointly by the Scottish Canoe Association & the Spey Fishery Board.)

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## Appendix 2: Netherlands. Collaboration agreement with a landowner : example

### **Agreement** **installation, maintenance, and opening up hiking trail**

The undersigned:

1. The municipality of XXXXX, in respect of this agreement on the basis of article 171 municipal law, legally represented by the Mayor XXX

hereinafter referred to as: municipality;

2. XXXXXXXXXXXX

XXXXXXXXXXXX

XXXXXXXXXXXX

acting and hereinafter referred to as: owner;

and

3. XXXXXXXXXXXX

XXXXXXXXXXXX

XXXXXXXXXXXX

acting as tenant, hereinafter referred to as: user entitled;

collectively, parties.

Considering that:

- Government and provincial policies, as laid down in regional and policy plans, are aimed at promoting recreational community use of the rural area;

- Parties determine the following under which conditions a specific form of recreational co-use is exercised;

agree to the following:

The owner undertakes to tolerate the municipality, which means that the municipality will construct a marked walkway over a length of XXX meters in the plot, known as XXX, Cadastral known as the municipality XXX, section XXX, number XXX XXX as outlined Is indicated on the card attached to this agreement (Annex 1);;

hereinafter referred to as the path

the following terms and conditions:



## **Article 1 Starting and termination**

1. This agreement is concluded for the duration of seven years. It shall enter into force with effect XXX and ends at XXX.
2. Parties not later than six months before the end of the agreement will consult with each other about any continuation, termination and or amendment to this agreement.
3. The Parties may terminate this Agreement for urgent reasons by registered letter in accordance with a notice period of one year after which this Agreement ends, provided that the seriousness of these circumstances justifies the termination.

## **Article 2 Compensation**

### **1. Opening up and marking**

The municipality owes an annual fee of € 0.50 per meter to the owner for opening and marking the path. The eligible fee includes XXX meters at € 0.50 = € XXX total per year for the duration of this agreement (see Appendix 2).

### **2. Revenue loss**

The municipality owes an annual fee of € 0.30 per square meter (the path is 1 meter wide) to the owner. The eligible fee includes XXX meters at € 0.30 = € XXX total per year for the duration of this agreement (see Appendix 2).

3. The Support Point Climbing Paths (see Appendix 3) will, on behalf of the municipality, fulfil the payment of fees as mentioned in previous paragraphs to the owner once a year, for the first time per XXX on a bank account to be designated by the owner (Annex 2 ).

## **Article 3 content and performance of the agreement**

- 1 The owner grants permission to carry out work on, above and beyond the predefined cadastral plot, which are needed for the construction and maintenance of the path and all its attendant facilities provided that takes into account the interests and the wishes of the owner of the ground and as little as possible nuisance and damage.
2. The owner may return the property to the old state after the agreement has expired.
3. For (with express written consent of the owner) after the termination of the agreement the owner is not liable for any compensation, in any case.
4. The municipality makes every effort possible for the required permits, with a view to building up and retaining the path and related facilities.
5. Where it is considered necessary by the owner, physical steps must be taken in order to prevent further entry of private property.

## **Article 4 Replacing the path**



To the extent necessary, the owner may request the municipality to divert the path and / or associated facilities. In consultation, a suitable solution should be sought. This agreement then applies mutatis mutandis to the diverted path or facilities.

### **Article 5 Maintenance**

1. The owner is obliged to keep the path accessible and free of obstacles and large pits for hikers.
2. The municipality is obliged to keep the facilities built in conjunction with the road in good condition. This includes, in particular, the removal of litter and the control of the facilities (such as fencing, marking plates and boarding). Instructions for overdue maintenance will be resolved at the earliest opportunity, but no later than one month after notification, at the owner's first request.
3. The owner agrees with a volunteer group who checks the paths and signage on a monthly basis, keeps track of litter and shows signs of support for Climbing Paths (see Appendix 3, 'Overview of task allocation and tasks of Climbing Paths').

### **Article 6 Harmful acts**

If the path is not opened or carried out, or the owner willfully counteract the performance of the activities referred to in Article 3 or in the case of harmful acts which may cause damage to the character and structure of the road, the municipality may recover the contributions already paid and demand (additional) compensation for non-performance.

### **Article 7 use**

When constructing the path, care is taken to make it clear to the users of the path:

1. The path and associated facilities may only be used between dawn and dusk;
2. What conditions, possible risks or limitations are associated with the use of the path and the associated facilities. At the beginning of the path, boarding indicates that the path is on



private ground, that the hiker makes use of the path at his own risk and that the path is forbidden for dogs;

### **Article 8 Damage and Liability**

1. The municipality indemnifies the owner for any liability by third parties for all direct and demonstrable damage that arises as a direct consequence of the use of the road and associated facilities by third parties.
2. The municipality indemnifies the owner for all direct and demonstrable damage suffered by the owner and arises as a direct consequence of the use of the road and associated facilities by third parties.
3. The owner is only liable for damage caused to the road and the associated facilities, if it can be attributed directly to him.
4. The municipality shall ensure that the damage suffered by the owner and which is reasonably attributable to the recreational use of the part of the site by hikers shall be reimbursed or reimbursed to the owner.
5. Payment of damages will be made after sufficient assumption of the nature and extent of the damage suffered by the injured party. The costs incurred for determining the damage are borne by the municipality.
6. In case of damage to a hiker by cattle, the owner of the cattle on the above-mentioned plots must conclude a liability insurance with a solid insurance company.

### **Article 9 Transfer of ownership and agreement**

1. The owner will make sure that any successors in ownership will assume this agreement and its terms.
2. The agreement may not be transferred by the municipality earlier than after the prior written consent of the owner.

### **Article 10 Withdrawal**

- 1 The parties have the power to terminate the agreement in the interim if the agreement with another landowner regarding this Climbing path ends or ends and no alternative can be found.
- 2 Cancellation shall be made in writing in accordance with a notice period of three months. The parties will be consulted on the amounts to be settled.

### **Article 11 Disputes**

1. Differences between the parties on the interpretation and implementation of this agreement will be resolved as much as possible by a straightforward way.
2. If a difference of opinion has not been resolved by a reasonable way, a dispute is deemed to exist.



3. A dispute is initially dealt with in accordance with the Minitrage Rules of the Netherlands Arbitration Institute.

4. If the dispute arbitration does not lead to a solution, the parties are entitled to submit the dispute to the competent civil court.

#### **Article 12 Other provisions**

1. The annexes attached to this Agreement make it an integral and integral part of it.

2. The agreement will enter into force if all parties have signed the agreement.

Thus four copies made and signed in XXX on XXX

Signature:

Date:

The municipality XXXX

The owner

The User Entitled

Attachments:

1. Map location trail
2. Summary of cover
3. Load Balancing Overview



## **Annex 1: Map location trail**

### **Agreement for construction, maintenance and opening up hiking trail**





## Annex 2: summary of cover

### Agreement for construction, maintenance and opening up hiking trail

Duration of the agreement: 7 years

Period: XXX

ELEMENT	NATURE OF THE FEES	NUMBER of UNITS	PRICE PER UNIT	ANNUAL CONTRIBUTION	TOTAL CONTRIBUTION FOR DURATION AGREEMENT
1. footpath	opening/marking	m	€0.50	€	€
1. footpath	yield loss	m <sup>2</sup>	€0.30	€	€
			<u>Total</u>	€	€

The fee payable by the municipality for a total of € Klompenpad affects XXX (see table above). This amount can be transferred to:

Account  
number:

In the name  
of:

Place:



## Annex 3: Division of labour and tasks Overview Management and maintenance of Clogs paths

### Agreement for construction, maintenance and opening up hiking trail

#### Parties involved:

- A landowners
- B volunteers
- C municipality
- D Landscape Heritage Utrecht

#### Tasks:

##### *A: landowners:*

Obligations as specified in the installation, maintenance, and the agreement opening up the XXXXpad, that is closed with the municipality. Keep it is passable by the path (private) (settlement pits, mowing, keeping visible signage etc.)

##### *B: Volunteers:*

- monthly retrace route
- identify any bottlenecks
- do minor repairs
- small cutting
- check the signage
- check state of maintenance bridges, trellises etc.
- clean up litter
- Coordinator maintains contact with other volunteers and contact LEU and municipality

##### *C: municipality*

- *Responsible for the maintenance of the Klompenpad*
- *Financing major maintenance. These include:*
  - *replace broken bridge, fence*
  - *Replace broken information panel or other board (except routing)*



- *remove tree on the path*

*The municipality can outsource the project to Landscape Heritage Utrecht*

- *Reserve budget for reimbursement of private owners insofar as this is not provided for by subsidy schemes*
- *Enforcement - in particular for the control of dog bans on private grounds in case of accidents*
- *Convert route if an owner does not want to join any new or existing owner. The municipality can outsource the project to Landscape Heritage Utrecht*
- *Reprint folder with large adjustments, such as customize route on map or add text or photo. The implementation will take place in consultation with Landschap Erfgoed Utrecht.*
- *Reserve volunteer contribution à € 100 per year.*

#### *D: Landscape Heritage Utrecht*

- General Coordination maintenance
- Distribution directory and reprint with minor changes
- Management of the brand and concept "clogs paths" (quality Clogs paths)). This includes for example:
  - Proposed route changes keys according to the quality criteria
  - Guarding the uniformity of all Clogs paths
- Facilitate and bind volunteers:
  - organize annual meeting
  - with material (prods, mowers, trimmers etc.)
  - voluntary insurance
  - any recruitment of new volunteers where necessary and by speaking tasks and trailing schema
  - provision of information to volunteers (by play complaints, news, questions etc.)
- Promotion d. m. v press releases, articles in magazines
- [www.klompenpaden.nl](http://www.klompenpaden.nl) website maintenance
- Handling complaints from walkers and owners.
- Answer questions from third parties on the path
- Ensure extension contract the effect of recreation at landowners and users
- Financial handling fees to owners
- Support municipalities
- Annual feedback activities focal point to the relevant commune (by means of log).



### Appendix 3: Dutch example: Agreement for management of Clogs paths in the municipality X

The following parties agree:

The municipality X, legally represented by Mr/Mrs/Ms ....., function, hereinafter referred to as municipality X

and

The Foundation Landschap Erfgoed Utrecht, legally represented by Mr. F. ter Maten, Director, hereinafter referred to as LEU,

considering that:

LEU is the intellectual owner of the Klompenpaden to offer recreants, tourists and passengers a culture-historical landscape route between 5 and 15 km and the municipality X takes on a public responsibility for maintaining the Klompenpaden, and

- The parties aim at the sustainable maintenance of the quality of the Klompenpaden

The municipality declares its daily management and maintenance to LEU, which Declares it to be in charge and to take maintenance, to accept the municipality:

The X, hereinafter referred to as 'The Climbing Path '.

Regarding the management and maintenance of the Klompenpaden, the following are also applicable.

Provisions and terms:

#### Article 1 fee

1.1 for the management and maintenance of the Clogs paths the municipality will pay to the LEU an amount of € X in total (including VAT) per annum. For the reimbursement of compensation, see Annex I.

1.2 billing by LEU of the management fee and to pay fees to the owners (indicating the Clogs paths which the invoicing relates) takes place annually in the first quarter.

#### Article 2 Contract duration

2.1 The undersigned declare that this agreement has been entered into for a period of six (6) years, with effect from XXXX and ending on XXX.

2.2 The agreement ends when the agreed contract period has expired without the need for cancellation.

2.3 The parties will be in contact for one year before the end of the agreement on renewal.

#### Article 3 competence of notice

3.1 Parties have the authority to terminate the contract in whole or in part by written notice with due observance of a notice period of three months if:

- the municipality and/or LEU decision to terminate the agreement for its own reasons;



- the agreement with the landowner regarding one or more Clogs paths ends or is terminated;
- the province of Utrecht decides not to grant more financial contribution to the management of the Clogs paths.

3.2 Cancellation must be made by registered letter

#### **Article 4 Task distribution on Klompenpaths**

4.1 The tasks for the Climbing Paths are performed by the municipality and LEU as agreed and described in Annex II.

4.2 The Municipality and LEU are obliged to perform properly the tasks referred to in the previous paragraph.

4.3 LEU may, in consultation with the municipality, outsource a number of its tasks to third parties.

#### **Article 5 Accidents**

In the case of calamities that hinder the use of the Climbing Paths parties will consult with each other as soon as possible.

#### **Article 6 Final provisions**

In all cases, in which neither the law nor this agreement provides, the municipality and the LEU decide jointly.

#### **Article 7 Annexes**

To this agreement include the following documents:

Annex I: compensation allowance

Annex II: distribution of tasks and tasks management and maintenance Clogs paths;

Thus agreed on:

date ...

to: to:

X De Bilt

by: by:

Landscape Heritage Foundation Utrecht Municipality X

(signature) (signature)

On behalf of this: on behalf of this:

Mr. f. t.

Director



## Annex I Building fee

*Management contract associated with the Clogs paths.*

All prices are incl. VAT.

## Annex II Task division and tasks management and maintenance of Klompenpaden Associated with the Climb paths management contract

*Involved parties:*

*A landowners*

*B volunteers*

*C municipality*

*D Landscape Heritage Utrecht*

*Tasks:*

*A: landowners:*

*Obligations as specified in a contract on recreational use shared with the municipality. It is possible to keep track of the path on its own site (settlement pits, mowing, visible signage etc.)*

*B: volunteers:*

- *Monthly lane route*
- *Signaling possible bottlenecks*
- *Perform minor repairs*
- *Small pruning*
- *Check the signage*
- *Check maintenance of bridges, gates, etc.*
- *Clean up litter*
- *Coordinator maintains contact with other volunteers and contact person LEU*

*C: municipality*

- *Responsible for the maintenance of the Klompenpad*
- *Financing major maintenance. These include:*
  - O replace broken fence*
  - O Replace broken information panel or other board (except routing)*
  - O remove tree on the path*
- The municipality can outsource the project to Landscape Heritage Utrecht*
- *Reserve budget for reimbursement of private owners insofar as this is not provided for by subsidy schemes*
- *Volunteer insurance*
- *Enforcement - in particular for the control of dog bans on private grounds in case of accidents*
- *Financing route if an owner no longer wants to join, either new or existing owner*
- The municipality can outsource the project to Landscape Heritage Utrecht*
- *Financing reprinted folder with major adjustments, such as customize route on map or add text or photo. The performance is carried out by Landscape Heritage Utrecht*
- *Reserve volunteer group contribution à € 100 per year per path*





*D: Landscape Heritage Utrecht*

- *General coordination maintenance*
- *Distribution folder and reprint with minor adjustments*
- *Brand management and concept "Climbing paths" (Quality Climbing Paths). These include:*
  - O Test route changes based on the quality criteria*
  - O Monitoring the uniformity of all Climbing paths*
- *Facilitate and bind volunteers:*
  - O organize annual meeting*
  - O provided with material (sticks, mowers, trimmers etc.)*
  - O possible recruitment of new volunteers where necessary and discuss tasks and follow-up schedule*
  - O information to volunteers (play complaints, news, questions, etc.)*
- *Promotion by means of Press releases, articles in magazines*
- *Maintenance website [www.klompennaden.nl](http://www.klompennaden.nl)*
- *Handle complaints from hikers and owners*
- *Answer third party questions regarding the path*
- *Provide for extension contract recreational co-use with landowners and Users*
- *Financial settlement fees to owners*
- *Support municipalities*
- *Annual feedback activities Aid to the municipality in question*



## Appendix 4: Utrecht te Voet:

A leaflet describing the project:

**Utrecht te Voet**  
De wandellijnen van Utrecht te Voet voeren door 'stedelijk landschap' dat u niet of nauwelijks kent. Ze lopen niet alleen door bos en heide, maar beginnen al bij de voordeur. Al wandelend doorbrekt u de barrières rond de stad om te kunnen genieten van landschap, natuur en cultuurhistorie. Onderweg kunt u overstappen op een andere wandelijn, of terugreizen met trein, tram of bus. U wandelt van de binnenstad naar het buitengebied. Of andersom, want alle routes zijn in twee richtingen beschreven.

**Routebeschrijving**  
Op [www.utrechttevoet.nl](http://www.utrechttevoet.nl) kunt u van elke wandelijn een routebeschrijving met kaartje uitprinten. Elke beschrijving geeft tevens informatie over de lengte en de bereikbaarheid van de betreffende route.

**Knooppunten**  
Op een knooppunt heeft u de keuze uit meerdere wandellijnen. Elk knooppunt heeft een eigen naam, die terug komt op de kaart en in de routebeschrijving. Zo kunt u zelf uw route samenstellen en de keuze maken voor een korte zondagse wandeling of voor een stevige dagtocht.



**Markering**  
De wandellijnen zijn in beide richtingen gemarkeerd met pijlen; elke route heeft een eigen kleur. Een verbindingsslus herkent u aan een grijze pijl met zwarte rand. We raden aan om de wandelroutes te volgen aan de hand van de markering én routebeschrijving met kaartje; zie [www.utrechttevoet.nl](http://www.utrechttevoet.nl).



**Openbaar vervoer**  
Veel Utrecht te Voet-wandellijnen beginnen in de binnenstad en eindigen bij een station of een bus/tramhalte. Ze staan ingetekend op de kaartjes en vermeld in de routebeschrijving. Openbaar Vervoer Reisinformatie: [www.9292ov.nl](http://www.9292ov.nl), of tel 0900-9292 (70 cent per minuut).

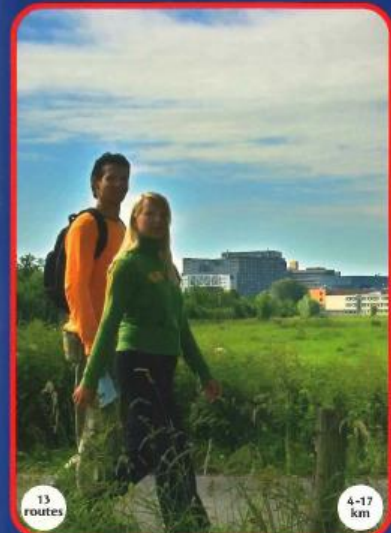
**Iets onjuist op de route?**  
De Utrecht te Voet-wandellijnen zijn ontwikkeld door Stichting Wandelplatform-LAW en worden onderhouden door vrijwilligers. Hoewel regelmatig controles plaatsvinden, kan de situatie in het veld veranderen. Wij stellen het op prijs als u dit meldt op [www.utrechttevoet.nl](http://www.utrechttevoet.nl).

**Verbeteren van de wandellijnen**  
De wandellijnen zijn zo veilig en aantrekkelijk mogelijk gemaakt. Knooppunten worden onder de aandacht gebracht van de verantwoordelijke instanties.



## Utrecht te Voet

Wandellijnen vanuit de binnenstad  
naar het buitengebied



[www.utrechttevoet.nl](http://www.utrechttevoet.nl)



### Translated text from the website:

Take a look at Utrecht from another side and walk into or out of the city with one of the thirteen Utrecht on Foot hiking routes!

As you walk, you break through the barriers around the city and enjoy the - often unknown - nature and cultural history. Getting around on another hiking route is very easy. You travel back by train, tram or bus.

The routes vary in length from 4 to 17 km and are marked with coloured arrows. Current directions in two directions are on this site. Easy to print, just like the detail and overview of sights. Thanks to the interactive nature of the retail cards, you can already make a virtual walk alongside these 'highlights' on the way.

Text and Explanation

Directions and map

Each route line - ranging from 4 to 17 km - is a driving directions and detailed map available. Move the mouse to the map and click on the route of your preference. A detailed map will appear that you



can print, along with directions and information about what's on the way. For information about the centre of Utrecht click [here](#).

### Nodes

At a junction you have the choice of several hiking routes. Each node has its own name, which returns to the map and directions. For example, you can compile your hiking route and make a choice for a short 'Sunday afternoon walk' or for a tight day trip.

### Marking

The lanes are marked in both directions with arrows; Each route has its own colour. A connection loop recognizes a grey arrow with black border. We recommend to follow the hiking trails by means of the mark and directions with a ticket.

### Public transport

Many Utrecht to Footwalls start in the city center and end at a station or bus / tram stop. They are subscribed to the tickets and listed in the directions.

Personal travel advice can be obtained from Public Transport Travel Information: [www.9292ov.nl](http://www.9292ov.nl) , or call 0900-9292 (70 cents per minute).

### Additional information

With each directions you will not only find information about public transport, but also about catering on the way and an overview on which you can switch to another Utrecht on foot hiking line.

### Something wrong on the route?

The Utrecht to Voet hiking routes are developed by the Wandelnet Foundation and are maintained by volunteers. The walkways are made as safe and attractive as possible. Challenges are brought to the attention of the responsible authorities.

Although regular checks can take place, the situation may change in the field. We appreciate your report on this site. A response option has been included on each individual route page.



## Appendix 5: France: example, a hikers' charter

### :RIGHT OF WAY AGREEMENT, DEVELOPMENT, MAINTENANCE, AND MARKUP

#### BETWEEN

The local authority [name], [address], [name and title of legal representative]

Hereinafter referred to as the community.

#### OF THE FIRST PART.

The departmental Committee of the hiking of [Department], [address], represented by [name and title of legal representative], association under the Act of 1901 representative the French Federation of hiking in the Department [name of Department] within the meaning of article L.131 - 11 of the Code of the sport.

Hereinafter referred to as the Committee.

#### OF THE SECOND PART.

Mr./Ms. [name], owner or any the less holder the right to use the [identification] path taken by the route [name of the route]

Hereinafter referred to as the owner.

#### OF THIRD PART,

The Committee is the representative of the French Hiking Federation in its department and has as a statutory object the development of hiking both for its sports practice and for the discovery and preservation of the environment, tourism and leisure. In this capacity, he works as an expert in development, maintenance and mark-up on the hiking routes of the Federation or by order of the local authorities. It has the authority to represent the Federation on its territory and to implement the national tools, elements and references in the department.

#### ARTICLE 1 - PLACE (X) COVERED BY THE AUTHORIZATION

The purpose of this agreement is to define the conditions under which the owner authorizes the passage of the pedestrian public, as well as the implementation of the maintenance and marking operations relating thereto, to the parcel (s) :

City:

Section (s) cadastral (s) and number (s) parcel (s):

as shown on the plan attached.



## **ARTICLE 2 - SCOPE OF AUTHORISATION**

2.1. the owner allows the passage of the public pedestrian only on the property. This authorization is valid for the circulation of the public and the officers of the Committee.

2.2 the owner authorizes the officers of the Committee to conduct the planning, markup and light maintenance necessary to ensure the safety of users and the need to preserve the State of the property in question. Development operations mean:

- the implementation of any necessary signaling support for the direction of the public, additional markup, or in the absence of natural materials for the affixing of the markup.
- the realization of specific equipment to secure the path

## **ARTICLE 3 - OBLIGATIONS OF THE COMMITTEE AND THE COMMUNITY**

### **3.1 Obligations Related to Marking and Development Operations**

The Committee and the Collective undertake to conduct their operations on the ground without damaging any real or movable elements on the property concerned, in compliance with the official charter of the markings and signposting of the French Hiking Federation. The Committee and the Community become responsible for the safety of the route taken by the itinerary vis-à-vis the public, since this obligation no longer affects the Owner, who remains liable only for the wrongful acts he may commit.

### **3.2. Closing of the itinerary by the Committee or the Collectivity**

The Committee and the Collectivity undertake to temporarily close the itinerary if they find that the conditions of a safe practice are no longer met or to its definitive closure if the track no longer serves as a support routing. A closed closure also entails the obligation for the Committee and the Collectivity to notify the owner by any means.

### **3.3 termination of right of way**

In the cases referred to in article 4, if the owner suspends or cancels the right of way, the Committee and the community undertake to implement the means at their disposal to warn the public of this closure and possibly alternative route that they could implement.

### **3.4 response times**

The Committee and the community are required to meet the deadlines referred to in article 4.3. and, in the event of a final closing, to use the means at its disposal to prevent the public.

## **ARTICLE 4 - OBLIGATIONS OF THE OWNER**

### **4.1. obligations of the passage**



The owner agrees to let circulate the public, being understood that only the means of movement mentioned in article 2.1. are allowed.

#### 4.2. Obligations related to development

The Owner agrees to authorize the operations referred to in Article 2.2. And shall not deteriorate the facilities installed, it shall notify the Committee or the Collectivity if any of these facilities proves incompatible with the preservation of its property, causes it any disorder or if it proves to be dangerous . The Landlord undertakes not to remove the development element himself, but may temporarily suspend the authorization for the passage in accordance with Articles 3.3 and 4.3.

#### 4.3 obligations related to the suspension or withdrawal of the authorisation

The owner may suspend the authorization of passage of the public if it finds that the path passing on his property turns out to be dangerous to the public or in the conditions referred to in article 3.2. In this hypothesis it warns the Committee or the community that are required to perform actions to address the problem within a period of 15 days.

The owner can remove the authorization of passage of the public, in which case he undertakes to inform the Committee or the community which are required to conduct public information operations and the withdrawal of elements of development within three months.

### ARTICLE 5 - DURATION

This agreement shall take effect on the day of its signature for a period of 2 (two) years, it is renewed by tacit agreement for the same duration, except denunciation by one or other of the parties within the time limit provided for in items 3.2. and 4.3.

### ARTICLE 6 - MISCELLANEOUS

This authorization does not imply any easement of passage likely to encumber the aforementioned property. It can not, under any circumstances, be assimilated to a lease or to any association or partnership.

Made in 4 original copies,





For the community

For the Committee,

For the owner.



## Appendix 6: France : a specimen agreement for a new permissive route

### Respect the protected areas

In France, many remarkable natural spaces (national parks, natural reserves, etc.) are protected by regulatory measures.  
Whether on the coast, in the mountains, in the wetlands or elsewhere, these spaces welcome hikers. Check before you leave for regulatory requirements.

### Stay on the trails

In nature, only the path is the territory of man.  
Stay on the roads to avoid trampling the species. Do not take shortcuts and respect fragile spaces.

### Cleaning our soles

Without knowing it, we can harm biodiversity  
by bringing seeds or germs from other natural environments into the soil glued to our soles. Think of regularly cleaning the soles of your shoes, especially after a stay abroad.

### Close fences and barriers

On the roads, we are always on the property of others.  
Remember to close the fences and gates after your passage.

### Keep dogs on a leash

We consider him a friend, wild animals see him as a predator!  
For the comfort and safety of all, keep your pets on a leash.

### Recover our waste

The best waste is the one we do not produce.  
Choose the products you use. Collect and collect your waste with you. Volunteer to preserve our environment.

### Sharing natural spaces

Hiking is not the only activity practiced on the roads.  
Share the natural area with the other sports activities and remain attentive to other users.

### Let the flowers grow

They are prettier in their natural environment than in a bouquet.  
Do not tear off a flower, bud or young shoot but learn to recognize the fauna and flora in their natural environment.

### Let's be discreet

Wild animals are not used to hearing our sounds .  
Stay discreet for a chance to see them. Never touch a young animal, his mother would abandon it.

### Do not make a fire

Fire represents a danger for hikers and nature.  
Follow the instructions and in case of fire, call 18 or 112.



## Preserving our sites

Be a quality actor your hiking sites!

A defective panel, a pollution problem, a need for security ... Thanks to the [Suric @ te program](#) , report any anomaly on [sentinelles.sportsdenature.fr](https://sentinelles.sportsdenature.fr) . Your report will be dealt with by the sports federations of nature and the general councils in connection with the national resources of the sports of nature of the Ministry of Sports.

## Privilege carpooling and public transport

Transportation is one of the main sources of greenhouse gas emissions.

Prefer carpooling or public transport for hiking. Stay on the tracks open to the vehicles and park in the spaces provided for this purpose.



**Appendix 7:**  
**Statutory provisions**  
**relating to liability for**  
**Ireland**  
*Number 10 of 1995*

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**OCCUPIERS' LIABILITY ACT, 1995**

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ARRANGEMENT OF SECTIONS

Section

1. [Interpretation.](#)
2. [Replacement of common law rules.](#)
3. [Duty owed to visitors.](#)
4. [Duty owed to recreational users or trespassers.](#)
5. [Modification of occupiers' duty to entrants.](#)
6. [Duty of occupiers towards strangers to contracts.](#)
7. [Liability of occupiers for negligence of independent contractors.](#)
8. [Saver.](#)
9. [Short title and commencement.](#)



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*Number 10 of 1995*

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**OCCUPIERS' LIABILITY ACT, 1995**

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AN ACT TO AMEND THE LAW RELATING TO THE  
LIABILITY OF OCCUPIERS OF PREMISES  
(INCLUDING LAND) IN RESPECT OF  
DANGERS EXISTING ON SUCH PREMISES  
FOR INJURY OR DAMAGE TO PERSONS OR  
PROPERTY WHILE ON SUCH PREMISES AND  
TO PROVIDE FOR CONNECTED MATTERS.  
[17<sup>th</sup> June, 1995]



BE IT ENACTED BY THE OIREACHTAS AS  
FOLLOWS:

Interpretation.

1.—(1) In this Act, unless the context otherwise requires—

“damage” includes loss of property and injury to an animal;

“danger”, in relation to any premises, means a danger due to the state of the premises;

“entrant”, in relation to a danger existing on premises, means a person who enters on the premises and is not the sole occupier;

“injury” includes loss of life, any disease and any impairment of physical or mental condition;

“occupier”, in relation to any premises, means a person exercising such control over the state of the premises that it is reasonable to impose upon that person a duty towards an entrant in respect of a particular danger thereon and, where there is more than one occupier of the same premises, the extent of the duty of each occupier towards an entrant depends on the degree of control each of them has over the state of the premises and the particular danger thereon and whether, as respects each of them, the entrant concerned is a visitor, recreational user or trespasser;

“premises” includes land, water and any fixed or moveable structures thereon and also includes vessels, vehicles, trains, aircraft and other means of transport;

“property”, in relation to an entrant, includes the property of another in the possession or under the control of the entrant while the entrant is on the premises of the occupier;

“recreational activity” means any recreational activity conducted, whether alone or with others, in the open air (including any sporting activity), scientific research and nature study so conducted, exploring caves and visiting sites and buildings of historical, architectural, traditional, artistic, archaeological or scientific importance;

“recreational user” means an entrant who, with or without the occupier's permission or at the occupier's implied invitation, is present on premises without a charge (other than a reasonable charge in respect of the cost of providing vehicle parking facilities) being



imposed for the purpose of engaging in a recreational activity, including an entrant admitted without charge to a national monument pursuant to [section 16](#) (1) of the [National Monuments Act, 1930](#) , but not including an entrant who is so present and is—

- (a) a member of the occupier's family who is ordinarily resident on the premises,
- (b) an entrant who is present at the express invitation of the occupier or such a member, or
- (c) an entrant who is present with the permission of the occupier or such a member for social reasons connected with the occupier or such a member;

“trespasser” means an entrant other than a recreational user or visitor;

“visitor” means—

- (a) an entrant, other than a recreational user, who is present on premises at the invitation, or with the permission, of the occupier or any other entrant specified in *paragraph (a), (b) or (c)* of the definition of “recreational user”,
- (b) an entrant, other than a recreational user, who is present on premises by virtue of an express or implied term in a contract, and
- (c) an entrant as of right,

while he or she is so present, as the case may be, for the purpose for which he or she is invited or permitted to be there, for the purpose of the performance of the contract or for the purpose of the exercise of the right, and includes any such entrant whose presence on premises has become unlawful after entry thereon and who is taking reasonable steps to leave.

(2) In this Act—

- (a) a reference to a section is to a section of this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection is to the subsection of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and





(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

Replacement of common law rules.

**2.—**(1) Subject to [section 8](#), the duties, liabilities and rights provided for by this Act shall have effect in place of the duties, liabilities and rights which heretofore attached by the common law to occupiers of premises as such in respect of dangers existing on their premises to entrants thereon.

(2) This Act does not apply to a cause of action which accrued before the commencement of this Act.

Duty owed to visitors.

**3.—**(1) An occupier of premises owes a duty of care (“the common duty of care”) towards a visitor thereto except in so far as the occupier extends, restricts, modifies or excludes that duty in accordance with [section 5](#).

(2) In this section “the common duty of care” means a duty to take such care as is reasonable in all the circumstances (having regard to the care which a visitor may reasonably be expected to take for his or her own safety and, if the visitor is on the premises in the company of another person, the extent of the supervision and control the latter person may reasonably be expected to exercise over the visitor's activities) to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger existing thereon.

Duty owed to recreational users or trespassers.

**4.—**(1) In respect of a danger existing on premises, an occupier owes towards a recreational user of the premises or a trespasser thereon (“the person”) a duty—

(a) not to injure the person or damage the property of the person intentionally, and

(b) not to act with reckless disregard for the person or the property of the person,

except in so far as the occupier extends the duty in accordance with [section 5](#).

(2) In determining whether or not an occupier has so acted with reckless disregard, regard shall be had to all the circumstances of the case, including—

(a) whether the occupier knew or had reasonable grounds for believing that a danger existed on the premises;



- (b) whether the occupier knew or had reasonable grounds for believing that the person and, in the case of damage, property of the person, was or was likely to be on the premises;
  - (c) whether the occupier knew or had reasonable grounds for believing that the person or property of the person was in, or was likely to be in, the vicinity of the place where the danger existed;
  - (d) whether the danger was one against which, in all the circumstances, the occupier might reasonably be expected to provide protection for the person and property of the person;
  - (e) the burden on the occupier of eliminating the danger or of protecting the person and property of the person from the danger, taking into account the difficulty, expense or impracticability, having regard to the character of the premises and the degree of the danger, of so doing;
  - (f) the character of the premises including, in relation to premises of such a character as to be likely to be used for recreational activity, the desirability of maintaining the tradition of open access to premises of such a character for such an activity;
  - (g) the conduct of the person, and the care which he or she may reasonably be expected to take for his or her own safety, while on the premises, having regard to the extent of his or her knowledge thereof;
  - (h) the nature of any warning given by the occupier or another person of the danger; and
  - (i) whether or not the person was on the premises in the company of another person and, if so, the extent of the supervision and control the latter person might reasonably be expected to exercise over the other's activities.
- (3) (a) Where a person enters onto premises for the purpose of committing an offence or, while present thereon, commits an offence, the occupier shall not be liable for



a breach of the duty imposed by *subsection (1) (b)* unless a court determines otherwise in the interests of justice.

(b) In *paragraph (a)* “offence” includes an attempted offence.

(4) Notwithstanding *subsection (1)*, where a structure on premises is or has been provided for use primarily by recreational users, the occupier shall owe a duty towards such users in respect of such a structure to take reasonable care to maintain the structure in a safe condition:

Provided that, where a stile, gate, footbridge or other similar structure on premises is or has been provided not for use primarily by recreational users, the occupier's duty towards a recreational user thereof in respect of such structure shall not be extended by virtue of this subsection.

Modification of occupiers' duty to entrants.

**5.—**(1) An occupier may by express agreement or notice extend his or her duty towards entrants under [sections 3](#) and [4](#).

(2) (a) Subject to this section and to [section 8](#), an occupier may by express agreement or notice restrict, modify or exclude his or her duty towards visitors under [section 3](#).

(b) Such a restriction, modification or exclusion shall not bind a visitor unless—

(i) it is reasonable in all the circumstances, and

(ii) in case the occupier purports by notice to so restrict, modify or exclude that duty, the occupier has taken reasonable steps to bring the notice to the attention of the visitor.

(c) For the purposes of *paragraph (b) (ii)* an occupier shall be presumed, unless the contrary is shown, to have taken reasonable steps to bring a notice to the attention of a visitor if it is prominently displayed at the normal means of access to the premises.

(3) In respect of a danger existing on premises, a restriction, modification or exclusion referred to in *subsection (2)* shall not be taken as allowing an occupier to injure a visitor or damage the property of



a visitor intentionally or to act with reckless disregard for a visitor or the property of a visitor.

(4) In determining for the purposes of *subsection (3)* whether or not an occupier has acted with reckless disregard, regard shall be had to all the circumstances of the case including, where appropriate, the matters specified in *subsection (2)* of [section 4](#).

(5) Where injury or damage is caused to a visitor or property of a visitor by a danger of which the visitor had been warned by the occupier or another person, the warning is not, without more, to be treated as absolving the occupier from liability unless, in all the circumstances, it was enough to enable the visitor, by having regard to the warning, to avoid the injury or damage so caused.

Duty of occupiers towards strangers to contracts.

**6.**—(1) The duty which an occupier of premises owes to an entrant under this Act shall not be capable of being modified or excluded by a contract to which the entrant is a stranger, whether the occupier is bound by the contract to permit the entrant to enter or use the premises or not.

(2) For the purposes of this section, an entrant shall be deemed to be a stranger to a contract if the entrant is not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and, accordingly, a party to the contract who has ceased to be so entitled shall be deemed to be a stranger to the contract.

(3) This section applies to contracts entered into before the commencement of this Act, as well as to those entered into after such commencement.

Liability of occupiers for negligence of independent contractors.

**7.**—An occupier of premises shall not be liable to an entrant for injury or damage caused to the entrant or property of the entrant by reason of a danger existing on the premises due to the negligence of an independent contractor employed by the occupier if the occupier has taken all reasonable care in the circumstances (including such steps as the occupier ought reasonably to have taken to satisfy himself or herself that the independent contractor was competent to do the work concerned) unless the occupier has or ought to have had knowledge of the fact that the work was not properly done.



Saver.

**8.**—Nothing in this Act shall be construed as affecting any enactment or any rule of law relating to—

- (a) self-defence, the defence of others or the defence of property,
- (b) any liability imposed on an occupier as a member of a particular class of persons including the following classes of persons:
  - (i) persons by virtue of a contract for the hire of, or for the carriage for reward of persons or property in, any vessel, vehicle, train, aircraft or other means of transport;
  - (ii) persons by virtue of a contract of bailment; and
  - (iii) employers in respect of their duties towards their employees, or
- (c) any liability imposed on an occupier for a tort committed by another person in circumstances where the duty imposed on the occupier is of such a nature that its performance may not be delegated to another person.

Short title and commencement.

**9.**—(1) This Act may be cited as the Occupiers' Liability Act, 1995.

(2) This Act shall come into operation one month after the date of its passing.

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Act Referred to

[National Monuments Act, 1930](#)

1930, No. 2



## Appendix 8: Statutory provisions relating to occupiers in Scotland

### Occupiers' Liability (Scotland) Act 1960

#### 1960 CHAPTER 30 8 and 9 Eliz 2

An Act to amend the law of Scotland as to the liability of occupiers and others for injury or damage occasioned to persons or property on any land or other premises by reason of the state of the premises or of anything done or omitted to be done thereon; and for purposes connected with the matter aforesaid.

[2nd June 1960]

#### **1Variation of rules of common law as to duty of care owed by occupiers.**

(1)The provisions of the next following section of this Act shall have effect, in place of the rules of the common law, for the purpose of determining the care which a person occupying or having control of land or other premises (in this Act referred to as an "occupier of premises") is required, by reason of such occupation or control, to show towards persons entering on the premises in respect of dangers which are due to the state of the premises or to anything done or omitted to be done on them and for which he is in law responsible.

(2)Nothing in those provisions shall be taken to alter the rules of the common law which determine the person on whom in relation to any premises a duty to show care as aforesaid towards persons entering thereon is incumbent.

(3)Those provisions shall apply, in like manner and to the same extent as they do in relation to an occupier of premises and to persons entering thereon,—

(a)in relation to a person occupying or having control of any fixed or moveable structure, including any vessel, vehicle or aircraft, and to persons entering thereon; and

(b)in relation to an occupier of premises or a person occupying or having control of any such structure and to property thereon, including the property of persons who have not themselves entered on the premises or structure.

#### **2Extent of occupier's duty to show care.**

(1)The care which an occupier of premises is required, by reason of his occupation or control of the premises, to show towards a person entering thereon in respect of dangers which are due to the state of the premises or to anything done or omitted to be done on them and for which the occupier is in law responsible shall, except in so far as he is entitled to and does extend, restrict, modify or exclude by agreement his obligations towards that person, be such care as in all the circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger.

(2)Nothing in the foregoing subsection shall relieve an occupier of premises of any duty to show in any particular case any higher standard of care which in that case is incumbent on him by virtue of any enactment or rule of law imposing special standards of care on particular classes of persons.





(3) Nothing in the foregoing provisions of this Act shall be held to impose on an occupier any obligation to a person entering on his premises in respect of risks which that person has willingly accepted as his; and any question whether a risk was so accepted shall be decided on the same principles as in other cases in which one person owes to another a duty to show care.

### **3Landlord's liability by virtue of responsibility for repairs.**

(1) Where premises are occupied or used by virtue of a tenancy under which the landlord is responsible for the maintenance or repair of the premises, it shall be the duty of the landlord to show towards any persons who or whose property may from time to time be on the premises the same care in respect of dangers arising from any failure on his part in carrying out his responsibility aforesaid as is required by virtue of the foregoing provisions of this Act to be shown by an occupier of premises towards persons entering on them.

(2) Where premises are occupied or used by virtue of a sub-tenancy, the foregoing subsection shall apply to any landlord who is responsible for the maintenance or repair of the premises comprised in the sub-tenancy.

(3) Nothing in this section shall relieve a landlord of any duty which he is under apart from this section.

(4) For the purposes of this section, any obligation imposed on a landlord by any enactment by reason of the premises being subject to a tenancy shall be treated as if it were an obligation imposed on him by the tenancy, "tenancy" includes a statutory tenancy which does not in law amount to a tenancy and includes also any contract conferring a right of occupation, and "landlord" shall be construed accordingly.

(5) This section shall apply to tenancies created before the commencement of this Act as well as to tenancies created after its commencement.

### **4Application to Crown.**

This Act shall bind the Crown, but as regards the liability of the Crown for any wrongful or negligent act or omission giving rise to liability in reparation shall not bind the Crown any further than the Crown is made liable in respect of such acts or omissions by the [M1](#)Crown Proceedings Act 1947, and that Act and in particular section two thereof shall apply in relation to duties under section two or section three of this Act as statutory duties.

### **Annotations:**

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### **Marginal Citations**

[M11947 c. 44.](#)

### **5Short title, extent and commencement.**

(1) This Act may be cited as the Occupiers' Liability (Scotland) Act 1960, and shall extend to Scotland only.

(2) This Act shall come into operation at the end of the period of three months beginning with the day on which it is passed.



## Appendix 9 : Alabama Recreational Use Statute

### CODE OF ALABAMA

#### TITLE 35: PROPERTY

#### CHAPTER 15: DUTY OF CARE OWED PERSONS ON PREMISES FOR SPORTING OR RECREATIONAL PURPOSES

#### ARTICLE 1: GENERAL PROVISIONS

##### **§35-15-1. No duty owed except as provided in section 35-15-3**

An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry and use by others for hunting, fishing, trapping, camping, water sports, hiking, boating, sight-seeing, caving, climbing, rappelling or other recreational purposes or to give any warning of hazardous conditions, use of structures or activities on such premises to persons entering for the above-stated purposes, except as provided in section 35-15-3.

HISTORY: Acts 1965, No. 463, p. 663, s 1; Acts 1991, No. 91-666, p. 1274, s 1.

##### **§35-15-2. Effect of permission to use premises**

An owner, lessee or occupant of premises who gives permission to another to hunt, fish, trap, camp, hike, sight-see, cave, climb, rappel or engage in other sporting or recreational activities upon such premises does not thereby extend any assurance that the premises are safe for such purpose nor constitute the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed or assume responsibility for or incur liability for any injury to person or property caused by an act of such person to whom permission has been granted, except as provided in section 35-15-4.

HISTORY: Acts 1965, No. 463, p. 663, s 2; Acts 1991, No. 91-666, p. 1274, s 1.

##### **§35-15-3. Otherwise existing liability not limited**

This article does not limit the liability which otherwise exists for wilful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, hike, cave, climb, rappel or sight-see was granted for commercial enterprise for profit; or for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike or sight-see was granted to third persons as to whom the person granting permission, or the owner, lessee or occupant of the premises owed a duty to keep the premises safe or to warn of danger.

HISTORY: Acts 1965, No. 463, p. 663, s 3; Acts 1991, No. 91-666, p. 1274, s 1.



#### **§35-15-4. General duty of care or ground of liability not created**

Nothing in this article creates a duty of care or ground of liability for injury to person or property.

HISTORY: Acts 1965, No. 463, p. 663, s 4.

#### **§35-15-5. Right to go on lands of another without permission not created**

Nothing in this article shall be construed as granting or creating a right for any person to go on the lands of another without permission of the landowner.

HISTORY: Acts 1965, No. 463, p. 663, s 5.

### **ARTICLE 1: Limitation of Liability for Non-commercial Public Recreational Use of Land.**

#### **§35-15-20. Legislative intent**

It is hereby declared that there is a need for outdoor recreational areas in this state which are open for public use and enjoyment; that the use and maintenance of these areas will provide beauty and openness for the benefit of the public and also assist in preserving the health, safety, and welfare of the population; that it is in the public interest to encourage owners of land to make such areas available to the public for non-commercial recreational purposes by limiting such owners' liability towards persons entering thereon for such purposes; that such limitation on liability would encourage owners of land to allow non-commercial public recreational use of land which would not otherwise be open to the public, thereby reducing state expenditures needed to provide such areas.

HISTORY: Acts 1981, No. 81-825, p. 1468, s 1.

#### **§35-15-21. Definitions**

Unless the context thereof clearly indicates to the contrary, as used in this article the following terms shall have the following meanings:

(1) Owner. Any public or private organization of any character, including a partnership, corporation, association, any individual, or any federal, State or local political subdivision or any agency of any of the foregoing having a legal right of possession of outdoor recreational land. For the purpose of this article, an employee or agent of the owner, but not an independent contractor while conducting activities upon the outdoor recreational land, is deemed to be an owner.



(2) Outdoor recreational land. Land and water, as well as buildings, structures, machinery and other such appurtenances used for or susceptible of recreational use.

(3) Recreational use or recreational purpose. Participation in or viewing of activities including, but not limited to, hunting, fishing, water sports, aerial sports, hiking, camping, picnicking, winter sports, animal or vehicular riding, or visiting, viewing or enjoying historical, archeological, scenic or scientific sites, and any related activity.

(4) Person. Any individual, regardless of age, maturity, or experience.

(5) Commercial recreational use. Any use of land for the purpose of receiving consideration for opening such land to recreational use where such use or activity is profit-motivated. Consideration does not include any benefits provided by law in accordance with this article, any other state or federal law, or in the form of good will for permitting recreational use as stated in this article; nor does consideration include a charge by the landowner for maintenance fees where the primary use of the land is for other than public recreational purposes.

HISTORY: Acts 1981, No. 81-825, p. 1468, s 2.

### **§35-15-22. Inspection and warning not required**

Except as specifically recognized by or provided in this article, an owner of outdoor recreational land who permits non-commercial public recreational use of such land owes no duty of care to inspect or keep such land safe for entry or use by any person for any recreational purpose, or to give warning of a dangerous condition, use, structure, or activity on such land to persons entering for such purposes.

HISTORY: Acts 1981, No. 81-825, p. 1468, s 3.

### **§35-15-23. Limitations on legal liability of owner**

Except as expressly provided in this article, an owner of outdoor recreational land who either invites or permits non-commercial public recreational use of such land does not by invitation or permission thereby:

(1) Extend any assurance that the outdoor recreational land is safe for any purpose;

(2) Assume responsibility for or incur legal liability for any injury to the person or property owned or controlled by a person as a result of the entry on or use of such land by such person for any recreational purpose; or



(3) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

HISTORY: Acts 1981, No. 81-825, p. 1468, s 4.

### **§35-15-24. Otherwise existing liability not limited**

(a) Nothing in this article limits in any way legal liability which otherwise might exist when such owner has actual knowledge:

(1) That the outdoor recreational land is being used for non-commercial recreational purposes;

(2) That a condition, use, structure, or activity exists which involves an unreasonable risk of death or serious bodily harm;

(3) That the condition, use, structure, or activity is not apparent to the person or persons using the outdoor recreational land; and

(4) That having this knowledge, the owner chooses not to guard or warn, in disregard of the possible consequences.

(b) The test set forth in subsection (a) of this section shall exclude constructive knowledge by the owner as a basis of liability and does not create a duty to inspect the outdoor recreational land.

(c) Nothing in this article shall be construed to create or expand any duty or ground of liability or cause of action for injury to persons on property.

HISTORY: Acts 1981, No. 81-825, p. 1468, s 5.

### **§35-15-25. Duty of care by persons using outdoor recreational land**

Nothing in this article shall be construed to relieve any person using outdoor recreational land open for non-commercial public recreational use from any obligation which such person may have in the absence of this article to exercise care in the use of such land and in the activities thereon, or from legal consequences of failure to employ such care.

HISTORY: Acts 1981, No. 81-825, p. 1468, s 6.

### **§35-15-26. Provisions not applicable to commercial recreational enterprise**

The liability limitation provisions of this article shall not apply in any cause of action arising from acts or omissions occurring on or connected with land upon which any commercial recreational enterprise is conducted.



HISTORY: Acts 1981, No. 81-825, p. 1468, s 7.

### **§35-15-27. Governmental immunity**

Nothing in this article shall be so construed as to alter or repeal any immunity from law suit presently conferred by law upon the state or political subdivision thereof, or any agency or instrumentality thereof.

HISTORY: Acts 1981, No. 81-825, p. 1468, s 8.

### **§35-15-28. Owner must establish public use**

(a) The liability limitation protection of this article may be asserted only by an owner who can reasonably establish that the outdoor recreational land was open for non-commercial use to the general public at the time of the injury to a person using such land for any public recreational purpose. Any owner may create a rebuttable presumption of having opened land for non-commercial public recreational use by:

(1) Posting signs around the boundaries and at the entrance(s) of such land; or

(2) Publishing a notice in a newspaper of general circulation in the locality in which the outdoor recreational land is situated, and describing such land; or

(3) Recording a notice in the public records of any county in which any part of the outdoor recreational land is situated, and describing such land; or

(4) Any act similar to subdivisions (1), (2), or (3) of subsection (a), which is designed to put the public on notice that such outdoor recreational land is open to non-commercial public recreational use.

(b) The assertion of any of the provisions of the article by an owner shall not be construed to be (1) expressed or implied dedication; (2) granting of an easement; or (3) granting of an irrevocable license, to any person or the public to use such outdoor recreational land.

(c) Any person who enters non-commercial outdoor recreational land for any recreational purpose either with or without an invitation or permission from the owner, and either with or without knowledge that the land is held open for non-commercial public recreational use is subject to the provisions of this article.

(d) The availability of outdoor recreational land for non-commercial public use may be conditioned upon reasonable restrictions on the time, place and manner of public use as the owner shall establish.

HISTORY: Acts 1981, No. 81-825, p. 1468, s 9.





## Appendix 10: Author's suggested Addition to the Highways Act 1980

### 135C Temporary diversion where livestock are present

(1) Where a footpath or bridleway passes over any land on which livestock are to be present, the occupier of the land may, subject to the provisions of this section, temporarily divert--

- (a) so much of the footpath or bridleway as passes over that land, and
- (b) so far as is requisite for effecting that diversion, so much of the footpath or bridleway as passes over other land occupied by him.

(2) A person may not under this section divert any part of a footpath or bridleway if--

- (a) the period or periods for which that part has been diverted under this section, and
- (b) the period or periods for which any other part of the same footpath or bridleway passing over land occupied by him has been diverted under this section,

amount in aggregate to more than for a single period of no more than 40 consecutive days in any period of 90 days unless such further period has been otherwise approved by the parish council or parish meeting for an area which does not exist as a parish.

(3) Where a person diverts a footpath or bridleway under this section--

- (a) he shall do so in a manner which is reasonably convenient for the exercise of the public right of way, and
- (b) where the diversion is by means of a temporary footpath or bridleway, he shall so indicate the line of the temporary footpath or bridleway on the ground to not less than the minimum width that it is apparent to members of the public wishing to use it.

(4) This section does not authorise a person--

- (a) to divert a footpath or bridleway on to land not occupied by him without the consent of the occupier of that land and of any other person whose consent is needed to obtain access to it,
- (b) to divert a footpath onto a highway other than a footpath or bridleway, or
- (c) to divert a bridleway onto a highway other than a bridleway.

(5) The person by whom a footpath or bridleway is diverted under this section shall--

- (a) at least fourteen days before the commencement of the diversion, give notice of the diversion in accordance with subsection (6) below,



(b) so as to bring it to the attention of users of the land, post notice of the temporary diversion at or near at least one obvious place of entry to (or, if there are no such places, at or near at least one conspicuous place on the boundary of) the land to which the application relates during the diversion.

(6) Notice under subsection (5)(a) above shall be given--

- (a) to the highway authority for the footpath or bridleway,
- (b) if the footpath or bridleway is on or contiguous with access land in England, to [Natural England], and
- (c) if the footpath or bridleway is on or contiguous with access land in Wales, to [the Natural Resources Body for Wales].

(7) A notice under subsection (5)(a) or (b) above shall be in such form and contain such information as may be prescribed.

(8) If a person--

- (a) in a notice which purports to comply with the requirements of subsection (5)(a) above, makes a statement which he knows to be false in a material particular,
- (b) by a notice displayed on or near a footpath or bridleway, falsely purports to be authorised under this section to divert the footpath or bridleway, or
- (c) in diverting a footpath or bridleway under this section, fails to comply with subsection (3) above,

he shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(9) In this section--

"access land" has the same meaning as in Part I of the Countryside and Rights of Way Act 2000;

"livestock" means cattle, horses, asses, mules, hinnies, sheep, pigs, goats, camelids and poultry, and also deer not in the wild state, also, while in captivity, pheasants, partridges and grouse;

"minimum width" in relation to a temporary footpath or bridleway, means the minimum width, within the meaning of Schedule 12A to this Act, of the footpath or bridleway diverted;

"poultry" means the domestic varieties of the following, that is to say, fowls, turkeys, geese, ducks, guinea-fowls, pigeons, peacocks and quails; and

"prescribed" means prescribed by regulations made by the Secretary of State.]



## Appendix 11

### PROPOSAL FOR A STATUTORY MECHANISM TO ENABLE TEMPORARY DIVERSIONS OF PUBLIC RIGHTS OF WAY FOR AGRICULTURAL PURPOSES:

Extract from a paper put to the CLA's Legal, Parliamentary and Property Rights National Committee

There is a need to be able to temporarily divert public rights of way for agricultural purposes. Such a process would provide the necessary flexibility for the needs of agriculture and enhance the safety of public rights of way users; in order to be successful it would also need to provide adequate safeguards for the rights of way network.

The existing process for diverting public rights of way does not provide the flexibility to allow for temporary diversions in this way, it is complex and bureaucratic, poorly adapted to provide the necessary flexibility for agricultural operations and some Highway Authorities have backlogs of orders to process stretching out for decades. Historically there has also been no right for a landowner to have a diversion application processed and time pressured Highway Authorities have often not acted on these. This situation will be improved with new regulations as a result of section 23 Deregulation Act 2015 which provides for a right of appeal to the Secretary of State if a council in England doesn't process a diversion application or refuses to. However, the new rules will have no effect on the outcome of diversion applications and the cost to the landowner is also likely to increase considerably.

The need for a method to temporarily divert public rights has long been recognised. Section 57 of the Countryside and Rights of Way Act 2000 inserted 135A and B into the Highways Act 1980 which allowed for temporary diversions for dangerous works, but these provisions have never been commenced. It is likely that even if commenced the short period allowed to divert (no more than 14 days in any one calendar year) and the requirement to publish notice of the diversion in a local newspaper will make it impractical for many situations.

The Farming Regulation Task Force's report to Government, published on 17 May 2011 recognised the problems caused by a process that did not allow flexibility to deal with modern land use when diverting public rights of way, it included the following recommendation: "4.38 We also wish to make a new proposal for time-limited provisions to divert a footpath temporarily, e.g. for the life of a multi-year high-value crop, or even for much longer periods. We understand that there is no regulatory provision for this and do not propose adding one because of the extra burden that this would impose. However, we recommend that a pragmatic solution for temporary diversions should be to put the proposed diversion to the relevant local access forum, for agreement or otherwise. We believe that it might be helpful for the Government to supplement this local approach with a code of practice." What is needed is a new approach to the temporary diversion of public rights of way that is flexible enough to deal with the changing needs of modern agriculture but that also provides sufficient safeguards to satisfy the public that the rights of way network will not be adversely affected by such changes. For instance in order to have a practical effect any temporary diversion



would need to be operational for the period the cattle are in the field, so 14 days would not be long enough.

### Problems with Other Options

Permissive routes, which are the basis of the trials ongoing in Cornwall, are often suggested as a practical resolution but there are shortcomings with this option too. It can be a useful option but one issue is that whilst the public may choose to use the new route they are still legally entitled to use the existing public right of way too, so it would not be possible to use the land in a way that might result in a danger despite the offer of a new route. Another problem is the increased level of liability that providing a permissive route might attract. A person exercising a public right of way is not considered a visitor or a trespasser for the purposes of the Occupiers' Liability Acts 1957 and 1984. However if the occupier authorises the person to be on the land, such as through a permissive path, that person will be a visitor.

Under the Occupiers' Liability Act 1957 the occupier is under a duty to take such care "as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted to be there." This liability extends to responsibility for the surface of the route too which adds further pressure particularly in winter when the ground can be very wet. There is also a real concern that if this process becomes accepted as the status quo then landowners who do not go to the trouble of providing a permissive path and the requisite additional limitations will be seen as negligent if an incident does happen.

It may be an option to temporarily fence certain public rights of way so that the cattle and the public are completely separated. Again the rigours of the legal system lead to a few practical issues in taking this approach. For instance the width of the route may not be specified in the definitive statement, if this is the case it is often very difficult to pinpoint where to erect the fence, the widths of such highways can vary widely and may depend on historic evidence or past use. When asked to set out the route experience suggests that rights of way officers from the Highway Authority will err on the side of caution often leading to unnecessarily wide routes.

Not knowing the precise location to fence may seem like a small matter but there have been examples of members permanently fencing routes at great expense and later being told that the fence needs to be moved by a foot as it impinges on the public right of way. The occupier may also be liable for any injury caused by a fence if it is considered to be a nuisance to users of the highway; this is a particular concern with electric fencing and bridleways. Fencing off the public right of way whether permanently or temporarily is often only an option where it runs along the field edge. Cross field public rights of way require twice the fencing and result in the field being segregated into small parcels of land that can make farming operations impractical.

### Draft Temporary Diversion

[At Appendix 10 above] is a draft proposed addition to the Highways Act 1980 which is closely based on section 135A. The requirement to advertise in a local paper has been removed and a requirement to place a notice is from the wording of regulation 4(2)(c) of The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 inserted instead.



## Footnotes

- <sup>i</sup> Stepping Forward The Stakeholder Working Group on Unrecorded Public Rights of Way: Report to Natural England:  
[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwJro4C6hanVAhWsc8AKHUuTCXkQFgggMAA&url=http%3A%2F%2Fpublications.naturalengland.org.uk%2Ffile%2F72033&usg=AFQjCNHSPKiW\\_chc4cPLcPXVjnWX7n5odg](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwJro4C6hanVAhWsc8AKHUuTCXkQFgggMAA&url=http%3A%2F%2Fpublications.naturalengland.org.uk%2Ffile%2F72033&usg=AFQjCNHSPKiW_chc4cPLcPXVjnWX7n5odg)
- <sup>ii</sup> Ramblers: Paths in Crisis: <http://www.ramblers.org.uk/get-involved/campaign-with-us/past-campaigns/footpath-funding-cuts.aspx>
- <sup>iii</sup> Deregulation Act 2015: <http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>
- <sup>iv</sup> Health and Safety Executive: <http://www.hse.gov.uk/aboutus/meetings/iacs/aiac/090615/aiac-paper-150601.pdf>
- <sup>v</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/0,,contentMDK:22547097~pagePK:50016803~piPK:50016805~theSitePK:13,00.html>
- <sup>vi</sup> The data only provided UK population density as a whole and so for the countries within the UK the figures from the Office of National Statistics were used. The Office for National Statistics:  
<https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/populationdensity>  
 Ireland (67 per sq km), Scotland (69 per sq km), Netherlands (503 per sq km), France (122 per sq km) and the USA (35 per sq km). For comparison: England (417 per sq km) Wales (149 per sq km).
- <sup>vii</sup> The CIA World Factbook: <https://www.cia.gov/library/Publications/the-world-factbook/fields/2097.html>  
 Ireland (agricultural land: 66.1% arable land 15.4%; permanent crops 0%; permanent pasture 50.7% forest: 10.9% other: 23% (2011 est.)), Scotland (included within UK figures below), Netherlands (agricultural land: 55.1% arable land 29.8%; permanent crops 1.1%; permanent pasture 24.2% forest: 10.8% other: 34.1% (2011 est.)), France (agricultural land: 52.7% arable land 33.4%; permanent crops 1.8%; permanent pasture 17.5% forest: 29.2% other: 18.1% (2011 est.)) and the USA (agricultural land: 44.5% arable land 16.8%; permanent crops 0.3%; permanent pasture 27.4% forest: 33.3% other: 22.2% (2011 est.)). For comparison: United Kingdom (agricultural land: 71% arable land 25.1%; permanent crops 0.2%; permanent pasture 45.7% forest: 11.9% other: 17.1% (2011 est.)).
- <sup>viii</sup> United Nations Development Programme, Human Development Reports.  
<http://hdr.undp.org/en/content/copyright-and-terms-use> Ireland (ranked 8, HDI 0.923), Scotland (included in figures for the UK below), Netherlands (ranked 7, HDI 0.924), France (ranked 21, HDI 0.897) and the USA (ranked 10, HDI 0.920). For comparison: United Kingdom (ranked 16, HDI 0.909).
- <sup>ix</sup> <http://www.legislation.gov.uk/apgb/Geo3/39-40/67/contents>
- <sup>x</sup> <http://www.irishstatutebook.ie/eli/1922/act/1/enacted/en/print.html>
- <sup>xi</sup> The Repeal Bill White Paper <https://www.gov.uk/government/publications/the-repeal-bill-white-paper>
- <sup>xii</sup> <http://www.irishstatutebook.ie/eli/cons/en/html>
- <sup>xiii</sup> The Scotland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/46/contents>
- <sup>xiv</sup> Land Reform (Scotland) Act 2003: <http://www.legislation.gov.uk/asp/2003/2/contents>
- <sup>xv</sup> <https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008>
- <sup>xvi</sup> Countryside access in the UK: a review of associated legislation and policy  
 April 2014  
<http://www.assembly.wales/Research%20Documents/Countryside%20access%20in%20the%20UK%20a%20review%20of%20associated%20legislation%20and%20policy%20-%20Research%20paper-22042014-255572/14-019-English.pdf>
- <sup>xvii</sup> Explanation of the Rundale system: <http://www.open.edu/openlearn/openlearn-ireland/ireland-places-culture-heritage/the-rural-dimension-rundale-the-west-ireland>
- <sup>xviii</sup> Supreme Court decision in Walsh & anor -v- Sligo County Council [2013] IESC 48
- <sup>xix</sup> <http://www.keepirelandopen.org/>
- <sup>xx</sup> Mountaineering Ireland:  
<http://www.mountaineering.ie/accessandenvironment/ComhairlenaTuaithe/TheWalksScheme/default.aspx>



- xxi Encyclopaedia Britannica: <https://www.britannica.com/place/Ireland>
- xxii Data sourced from: <http://www.worldatlas.com/articles/natural-treasures-of-ireland-the-six-national-parks-of-the-republic-of-ireland.html>
- xxiii The codification whose modern successor is s31 Highways Act 1980: <http://www.legislation.gov.uk/ukpga/1980/66/section/31>
- xxiv Land Reform (Scotland) Act 2013: <http://www.legislation.gov.uk/asp/2003/2/contents>
- xxv Further information can be found here: <https://rm.coe.int/168007ff55>
- xxvi Increase Peoples Use of Scotland's Outdoors: <http://www.gov.scot/About/Performance/scotPerforms/indicator/outdoors>
- xxvii Munro's are Scottish mountains over 3000 feet.
- xxviii Prescription and Limitation (Scotland) Act 1973: <http://www.legislation.gov.uk/ukpga/1973/52>
- xxix Rights of Way in Scotland: <http://www.snh.org.uk/pdfs/access/sr-sproy.pdf>
- xxx Encyclopaedia Britannica: <https://www.britannica.com/place/Scotland>
- xxxi Scottish Natural Heritage: <http://www.snh.org.uk/publications/on-line/education/advances4/7-land-cover-map-scotland.asp>
- xxxii Taking the area of England as 130,279 km<sup>2</sup> it would require a population of 8,989,251 Which was achieved somewhere between the 1801 to 1811 census figures. [http://www.histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census \(by date\)&active=yes&mno=4&tocstate=expandnew&tocseq=500&display=sections&display=tables&display=page titles&pageseq=first-nonblank](http://www.histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(browse)&active=yes&mno=4&tocstate=expandnew&tocseq=500&display=sections&display=tables&display=page&titles&pageseq=first-nonblank)
- xxxiii Wegenwet: <http://wetten.overheid.nl/BWBR0001948/2016-03-15>
- xxxiv Evelien Kenbeek from Landschap Erfgoed Utrecht
- xxxv 2010 National Walking Monitor- Walking Platform Netherlands
- xxxvi Encyclopaedia Britannica: <https://www.britannica.com/place/Netherlands>
- xxxvii From the research undertaken it is uncertain whether the many routes within the national parks are included within the figure for the total distance of walking routes, both have been included in the figures.
- xxxviii French Federation of Hiking: <https://www.ffrandonnee.fr/Default.aspx>
- xxxix <https://www.bouches-du-rhone.net/les-sentiers-les-topoguides/gr-2013/gr-2013-de-l-d%C3%A9-a-projet/>
- xl Ffrandonnee website: <https://www.ffrandonnee.fr/faq/969/1/randonnee-chien-agressif-patou-responsabilite.aspx>
- xli Encyclopaedia Britannica: <https://www.britannica.com/place/France>
- xliv National Assembly for Wales: <http://www.assembly.wales/Research%20Documents/Countryside%20access%20in%20the%20UK%20a%20review%20of%20associated%20legislation%20and%20policy%20-%20Research%20paper-22042014-255572/14-019-English.pdf>
- xlvi Irish Statute Book: <http://www.irishstatutebook.ie/eli/1995/act/10/enacted/en/print.html?printonload=true>
- xlv Recreation in the Irish Countryside, Department of Environment, Community & Local Government, Ireland.
- xlv Official Internet Site of the Florida Legislature: [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0300-0399/0375/Sections/0375.251.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0375/Sections/0375.251.html)
- xlvi [1975] A.C. 591
- xlvi Government's Guidance linking to CLA Guidance: <https://www.gov.uk/guidance/open-access-land-management-rights-and-responsibilities> and link to CLA guidance: [https://www.cla.org.uk/sites/default/files/LIABILITIES%20ON%20COASTAL%20MARGIN%20ZONE-CLA%20GUIDANCE%20FINAL%20\(May%202016\).pdf](https://www.cla.org.uk/sites/default/files/LIABILITIES%20ON%20COASTAL%20MARGIN%20ZONE-CLA%20GUIDANCE%20FINAL%20(May%202016).pdf)
- xlvi <http://gov.wales/betaconsultations/environmentandcountryside/improving-opportunities-to-access-the-outdoors/?lang=en>
- xlvi <https://naturalresources.wales/media/681025/welsh-outdoor-recreation-survey-key-facts-for-policy-and-practice-2016.pdf>
- l Health and Safety Executive: <http://www.hse.gov.uk/aboutus/meetings/iacs/aiac/090615/aiac-paper-150601.pdf>
- li Sheepwatch: <http://www.sheepwatch.co.uk/effects-of-sheep-worrying.html>
- lii <http://www.outdooraccess-scotland.com/Practical-guide/public/dog-walking>
- liii The Irish Farmers Association: <https://www.ifa.ie/wp-content/uploads/2014/05/New-IFA-Protocol-for-farmers-to-follow-after-sheep-kills-by-dogs.pdf>