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Dedicating land for access purposes: guidance

Guidance for those considering dedicating land for access purposes.

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Disclaimer

This guidance does not form part of the above-mentioned Act or Regulations and has no legal effect. It provides guidance on the main features contained in the Regulations but does not attempt to provide a comprehensive explanation of every provision.

1. Introduction

1. The Countryside and Rights of Way Act 2000 (“the Act”) creates a statutory right of access to mountain, moor, heath, down and registered common land (“access land”) in England and Wales. Section 16 of the Act allows the owner of any land, or a lessee with not less than 90 years of their lease outstanding to irrevocably dedicate that land for public access.
2. This guidance provides information on the procedures to be followed in order to dedicate land. To make the process as straightforward as possible, we have included model forms for landowners to consider using if they wish to.
3. The steps that individuals need to follow to make a dedication are set out in **[The Countryside Access \(Dedication of Land as Access Land\) \(Wales\) Regulations 2003 \(S.I. 2003/135 \(W.9\)\) \(“the Regulations”\)](#)**.
4. The Regulations, and this guidance, only apply to dedication of land for access purposes in Wales. If you wish to dedicate land in England, then you should contact Natural England, who have issued separate, but similar guidance.

2. Who can dedicate land

1. You are eligible to make a dedication if you are either:

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- the owner of the land (i.e. the “holder of the fee simple absolute in possession of the land”), or
- a leaseholder (so long as your lease has not less than 90 years remaining unexpired)

3. What does dedication do

1. Dedicating land under section 16 of the Act creates a statutory right of access on foot, which can be enjoyed by everyone. The act of dedication is irrevocable in relation to freehold land and binds successive owners and occupiers of, and others with an interest in, that land so that the right is protected forever (except where the dedication is made by a leaseholder, in which case it will cease to have effect when the lease expires).
2. Making a dedication:
 - can open land for public access which would not otherwise be covered by the Act: for example woodland
 - ensures that the right of access to such land remains in force if the land changes hands (in the case of leasehold land the dedication will end when the lease expires)
 - ensure that land that is currently dedicated continues to be so even if the land ceases to fall within the definition of “access land” at some point in the future (in the case of leasehold land the dedication will end when the lease expires)
3. Access rights under the Act are normally on foot only, but the provisions of the Act allow a dedicator to extend the right of access to include activities such as horse riding, cycling, the use of motor vehicles and camping on the land (as contained in Schedule 2 to the Act). The dedication instrument may also be subsequently amended so as to further relax or remove restrictions contained in Schedule 2 to the Act - see Annex 1 for further details.
4. Dedicating land as “access land” limits the duty of care to members of the public under occupiers’ liability legislation to the level normally owed to

trespassers. Occupiers will have no duty of care in respect of risks that arise from natural features, rivers, streams, ponds, cliffs, ditches, or the misuse of walls, fences or gates on their land, unless they deliberately created the risk or recklessly allowed it to arise. The normal duty of care to a trespasser applies while access is excluded or restricted.

4. Do I have to provide access at all times

1. The Act includes provisions for restricting or excluding access in certain circumstances. The landowner or farm tenant may restrict access to the land for up to 28 days each calendar year (subject to certain conditions). The Act also provides opportunities for access to be restricted at other times - for example, to allow you to carry out essential land management work. Separate [guidance for land managers about restrictions is available from Natural Resources Wales \(NRW\)](#).
2. The Act also makes certain categories of land “excepted land”. Excepted land is land used for any of the purposes listed in Schedule 1 to the Act. Examples include land used for the purposes of a golf course, racecourse or aerodrome, or land covered by buildings or the curtilage of such land. It is important to note that there is no right of access over dedicated land which is, or at any time becomes, excepted land (though the dedication itself will remain in force).

5. Consultation with statutory organisations

1. As the act of dedication will have a long-term and (if the dedicator is the freeholder) permanent effect, we recommend you take independent legal advice if you are considering dedicating any of your land so that you are fully aware of the implications of doing so.

2. We would also recommend that you contact the following organisations prior to commencing the dedication process:
 - NRW (where your land includes a site of special scientific interest (SSSI) or where your land includes woodland)
 - CADW (where your land includes a Scheduled Monument) to discuss the implications of dedicating your land
3. We would also recommend you discuss a proposed dedication with the relevant National Park Authority and/or Local Authority for the land prior to starting the dedication process.
 - If your land includes an SSSI, you should check your notification documentation to see whether your proposal might require special consent. In accordance with the Wildlife and Countryside Act 1981, owners and occupiers of SSSIs must not carry out, or cause or permit to be carried out, any operation specified in the notification without the consent of NRW. Special provisions relate to those SSSIs that are owned or occupied by public bodies and authorities. NRW will be able to discuss these issues with you.
 - If your land includes a Scheduled Ancient Monument, you should check with CADW to ensure that opening-up access to the extent you propose is not likely to raise concerns about heritage features such as archaeological remains. There is no requirement for CADW to consent to the proposed dedication of land.
 - If your land contains woodland, you may need to carry out operations, such as tree harvesting, which can pose particular dangers to the public. For this reason, if you are planning to dedicate land that includes woodland, you should approach NRW at an early stage.

6. Interests of leaseholders / tenants

1. If any person other than you (as the person making the dedication) holds an inferior leasehold interest in any of the land to be dedicated (for instance, a

tenancy), you must make the dedication either with that person's consent or jointly with that person.

2. In order to ensure that any persons who need to consent to a dedication are fully informed you must give them specific information about your proposal to dedicate. This information must include:
 - the nature of your interest in the land
 - the location and extent of the land which you want to dedicate, so that it can be properly identified, this may require provision of a map
 - details of any proposals by yourself to relax or remove any of the general restrictions in Schedule 2 to the Act over any of the land to be dedicated
 - details of any unexpired period of a tenancy where you have a term of more than 90 years remaining on your lease
3. If you are proposing to dedicate land, we strongly recommend you make sure that there are no interests which would be adversely affected by the dedication, or any obligations in private law, which might be breached (see Annex 2 for further details).

7. How do I make a dedication

1. Once you have obtained any necessary consent, you can prepare the draft dedication instrument. This can be done by completing the model dedication instrument attached to this guidance (see Form A). If you do not wish to use this form, you must still provide all the information required by the Regulations in a format of your choice.

8. Executing and notifying the dedication

1. You must send a copy of the draft dedication instrument (e.g. Form A), at least three months before you intend to sign the instrument, to the following

bodies:

- the Access Authority (or Authorities) for the area covered by the dedication
 - Natural Resources Wales
 - the Welsh Ministers
 - the mortgagee, where the land is subject to any charge by way of legal mortgage
2. Sending the draft dedication instrument to these bodies allows them an opportunity to prepare for the dedication and to discuss any issues with you – for example, to consider whether the land concerned contains important nature conservation or heritage sites or how well the land involved is connected to the public rights of way network.
 3. Once a period of three months has elapsed, the draft dedication instrument will need to be signed and an original version (including map) sent to the Access Authority, within one month of the instrument being signed, otherwise the dedication will not be valid.
 4. You must also ensure that copies are sent to the other bodies or persons as set out in 8.1. above. Each copy must include a statement identifying the access authority with whom the dedication has been lodged and the date it was lodged.
 5. If the dedication instrument relates to land in more than one Access Authority's area, it is up to the discretion of the Dedicator as to which Access Authority holds the original instrument.
 6. If you are dedicating land that lies on the border with England, a separate dedication will need to be made for that land which lies in England. The provisions contained in: The Access to the Countryside (Dedication of Land) (England) Regulations 2003 (S.I. 2003/2004), and guidelines published by Natural England, will need to be followed.
 7. If NRW judge that the land which has been dedicated consists wholly or predominantly of woodland and where the dedicated woodlands are within a National Park, it will serve a notice on the National Park Authority stating that NRW will become the "relevant authority" for those woodlands. Once NRW

has become the relevant authority for dedicated woodlands, it will work with the owner and occupier to ensure that sustainable management of those woodlands can continue alongside the right of access.

9. Registering the dedication as a local land charge

1. As section 16(8) of the Act states that a dedication is a local land charge, you will also need to make sure that the dedication is registered in the appropriate local land charges register, kept by the county council or county borough council (“the registering authority”) (in accordance with section 5 of the Local Land Charges Act 1975), or the registrar, where the Land Registrar has assumed the local land charges statutory functions (in accordance with the Infrastructure Act 2015). Further information can be found on the UK Government’s Local Land Charges web page: [Practice guide 79: Local Land Charges](#).
2. Where dedicated land lies across two or more local authority areas, the local land charge will need to be registered by each authority.
3. Registration is important as, if the land is sold and its status as a local land charge was not correctly registered (or was not shown by the official search certificate used in the conveyancing process as being correctly registered), section 10 of the 1975 Act entitles the purchaser to compensation for any loss incurred as a result.
4. To ensure that dedications are properly registered as local land charges, we advise you to complete and send Form B to the registering authority together with a copy of the dedication instrument and accompanying map.
5. It is important to remember that you are responsible for registering your dedication as a local land charge and for checking that it has been properly registered in the appropriate local land charges register(s).

10. Amending a dedication

1. A dedication can be amended at any time after it has been made. However, an amendment can only be made in order to remove or relax one or more of the general restrictions set out in Schedule 2 to the Act (see Annex 3 for further information on amending dedications).

11. When does the dedication take effect

1. The new right of access to dedicated land will not come into force immediately. In order to allow time for the various notifications to be given, for the dedication to be registered as a local land charge, and for you or another entitled person to apply for local restrictions, the dedication will come into force six months after the date of its execution.

Annex 1: general restrictions

Unless you specify otherwise, the right of access to dedicated land is limited to access for the purposes of open-air recreation on foot.

Schedule 2 to the Act contains a number of general restrictions, which must be observed by a person exercising the right of access. The process of dedicating land allows you to remove or relax any of these restrictions. This means, for example, that you could dedicate a right of access to your land for horse riding or cycling as well as walking.

It is very important to note that removing a restriction will allow access users to engage in any activity which would otherwise be prohibited by that restriction. If

you wish to extend the right of access to include some activities prohibited by a general restriction, but not others, then you should clearly state the extent of the relaxation in the dedication instrument in terms of the activity itself (i.e. “cycling only”), the area of the land to which the relaxation applies and any other criteria which may be relevant. Instructions on how to do this are set out in the explanatory notes to Form A.

Once your land has been dedicated, it is possible for you to amend the dedication at a later date to remove or relax any of the Schedule 2 restrictions left in place. However, it is not possible for you to re-instate restrictions once they have been removed or relaxed, either in the original dedication or in a subsequent amending dedication instrument. You therefore need to consider very carefully whether the removal or relaxation of any of the general restrictions is appropriate.

Before removing or relaxing a general restriction you should also consult any authority whose permission may be required before the restriction can be lifted (for example, if you wish to dedicate your land for vehicular use this might require planning permission).

Annex 2: obtaining consent in order to satisfy an obligation in private law

The guidance in this Annex is intended to highlight some of the situations where you (as a freeholder or a leaseholder) may need to obtain the consent of a third party before making a dedication in order to comply with a requirement in private law. The examples given below do not constitute an exhaustive list and there may be other situations where you will need to obtain the consent of a third party before making a dedication in order to comply with a requirement in private law. We therefore recommend you seek legal advice about the number and extent of any such requirements before making the dedication.

Reserved Rights: You may need to obtain the consent of any person who holds a reserved right, such as a sporting right, over the land which you are planning to dedicate. The Act does not require the agreement of the holders of these rights as a condition of making a dedication. We nevertheless advise you to check carefully whether dedicating the land might breach the conditions of any contract you may have entered into with the holder of a reserved right.

Covenants in a Leasehold Agreement: If you are a leaseholder who is considering dedicating your land, you will also need to check carefully whether your lease contains any covenants which restrict or prohibit the use of the land for public access (in which case dedication may not be appropriate). If you are planning to remove or relax any of the general restrictions listed in Schedule 2 to the Act, you should make similar checks in respect of the activities covered by these restrictions.

In all cases, we recommend that, wherever possible, you try to enter into an agreement with the holder of any interest that the dedication would adversely affect as, in the absence of any such agreement, you might be at risk of an action in private law.

Annex 3: amending a dedication

A dedication can be amended by any person who would be entitled to make a dedication had one not already been made.

It is possible to amend a dedication at any time after it has been made. However, an amendment can only be made in order to remove or relax one or more of the general restrictions in Schedule 2 to the Act. It is not possible to amend a dedication in order to re-impose any restrictions on the right of access which may already have been removed or relaxed.

We recommend that you use Form A at the end of this pack if you wish to amend a dedication. If you do not wish to use this form, you must ensure that any documentation amending a dedication includes all of the information required in respect of a full dedication, as specified at regulation 3 of the Regulations (apart from paragraphs (g), (h) and (k) of regulation 3). It is again desirable for you to contact NRW and CADW, as appropriate. You may also wish to seek independent legal advice.

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