

Commons and Public Access to the Countryside

Commons and Open Spaces

There exists a good deal of common land in the United Kingdom which may not be fenced. It is the intention that over time the ownership of common land will be entered on a Land Registry data base. Commons legislation may provide some indication of ownership, but it is not intended to be conclusive.

Much rural land, particularly in the West and North of England comprises uncultivated land, a great deal of which is subject to the rights of local farmers to graze cattle and sheep. This open land may be subject to public rights of access, grazing rights, rights to take turf, pasturing, pigs in the woods and digging sand which may have existed for a great many years.

Because of uncertainty, Commons Registration legislation, to which no equivalent exists in Ireland, was introduced in England. The registers under the Act endeavour to describe common land, the rights exercisable over it and to specify the owners. The register of common land is now comprehensive in recording all common land because lands which were not recorded in the period since the legislation was first passed has lost its status and it is no longer possible to create new rights of common by long use. New rights of common created by deliberate action must be registered.

It is unlawful to put a fence or ditch around common land or to build on it. The owner of the land may enjoy rights provided they are not inconsistent with the rights of the commoner. They do not own any growing trees or minerals. The owner of land may permit people to carry out certain sports or trades. However, he can not do anything to interfere with the rights of the commoner.

Access to the Countryside

Much common land, moor land and open country is unfenced and is seen as part of the heritage and as a recreation resource. There are certain rights of public access in respect of such land (although not in respect of private land). Legislation introduced in 2000 grants members of the public the general right to walk across access land which is defined as mountain, moor, heath, down and common land which has been mapped as such by the Countryside Agency and is not otherwise subject to restrictions. This is limited to walking only. This “right to roam” can be restricted in a number of circumstances, the most common of which is where the land is under cultivation or where the land owner has exercised his statutory right to restrict access for up to 28 days a year. The maps which record access land can be viewed on-line.

Under legislation equivalent to the Irish legislation, an occupier of land must ensure that visitors are reasonably safe in using the land for the purpose on which they have come onto it. A land owner will only be liable to a trespasser if he knows there is a danger and has reason to believe a trespasser may come in the vicinity of the danger. Where a walker suffers injury exercising its rights to roam, the land owner's liability is qualified. He will not be liable for any injury arising from a natural feature and in assessing liability due regard must be given to the fact that the right to roam should not place any undue burden on the land owner.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.