

ACCESS TO COMMONS

Although legislation dating to the late 16th century required that common and waste land should be left open for the recreation of Londoners, the main push for a legal right of access to common land began in the mid-19th century resulting in the following acts: -

The Metropolitan Commons Act 1866

As well as preventing the inclosure of any common within the Metropolitan Police District – a radius of 15 miles from Charing Cross – this act also allowed the London boroughs to implement management schemes which invariably enabled the provision and management of public access on the commons.

The Commons Act 1876

This act allowed the regulation of any common by a provisional order confirmation act. As well as allowing the appointment of a Board of Conservators, such acts usually made provision for a right of access for “inhabitants of the neighbourhood” for the purposes of playing games and recreation. These rights generally developed into *de facto* access for all due to the difficulties of policing and enforcing any more restrictive provisions.

The Commons Act 1899

The 1899 act enabled district councils (and subsequently national park authorities) to manage and improve commons for the benefit of the public. The act imposes a model scheme of regulation on authorities - this requires that local inhabitants have a right of access over the whole common for the purposes of recreation and playing games.

Commons in Shropshire with Schemes of Management are: -

Grimpo Common, West Felton
Merrington Green
The Moors Ellesmere
Whitcliffe Common Ludlow
The Old Racecourse, Oswestry

The National Trust Acts

In the early 20th century, the National Trust acquired a large number of commons on which general public access was already allowed. The National Trust Acts placed a statutory duty on the Trust to keep its common lands unenclosed and un-built upon as open spaces for the recreation and enjoyment of the public. However, there is no express provision for a right of public access.

The Law of Property Act 1925

The most significant and wide ranging impact on access to common land prior to the CRoW Act 2000 was introduced by s.193 of the Law of Property Act 1925. This provided a right of access “for air and exercise” to any metropolitan common or common situated wholly or partly in a borough or urban district.

A High Court decision in 1998 resolved that access under s.193 included horse riding [**R v Secretary of State for the Environment, Transport and the Regions ex parte Billson**]. However, no cycling or vehicles are allowed and fires may not be lit.

The act also enabled owners of rural commons to apply this section to their land by way of a deed. It was intended that this right would be repealed by the CRoW Act but it was subsequently decided that it should remain due to the additional access rights afforded by s.193.

Commons in Shropshire which fall under this act include: -

The Cliffe
The Shrubbs

Commons in Shropshire with Deeds of Application: -

Henley Common, Acton Scott
Old Racecourse, Oswestry

The National Parks and Access to the Countryside Act 1949

This act enabled access to “open country” for the purposes of recreation either by an agreement with the owner or an access order. Open country is land consisting wholly or predominantly of mountain, moor, heath, down, cliff or foreshore and includes common land fitting this definition. Only a small number of access agreements (and probably no orders) were established on common land.

The Ancient Monuments and Archaeological Areas Act 1979

This act granted public access to any monument under the ownership or guardianship of the Secretary of State, or the Commission for Ancient Monuments or a local authority.

Local or private acts

There are large numbers of local acts which deal with the management of a single or a small group of commons. Some of these acts provide for public access, others do not.

For example, the Dartmoor Commons Act 1985 provides for public access on foot or horseback to all registered commons on Dartmoor. The Malvern Hills Act 1884 and the Epping Forest Commons Act 1878 provide public access to these areas. The Manchester Corporation Waterworks Act 1879 dealt with the creation of Thirlmere reservoir in Cumbria and the act specifically prohibits the corporation from restricting

“the access heretofore actually enjoyed on the part of the public and tourists to mountains and fells surrounding Lake Thirlmere”.

There are no local acts affecting commons in Shropshire