

Fencing of Quarries

Introduction

1. This guidance covers the demarcation of enforcement responsibilities concerning the fencing of quarries and highlights the implications of access rights in England and Wales from the [Countryside and Rights of Way Act 2000](#) (the “*right to roam*”) and in Scotland from the [Land Reform \(Scotland\) Act 2003](#).
2. The [Ordinance Survey](#) shows all land on which the public have a right of access on their 1:25,000 Explorer maps. However, walkers' maps published by the [Ordinance Survey](#) for Great Britain do not distinguish “*excepted land*” from “*access land*” (either category may include active or abandoned quarries). These maps simply record open country, registered common land and land with existing rights of access such as urban commons. The precise extent of access rights will not therefore be clear to the public from the maps, and there will be the potential for trespass on to “*excepted land*” unless these are clearly demarcated on the ground.

Fencing at active quarries

3. The [Quarries Regulations 1999 \(QR99\)](#) apply to active quarries used for the extraction or preparation for sale of minerals and are enforced by the HSE.
4. QR99 (reg. [16](#)) places a duty on the quarry operator “*to ensure that where appropriate, a barrier suitable for the purpose of discouraging trespass is placed around the boundary of the quarry and is properly maintained*”.
5. When a quarry ceases operation and is abandoned or disused, the operator has a duty to notify HSE (QR99 [reg. 45](#)). At this point, HSE are no longer the Enforcing Authority for such sites (QR99 reg. [4\(2\)\(b\)](#)).

Fencing at abandoned and disused quarries (and statutory nuisance)

6. MQA Section [151\(2\)\(c\)](#) deems a quarry to be a ‘*statutory nuisance*’ under [Part III](#) of the Environmental Protection Act 1990 (EPA) if:
 - i) it is not provided with an efficient and properly maintained barrier so designed and constructed as to prevent any person from accidentally falling into the quarry; and*
 - ii) by reason of its accessibility from a highway or place of public resort constitutes a danger to members of the public.*
7. Should an abandoned or disused quarry fall under the definition of a ‘*statutory nuisance*’ for the purposes of EPA then the local authority is the Enforcing Authority (EPA [s79](#) and [s80](#)).

8. The person responsible for providing an ‘*efficient and properly maintained barrier*’ is identified in EPA [s79](#) (being the responsible person, owner or occupier of the land).
9. Under [MQA s151\(3\)](#), “*any expenses incurred... by a person other than the owner... for the purpose of abating, or preventing the recurrence of, a nuisance or in reimbursing a local authority in respect of the abatement, or prevention of the recurrence, of such a nuisance shall, subject to any agreement to the contrary, be recoverable by that person from the owner (as so defined) of the quarry.*” This means the local authority can request reimbursement (from the owner) for any costs incurred by them in taking action in preventing a ‘*statutory nuisance*’.

Right of access

England and Wales

10. There is no right of access to active quarries.
11. The Countryside and Rights of Way Act (CROW) 2000 (England and Wales) contains provisions to have a statutory right of access to open country (mountain, moor, heath, down) and registered common land (land registered under the Commons Act 2006) known as “*access land*”.
12. The public right of access does not apply to “*excepted land*” as defined in CROW. “*Land used for the getting of minerals by surface working (including quarries)*” is excepted under Schedule 1, Part 1, [paragraph 5](#). Therefore, land that is part of an active quarry operation is deemed to be “*excepted land*” and no “*access right*” applies.
13. There is no definition or cross reference in CROW of what is meant by “*quarries*” and so far no relevant case law. In this absence, applying the definition of “*quarry*” in QR99 ([reg. 3](#)) is reasonable.
14. A quarry operator may use fencing, signs and other means to delineate the boundary of CROW “*excepted land*”. The same issues will apply here as with delineating existing rights of way, and laws of trespass apply on “*excepted land*”.
15. “*Access land*” may include areas where there is existing planning permission for mineral extraction, but which are not yet being worked. The “*access right*” is likely to apply until the land is worked. As the quarry is extended into the planning permission, the land where work is taking place will become “*excepted land*” and the “*access right*” will no longer apply.
16. Once a quarry is abandoned or disused, it ceases to be considered as being on “*excepted land*” and “*access right*” will begin.
17. Detailed guidance is available on rights of way <https://www.gov.uk/topic/outdoor-access-recreation/rights-of-way-open-access>

Further guidance

18. Defra and Natural England have produced guidance both for local authorities with enforcement powers under the Environmental Protection Act, and for land managers who may be affected: <https://www.gov.uk/environment/access-to-the-countryside>

19. Advice is also available from [Natural Resources Wales](#) or the relevant local authority for matters relating to a particular route.

Scotland

20. There is no right of access to active quarries.
21. The Land Reform (Scotland) Act 2003 is the relevant legislation for “*access rights*” in Scotland. Here again, “*access rights not exercisable*” applies to land “*which is used for the working of minerals by surface workings (including quarrying)*” ([Chapter 2 section 6 1\(h\)](#)).
22. Once a quarry is abandoned or disused, it ceases to be considered as being on land where ‘*access rights are not exercisable*’ and “*access rights*” will begin.
23. Scotland's local authorities and national park authorities are the ‘*access authorities*’ in their areas, with a number of specific duties and powers under the Act. These include developing a [Core Paths Plan](#), keeping routes free of obstruction, and establishing a local access forum.

Further guidance

24. Scottish Natural Heritage advice and guidance is available at <https://www.outdooraccess-scotland.scot/act-and-access-code>