



Access to Land

Professional Guidance Series
PGS4

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Introduction

The following guidelines apply to accessing land for the purpose of carrying out surveys. Adoption of these guidelines will assist our members to practice within the law and the CIEEM Code of Professional Conduct. Members should seek legal advice if they are in any doubt about access issues - the onus of proof is with members to explain their presence on land. Riparian access in England and Wales is different from access to dry land although the general principles for access remain the same. Elsewhere, arrangements for riparian access are the same as for dry land.

Access Legislation

Land access legislation varies between countries. The main legislation is summarised below but is not comprehensive:

England and Wales

The Countryside and Rights of Way Act 2000 (CRoW Act) is the primary land access legislation in England and Wales. The CRoW Act created a statutory right of access to particular areas of open countryside and ensures that there are more opportunities for the public to gain access to the countryside. The Marine and Coastal Access Act 2009 provides for public access to the coast in England. Local bye-laws may also affect land access.

Scotland

In Scotland, the Land Reform (Scotland) Act 2003 (LR(S) Act) provides for 'responsible access' by non-motorised means over most land and inland water e.g. by foot, bicycle, canoe, horse for the purpose of recreation, some educational activities and certain commercial activities, plus passage i.e. getting from one place to another.

Northern Ireland

Public access legislation is less developed in Northern Ireland compared to the rest of the United Kingdom. The Access to the Countryside (Northern Ireland) Order 1983 provides for district councils to identify public rights of way across land, although there are not a large number and they should not be used for activities other than intended (such as walking from point A to B). The Order also includes provision for wider access to open country but no related agreements or orders have been made by district councils.

Republic of Ireland

There are few rights of way in Ireland, except for public roads, although there is the right to roam over the National Parks. Apart from these cases, public land access is limited.

Access for Surveying

The various pieces of access legislation including the CRoW Act and the LR(S) Act do not give the right of access for survey work. Surveying for commercial purposes in Scotland is considered to be beyond the public right of responsible access, although surveying for voluntary purposes may be considered to be within responsible access rights (but such surveyors should still seek landowners' permission). However, a consultant could use access rights to cross land to get to and from a survey site.

To stray from land to which there is a public right of access constitutes the civil wrong of trespass (except in Scotland), which is not in itself an offence. Writing a species list, taking photographs or specimens or soil samples for commercial purposes without permission even on public access land is likely to be viewed at least as a trespass, although in Scotland taking pictures commercially is within responsible access. To refuse to leave when requested to do so or to cause damage is an offence. The implications of the Human Rights Act 1998 (or the European Convention on Human Rights Act 2003 in Ireland) either for the surveyor or the landowner in this context have yet to be explored by the legal profession but use of information obtained illegally in, for example, a public enquiry could be counter productive.

Where access is for criminal investigations or where statutory powers may be invoked, collecting evidence without permission or a warrant may risk it being inadmissible in court. If it is discovered that surveys were undertaken without access permission being granted, the validity of the survey data could be legally challenged and nullified, resulting in all the surveys having to be repeated (if access can be acquired and at the surveyors expense), a delay in project completion with associated economic and legal consequences, a professional indemnity claim and a very aggrieved client.

General Guidelines for Access to Land

While there is variation in access legislation across the UK and Ireland, the general principles of accessing land for commercial survey work are the same. When preparing to carry out a survey, members should:

- Take all reasonable measures to secure permission for access to land
- Clarify, at the outset, who is responsible for obtaining the necessary permissions; generally, it will be preferable for this to be the client. It is important to have this in writing so that you, the client and the landowner are clear about the situation
- Ensure that permission to access land is in writing and that a record is kept of all contacts made in seeking permission
- Comply with refused permission, unless you or your client have the authority to demand entry to land (see later)
- Obtain a letter from the client, wherever possible or appropriate, to show to anyone challenging your presence on land
- Observe the relevant countryside code and any other directives required by the landowner/ occupier and make every effort to minimise your own impact on the site. This may include precautions in case of contagious disease
- Leave ~~without demur if requested~~ to do so by the landowner/occupier or by anyone else who appears to have the authority to make such a request

In general, members should also:

- Take all reasonable steps to ensure the adequacy of their own work
- Do risk assessments
- Take account of Health and Safety and Control of Substances Hazardous to Health (COSHH), and take particular care when working alone (see CIEEM Guidance for 'Risk Assessment for Lone Workers' (Professional Guidance Series No. 7)
- Have adequate insurance cover.

Landowner Liaison

It is essential that members seek to establish good relations with landowners and occupiers. This is especially necessary in the wake of the CRoW Act and the LR(S) Act, when feelings and confusions about access to private land could still be running high. Wherever possible, explain the work which is to be undertaken, how long it is likely to take and, where appropriate, offer the relevant extract of the final report, or the whole report, when it is available.

In describing the work to be done, do remember to provide information about the time of year for your visit(s), the number of visits needed, vehicular access requirements and details of any sampling which may be necessary, particularly where this requires removal of material from the site, e.g. soil cores, or the use of video recording. It is advisable to draft a letter of agreement, outlining the proposed work on the site and, if possible, to obtain the landowner's signature granting permission. Adequate time should be allowed to acquire all permissions in advance of proposed survey start dates.

As always when liaising with a third party, first impressions count, so careful thought should be given to all first encounters - you do not want to fall at the first hurdle as a result of being too casual or over-confident. Flexibility and some resilience are necessary qualities plus a full knowledge of the appropriate parts of the legislation. It is not wise or acceptable for a member to take the view that they are unlikely to need to contact a particular landowner/ occupier again in future, so it does not matter if hackles are raised.

In all aspects of landowner/occupier liaison, members should adopt the courtesy, clarity in all communications and professionalism expected of CIEEM members, as defined in the Code of Professional Conduct. Hasty e-mail communication is especially liable to be viewed as impersonal and can be misinterpreted. Failure in any of these areas may be detrimental not only to the specific project but also to further work by those members and, ultimately, to the profession as a whole.

In all cases, it is advisable to seek permission from both the occupier (e.g. tenant) and landowner, to avoid embarrassment. Check whether permission should be sought from anyone else, for example to cross land in order to access the survey site, or in respect of commons.

Whilst it is acknowledged that the time scales for carrying out some surveys are extremely tight, nonetheless members should make prior contact with the landowner/occupier whenever possible, ideally by written correspondence, but failing that by telephone or personal visit. It may be useful to use phrasing such as 'unless

I hear to the contrary' to cover any doubt which may rise from a lack of response. Allow a reasonable time for a response.

Contact with the landowner will also allow a surveyor to discuss any health and safety issues, for example the presence of any dangerous livestock.

In the event of refused permission, depending on the nature of the refusal and the time scale for carrying out the work, judge whether it is appropriate to write giving further details of the intended work and allow a few months to elapse before broaching the subject again. Bear in mind that many refusals to allow access are based on inadequate information, inadequate notification, bad past experience of allowing access or perceived concerns of permitting access. It is members' responsibility to allay these concerns and to encourage trust. Diplomacy and understanding are important attributes, as is anticipation of the likely concerns relevant to the work to be carried out.

Local authorities and other bodies have the right to access land, under certain circumstances, with a notice period specified in law. However, as a matter of courtesy, members should still observe this code of conduct in respect of seeking permission and providing advance notification wherever possible. There are exceptions to advance notification of entry in special cases, e.g. pollution control.

Client Liaison

It is essential that members report lack of access, with an explanation for why access was not possible, as a constraint that impaired the quality of the ecological survey. Contact the client at the earliest opportunity following any difficulties in obtaining access to land.

Depending on the client and the country, the following powers of entry may apply:

- In England and Wales, Section 40 of the CROW Act gives a person who is authorised by the countryside bodies, highway authorities and National Park authorities power of entry onto land in order to carry out their statutory obligations under the Act. Section 41 provides compensation for sustained damage relating to these powers
- In Scotland, Section 26 of the LR(S) Act gives any person authorised by the local authority the power to enter any land for a purpose connected with the exercise of any of the authority's functions. Section 44 of the Nature Conservation (Scotland) Act 2004 grants any person authorised by Scottish Natural Heritage or the Scottish Ministers access to land for specific purposes.

Clarify with the client at the outset the availability of survey information to the landowner/occupier. It is important to be able to provide the landowner/occupier with feedback on what was found on their land.

It may be (but not tested) that conducting one's business from a public right of way is unlawful, although it is possible that informing the landowner/occupier may be sufficient. Whilst few people are likely to object to someone surveying land from a public footpath, the member must ask themselves whether this approach in any way compensates for access to the land in question.

If a planning application is not accompanied by an ecological survey, planning permission may not be granted. Therefore it is in the interests of the applicant to have a survey carried out. However, the applicant may not wish it to be known to other landowners that they propose to file an application at the time of commissioning the survey. This may present a conflict for members who will be requested to carry out the survey without approaching neighbouring landowners, potentially making it difficult to access the area to be surveyed. As a result, the survey may have to be undertaken from public access points, if any.

Commercial confidentiality with regard to ecological surveys, proposals for land development etc. is an area for members to treat with caution. Members must draw the client's attention to the potential shortcomings if a full survey cannot be undertaken because of the constraints imposed by commercial confidentiality.

Relevant Codes

There are various codes that provide guidance and advice to users of the countryside in the UK and Ireland, depending on the country:

- England and Wales - The Countryside Code
- Scotland - The Scottish Outdoor Access Code
- Northern Ireland - The Northern Ireland Country Code
- Republic of Ireland - Access Parameters and Countryside Code.

The Codes differ but have broadly the same principles. Below is a summary of the Countryside Code in England and Wales:

- Be safe - plan ahead and follow any signs
- Leave gates and property as you find them
- Protect plants and animals, and take your litter home
- Keep dogs under close control
- Consider other people.

Further Information

Riddall J and Trevelyan J (2007) *Rights of Way: A Guide to Law and Practice 4th Edition*. The Ramblers' Association, London.

Sydenham A (2007) *Public Rights of Way and Access to Land 3rd Edition*. Jordan Publishing Ltd, Bristol. Useful References The following organisations can provide up-to-date information about access:

- England - Natural England (www.naturalengland.org.uk)
- Wales - Natural Resources Wales (www.naturalresourceswales.gov.uk)
- Scotland - Scottish Natural Heritage (www.snh.gov.uk)
- Northern Ireland - Northern Ireland Environment Agency (www.ni-environment.gov.uk)
- Republic of Ireland - Comhairele na Tuaithe (www.pobail.ie/en/RuralDevelopment)
- National Rural Development/ Comhairlena Tuaithe
- Country Land and Business Association (www.cla.org.uk)
- Defra (www.defra.gov.uk)
- Mountaineering Ireland (www.mountaineering.ie)
- Scottish Rural Property and Business Association (www.srpba.com)
- The Ramblers (www.ramblers.org.uk)

The relevant National Access Forum, Local Access Forum, County Council and National Park Authority (if applicable) will have further information about land access in the local area.

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Chartered
Institute of
Ecology and
Environmental
Management

43 Southgate Street
Winchester, Hampshire SO23 9EH

t: 01962 868626
e: enquiries@cieem.net
www.cieem.net