

9 REVIEW OF APPROACHES TO HEATHLAND HABITAT MANAGEMENT

9.1 The origins and historic management of heathland

9.1.1 Heathland is a habitat and landscape form that was largely created by man (Webb 1986) by what today we would call ‘slash-and-burn’ agriculture. From the late Stone Age onwards, and especially in the Bronze Age, the original ‘wildwood’ of lowland Britain was felled and/or burned to clear areas for farming. The lighter soils were targeted because they were easier to clear and work compared to the heavier and flood prone clays of the valleys. On sandy soils what little fertility present was hard to maintain, nutrients leached rapidly and the characteristic bleached ‘podsollic’ soils developed. The heathland vegetation that we recognise today grew on these poor soils.

9.1.2 The land was exploited for fodder, fuel and thatching. This system continued to deplete nutrients from the soil, compensating for any natural additions through rainfall and microbial nitrogen fixation. Nutrients were leached through the soil and taken away with the gorse, bracken and heather, the animals that were folded on cropped land overnight leaving their dung behind and when they were finally slaughtered. In wetter areas where peat formed this was cut for fuel. This was an exploitative system driven by the grinding poverty that is so well described by Hardy in novels such as *The Return of the Native*. That intensity of exploitation would not be one that would fit current definitions of sustainable management (Defra 2003), with grazing to the extent that the soil was exposed and blew to form dunes (Watt 1937). Bagshot Heath was described in the early eighteenth century by Daniel Defoe in his *Tour Through the Whole Island of Great Britain 1724 – 1726* as “Much of it a sandy desert, where winds raise the sands”.

9.1.3 In the last 100 years the uses of heathland for animal bedding and fodder, fuel and building materials have declined and, as an economic activity, effectively ceased. Having no value as heathland they were taken for other uses. The rise of scientific agriculture made it possible to crop the poor soils using artificial fertiliser inputs while other areas were planted to forestry or developed for housing and commerce.

9.2 The need for vegetation management

9.2.1 Without continued removal of vegetation, nutrient levels rise slowly (Chapman 1967), grasses replacing heather and shrubs and tree species are able to survive to maturity. The result is that without burning, grazing or cutting to check the natural succession on these man-made and man-maintained heathlands, they develop into woodland. The need to remove nutrients and check succession on this man-created habitat remains the driving reason behind the fact that without active management the heathland and its associated wildlife will be lost (Dolman and Land in Sutherland and Hill 1995).

9.2.2 A failure to undertake management leads to poor habitat condition and, when this is in a SSSI, to reporting of a failure to achieve favourable condition. An analysis of the SSSI condition figures reported by English Nature (Entec 2005) identified lack of scrub management, lack of grazing and inappropriate forestry management as the most significant reasons for the poor condition of heathlands in south-east England that had the legal status of registered Common Land. This included management units of a number of the Thames Basin Heaths SPA component SSSIs.

9.3 Objectives for habitat management

9.3.1 When first considering management of a heathland site the decision that has to be made upon the objectives for management. This can be based on managing for the heathland vegetation community or managing for particular species (see below), or most frequently a combination of the two with the overall management pattern set by the community and the management of particular parcels focused on particular species. Such focused management needs to consider the requirements for the species at the different stages in their lifecycles, which for some may include habitat or features outside the heathland area (Symes and Day 2003).

9.3.2 The overall framework will be set by the state of the heathland. If it is currently in good condition it will be to maintain that state, if it has deteriorated (most frequently through bracken, scrub and tree invasion) then the objective will be to restore the heathland vegetation community and then to maintain it in that restored condition. It is important to ensure that resources are available to maintain the open conditions through continued management since if that post restoration management is not carried out then scrub or bracken will (re-)invade (Gimingham 1992).

9.3.3 The key indicators of good habitat condition and the necessary management processes to maintain that condition are presented in Table 9.1, listed by the important habitats that are present within the Thames Basin Heaths SPA (adapted from Alonso *et al* 2003, the English Nature ‘*Views about management*’ statements for the component SSSIs available on the English Nature website, Entec 2005 and Symes and Day 2003).

Table 9.1: Indicators of habitat condition and management processes

Constituent habitat	Lowland heathland (dry and wet)
Key indicators of good condition	Largely open in character with limited scrub (less than 15% of the area) and bracken. Structural variation in heather dominated areas (pioneer and mature phases greater in cover than degenerate and bare areas). Absence of non-native invasives.
Required management process	Vegetation and nutrient removal that, through planned actions or livestock, produces structural variation.

Constituent habitat	Lowland acid grassland
Key indicators of good condition	Open in character with limited quantities of encroaching scrub and bracken. No more than 10% bare ground. Presence of floral indicator species.
Required management process	Vegetation and nutrient removal.
Constituent habitat	Valley mires, bogs, fens, marsh and swamp
Key indicators of good condition	Appropriate water regime. No pollution. Presence of floral indicator species. No more than 10% bare ground.
Required management process	Limited need for vegetation and nutrient removal. Maintenance of the quality and quantity of the water feeding the habitat.
Constituent habitat	Conifer plantation
Key indicators of good condition	Diversity of age of stands with >10 years between adjacent coupes, minimum area of 5 ha for restocked blocks (ideally 30 ha), bare ground immediately after felling.
Required management process	Long term management plan, rotational felling, removal of brash after felling (completely or into windrows)

9.4 The habitat needs of important heathland species

9.4.1 The particular needs of important heathland vertebrates for specific features, including the three Annex I birds of the SPA, are identified in Table 9.2 (adapted from Symes and Day 2003). There are also a number of scarce invertebrates of heathland and many have a requirement for open ground and sandy banks (Symes and Day 2003).

Table 9.2: Heathland habitat needs of important heathland vertebrates

Species	Heathland feature
Nightjar	Mature heath with gaps and pine scrub, wet heath and scrub for foraging
Woodlark	Pioneer and building heath, mature heath with gaps, bare or burnt areas
Dartford Warbler	Mature heath with scattered gorse

Species	Heathland feature
Sand Lizard	Mature heath with gaps and scattered scrub, banks and mounds, bare sand
Smooth Snake	Mature heath with gaps and scattered scrub, banks and mounds, bare sand
Natterjack Toad	Mature heath with gaps, pioneer heath, bare or burnt areas, shallow ephemeral pools

9.4.2 The result of taking account of these needs is that it is highly unlikely that the management objective for a site would be for a continuous stretch of even aged heather. What will be sought is structural diversity - a spread of heather patches representing the range of growth stages with small patches of the two extremes of bare, sandy soil and scrub or trees. Such structural diversity can be achieved by a detailed programme of manual and mechanical intervention in a rotation across the site or it can be achieved by controlled grazing with appropriate stock across relatively large areas. A combination of the two can also be used.

9.5 The management techniques available

9.5.1 The advantages and disadvantages of each of the management technique available to a heathland site manager are set out in Table 9.3. This table has been collated from the information held in a number of habitat management publications (Day *et al*/ 2004, Entec 2005, Gimingham 1992, Lake and Underhill-Day 2004, Sutherland and Hill 1995 and Symes and Day 2003).

Table 9.3: The advantages and disadvantages of each management technique

Technique	Advantages	Disadvantages
Burning	Can be undertaken in rough terrain unsuitable for mowing or grazing. Relatively cheap to undertake.	Risk of out of control fires and drifting smoke. Runs counter to campaigns to reduce damage by arson. May be incompatible with some particular species conservation interests.

Technique	Advantages	Disadvantages
Grazing	Effective in creating microhabitats e.g. varied sward heights, patches of bare ground. Can provide an income. Can be undertaken on rough terrain.	The required fencing and water provision are expensive. Fencing can provoke a hostile reaction from user groups. Suitable livestock often not available. Labour requirements to husband stock. Some user groups fear the livestock. May be incompatible with some particular species conservation interests.
Herbicides	Can be applied over large areas. Rapidly tackles scrub and some invasives. Can be selective by chemical and application method.	Risk of non-target effects (unselective action or drift). Manual application is labour intensive. Viewed as inappropriate by some.
Mowing	Can be closely targeted by date and site.	Leaves uniform sward. Causes a rapid change in habitat condition. Not possible on rough and wet terrain. Difficulty of removal and disposal of cuttings.
Pulling/weeding	Low impact technique. Can be closely targeted by species, date and site.	Labour intensive. Practical only in small areas. Creates bare ground that may be colonised by undesirable species.
Tree felling	Can be closely targeted by date, site and species. Can provide an income.	Adverse reaction from user groups.
Turf cutting	Effective in removing nutrients. Creates bare, infertile ground.	Labour intensive. Difficulties of disposing of spoil.

9.5.2 Of the techniques available, extensive grazing over large areas with hardy, native breeds of livestock is widely considered to be the technique of first choice because it is the technique that in large part gave rise to, and maintained, the nature conservation interest of heathland (Lake and Underhill-Day 2004, Sutherland and Hill 1995, Symes and Day 2003, Webb 1986). The New Forest, which has a long history of extensive grazing, accompanied by burning, is considered a model for extensive grazing management by the Forestry Commission (Forestry Commission 2005). There are concerns about the universal application of grazing, especially on sites with some scarce reptiles and invertebrates (Lake *et al*/2001, Offer *et al*/2003) and also where there is public access (see below). A comprehensive discussion of

the advantages and disadvantages of re-establishing a grazing system on heathlands is provided in Lake *et al*/2001 and Lake and Underhill-Day 2004.

- 9.5.3 For those areas of the Thames Basin Heaths SPA that are conifer plantation the two approaches that will maintain their annex I bird interest in the long term are continued cycles of felling and replanting with conifers or restoration to open heathland after the next felling cycle. The advantage of continuing the forestry rotation is that it provides an economic basis for managing and maintaining heathland features over extensive areas and long timescales (Forestry Commission 2005) and with those features particularly populations of Nightjar and Woodlark. Restoration to open heathland can be the preferred option where it will significantly reduce fragmentation of heathland blocks (Forestry Commission 2005) and remove trees from bogs (Symes and Day 2003).

9.6 How management options are affected by the presence of recreational access

- 9.6.1 A recent study (Entec 2005) that investigated stakeholder reactions to the options for the management of registered Common Land in south-east England, including those representing regular visitors to heathlands and nature conservation bodies, identified a pattern of resistance to change and to restrictions on access. A common theme in responses to a questionnaire was conflict between informal recreational users and nature conservation interests. Fencing and tree clearance caused the most adverse reaction from stakeholders with some feeling threatened by the livestock carrying out the grazing. Fencing was objected to on both grounds of the physical impediment to access and the effect that it had on the view of an open landscape. Where grazing was introduced, resistance also arose because of the limitations that the presence of livestock then imposed on the opportunity to have dogs running off the lead. Tree clearance received both positive and negative reactions, dependent on site specific circumstances and the views that were opened up. The rapid pace of change was a particular concern. There was also evidence that people did not recall that the ‘wood’ that was being felled was once open heathland, with extensive views, some twenty to fifty years previously, even in cases when they had lived in the area over that period.

- 9.6.2 Where recreational access has been created as a right by common land statutes, this creates particular problems. Fencing to enable livestock grazing requires specific permission from the Secretary of State as provided for by section 194 of the Law of Property Act 1925. It has proven a difficult process to obtain consent for fencing in order to manage common land for nature conservation reasons since such a reason was not allowed for in the original legislation. The Commons Act 2006 contains provisions that should make it easier to gain consent for fencing work to manage the vegetation of a common and these provisions may come into force in 2007. Guidance has been produced on behalf of English Nature, Defra RDS, The Countryside Agency, Open Spaces Society and the National Trust (Short *et al* 2005) aimed at agreeing changes in the management of commons. This emphasises consultation, consensus building and identifying solutions.

9.6.3 Table 9.4 provides a guide to the status of the component SSSIs in the Thames Basin Heaths SPA as registered Common Land. The information in the table was produced from a rapid assessment of the maps presented on the website openaccess.gov.uk and is intended to provide a broad guide to the potential scale of the problem that registered Common Land may present to achieving nature conservation led management, especially fencing and grazing, across the SPA. It should be noted that it was not a precise analysis derived from a definitive set of boundaries processed in a GIS system.

Table 9.4: ‘Commons’ status of the component SSSIs

Component SSSIs	Identified as registered Common Land on the ‘openaccess.gov.uk’ web site
Ash to Brookwood Heaths	Not mapped as registered Common Land.
Bourley and Long Valley	Not mapped as registered Common Land.
Bramshill	Not mapped as registered Common Land.
Broadmoor to Bagshot Woods & Heaths	Not mapped as registered Common Land.
Castle Bottom to Yateley and Hawley Commons	Appears to be around a half mapped as registered Common Land.
Chobham Common	Appears to be virtually all mapped as registered Common Land
Colony Bog and Bagshot Heath	Appears to be less than a tenth registered Common Land.
Eelmoor Marsh	Not mapped as registered Common Land.
Hazely Heath	Appears to be virtually all mapped as registered Common Land.
Horsell Common	Appears to be all mapped as registered Common Land
Ockham and Wisley Commons	Appears to be two thirds registered Common Land.
Sandhurst to Owlsmoor Bogs and Heaths	Not mapped as registered Common Land.
Whitmoor Common	Appears to be all mapped as registered Common Land

9.6.4 Particular difficulty with achieving management through resistance to permitting fencing may be encountered on those SSSIs which are in large part registered

Common Land - Chobham Common, Hazely Heath, Horsell Common, Ockham and Wisley Commons and Whitmoor Common. The study of common land in south-east England (Entec 2005) ranked these commons, alongside all commons in south-east England in priority order for attention for habitat management actions. The two highest ranked Thames Basin Heaths SPA component SSSIs in need of management identified in that study were are Colony Bog and Bagshot Heath SSSI (although only a small part is registered Common Land) and Chobham Common SSSI.

- 9.6.5 Advice on establishing a conservation grazing system on sites with public access is given in Swanson 2005.

9.7 Conclusions

- 9.7.1 Lowland heathland is a habitat that was created and maintained by man. In particular the exploitation of the products of the heath ensured that nutrients were regularly removed, maintaining low fertility and preventing dominance by grasses or invasion by scrub and succession to woodland.
- 9.7.2 Active management and nutrient removal needs to continue to maintain the open land components of the SPA if they are to retain their Annex I bird interest. This is best achieved by the processes that created the heathlands and in a way that ensures there is diversity in the structure of the vegetation. Extensive grazing over large areas with hardy, native breeds of livestock is widely considered in the nature conservation community to be the most effective way to produce the conditions that provide for the important suite of heathland vertebrates. Achieving such management by grazing is hampered on heathlands with public access because of fear of, or resistance to, livestock due to the need for fencing and the limitations it poses on the opportunity to have free running dogs.
- 9.7.3 The current conifer plantations in the SPA need active intervention, in the form of continued cycles of felling, if they are to retain their Annex I bird interest. This is most cost-effectively achieved by continued commercial exploitation of the timber planned in a way that ensures there are always new blocks of bare ground being created by felling and subsequent replanting with conifers.
- 9.7.4 The fact that a significant number of the component SSSIs of the SPA are also largely common land poses particular problems for their management by grazing.

10 REVIEW OF APPROACHES TO HEATHLAND ACCESS MANAGEMENT

10.1 Introduction

10.1.1 On land that the public have traditionally had access, or have had access enabled by legislation, the approach to management for nature conservation purposes has been one of applying the least restriction possible to achieve protection of the nature conservation features. A hierarchy of restrictions have been applied with a presumption that voluntary mechanisms will be applied first, tested, monitored and only if they fail will statutory restrictions be applied. This is advocated as best practice, implemented as policy by many public bodies and is required in some statutory procedures.

10.2 Management approaches

10.2.1 The main division between management approaches is between those that seek to manage people in a positive manner and those that apply negative approaches. The latter is caricatured by the “Keep Out! Trespassers will be prosecuted!” signs of private landowners. The Countryside Agency (now Natural England) provide the following guide to land owners and managers on how to manage people positively when access has been created through the open access provisions of the CRow Act (Countryside Agency website “Managing access” www.openaccess.gov.uk):

- Routes can effectively guide the public to attractive places that they will wish to visit.
- People tend to behave in predictable ways, often preferring to make use of existing paths or tracks to reach viewpoints or other places of interest.
- Most people are happy to follow clearly marked routes, so it is sometimes possible to steer them away from sensitive areas, to access points and along paths.
- You cannot legally require visitors to remain on a particular path or track on access land but you can provide options that are appealing for the public and are in line with your management requirements.
- Give positive information about where people can go, as well as highlighting areas where access is restricted for any reason.
- Positive messages and signs are much more likely to be heeded than negative ones.

10.3 Management measures

Voluntary measures

10.3.1 The voluntary measures that could be applied (and in many cases are being) to benefit the Thames Basin Heaths SPA include:

- Honey pots – visitor centres, refreshment and toilet facilities to be located away from the SPA, adjacent to areas in the SPA identified as less sensitive or where there will be well resourced measures to manage access such as wardening.
- Car parks (formal) – changing their location, size, surfacing and signage – both improving the standard where it is desired to attract people and reducing the standard (or closing a car park) where it is desired to discourage access.
- Car parks (informal ie pull-ins over a kerb or onto open land) – changing the ability to access such informal car parks, preventing access to such areas where it is desired to discourage people and converting them to formal car parks where the wish is to attract people.
- Public transport – relocating stopping points away from areas where access is to be discouraged.
- Habitat management – managing the vegetation to encourage people in a different direction, either opening up a desire line or guiding people away from a sensitive area with ‘dead hedging’ or planting/encouraging gorse.
- Rangers on site to explain where it is desired people go and the activities that are to be encouraged in particular locations.
- Interpretation boards, leaflets, signs and waymarking and websites to highlight the routes and areas in which particular activities are being encouraged, including identifying any new facilities such as alternative greenspace that has been provided.
- Education and awareness raising activities off-site through for instance schools, clubs and special interest groups.

10.3.2 The overall approach here, much like the philosophy behind SANGS, is to provide an alternative facility or feature that is equally or more attractive than the SPA. In this case though there is active encouragement of existing users to change their behaviour and make use of the new facility or feature, be it off the SPA, in a less sensitive part of the SPA or at a less sensitive time.

10.3.3 Where existing voluntary measures are failing and/or new voluntary measures have, after an appropriate time to test their effectiveness, been shown to fail or be less effective than desired, then resort to restrictive measures will need to be considered. The ability to use such measures and the nature of them will depend on the open access status of the land.

10.3.4 Table 10.1 presents a guide to the status of public access for the component SSSIs of the Thames Basin Heaths SPA. The information in the table was produced from a rapid assessment of the maps presented on the website openaccess.gov.uk. It is intended to provide a broad guide the scale of the issue of open access on the Thames basin Heaths. It should be noted that it was not a precise analysis derived from a definitive set of boundaries processed in a GIS system. Further details on the MoD access management arrangements are given in RPS Group 2003.

Table 10.1: Open access status of the component SSSIs

Component SSSIs	Open access status: Registered Common Land (section 15), 'open country' (presumed 'heath') or not access land
Ash to Brookwood Heaths	Appears to be around three quarters mapped as open country, the remainder not access land. Note that significant access control exists across most of the site through MoD use.
Bourley and Long Valley	Appears to be around a quarter mapped as open country, the remainder not access land. Note that significant access control exists across most of the site through MoD use.
Bramshill	Appears to be less than a tenth mapped as 'open country', the remainder not access land.
Broadmoor to Bagshot Woods & Heaths	Appears to be around a half mapped as open access land but not registered Common Land. Note that access control exists across a quarter of the site through MoD use (some permanently closed) and this land is not mapped as having open access status.
Castle Bottom to Yateley and Hawley Commons	Appears to be around a half mapped as Common Land, the remainder not access land. Note that access control exists across a third of the site through MoD use (split roughly equally been land that is registered Common Land and land that has no open access status).
Chobham Common	Appears to be virtually all mapped as Common Land.

Component SSSIs	Open access status: Registered Common Land (section 15), 'open country' (presumed 'heath') or not access land
Colony Bog and Bagshot Heath	Appears to be predominantly mapped as open country with less than a tenth registered Common Land. Note that the 'open country' is largely within the MoD closed ranges area.
Eelmoor Marsh	Appears to be around a third mapped as 'open country', the remainder is not mapped as open access land.
Hazely Heath	Appears to be virtually all mapped as 'Common Land'.
Horsell Common	Appears to be all mapped as Common Land
Ockham and Wisley Commons	Appears to be two thirds Common Land, the remainder is not mapped as open access land
Sandhurst to Owlsmoor Bogs and Heaths	Appears to be two thirds open country, the remainder is not mapped as open access land.
Whitmoor Common	Appears to be all mapped as Common Land

Control measures through CRoW Act

10.3.5 There are some statutory restrictions on open access that can be applied through the CRoW Act. The Countryside Agency (now Natural England) advises landowners and managers "we strongly recommend the least restrictive option that will meet your needs". The forms of restriction include those that:

- Require the public to keep their dogs on leads (note this is already required in the bird breeding season)
- Exclude people with dogs from the land
- Restrict the public to designated paths
- Require the public to enter CRoW access land at designated entry points.
- Exclude people altogether from the land.

10.3.6 If such restrictions are sought that apply for 6 or more months then they have to undergo public consultation and are listed on the openaccess.gov.uk website. At the end of September 2006 three cases were undergoing such consultation. It was

reported in July 2006 that in 44 instances formal exclusions under section 26 of the CRoW Act had been applied for nature conservation reasons (Bathe 2006). The majority of these apply to access land (heathland and downland) with nesting Stone Curlew, an Annex I species.

- 10.3.7 Dogs using open access land have to be kept on a lead of no more than 2 metres between 1 March and 31 July in order to protect nesting birds. Additional restrictions can be applied but as described below it is apparent that this will not apply to dogs whose owners are using a public right of way to cross access land.

Control measures on Common Land

- 10.3.8 On registered Common Land the right that the public has historically acquired (ie prior to the CRoW Act) for ‘air and exercise’ cannot be restricted by the CRoW Act provisions described above. Such land over which the restrictions cannot be applied is referred to as “Section 15 land”. Access and activities on such registered Common Land is regulated by the original enactment that defined the use of that common although conditions of use may be applied by specific byelaws. It is also likely that members of the public will assert a right to continue to access common land even when restrictive measures are attempted. This will be on the grounds that their right of access derives from having used the site for a long period by local tradition or tolerance (without ‘let or hindrance’). Guidance on these legal matters, but not a final legal opinion, is given in a Countryside Agency document (Countryside Agency undated).

- 10.3.9 It appears, but this review has not made a substantive investigation, that on such “Section 15 land” there may be an absence of restrictive measures that can be applied in order to protect the conservation interest of an SPA or SAC. The consequence of this, if it is proven to be true, is that the UK Government only has ‘voluntary’ measures available to it and that SPAs and SACs may be at risk of continuing damage if voluntary means cannot be agreed. A similar deficiency that related to the management of vegetation for nature conservation purposes on registered Common Land was remedied by the Commons Act 2006.

Control measures on Public Rights of Way

- 10.3.10 As for other areas where restrictive measures might be applied, a hierarchy of action is applied to users of public rights of way – initially to ask for voluntary restraint, if that fails then to apply a Traffic Regulation Order and then as a last resort to use a permanent diversion of the right of way. Dogs on public rights of way must be under control. The Countryside Agency advises the public that if you cannot rely on your dog’s obedience then you should keep it on a lead (Countryside Agency undated).
- 10.3.11 A Traffic Regulation Order (TRO) can restrict the use of a right of way, closing it to classes of user, for restricted periods and experimentally. It can be used to protect a SSSI (IPROW undated) under the provision that allows a TRO for the purpose of ‘conserving or enhancing the natural beauty of the area’ where as a

result of an amendment created by the CRoW Act this is defined as including conserving its flora and fauna. Such a TRO can apply to public rights of way of all status (i.e. public footpaths & bridleways, restricted byways and byways open to all traffic). It could be used to control access on foot to a heathland where it is not registered Common Land and had otherwise been closed using the access land restrictions described above. Highways authorities have to consider their duty under section 28G of CRoW Act to further the conservation and enhancement of the SSSIs when contemplating such an action (IPROW 2004).

- 10.3.12 There is a procedure for diverting public rights of way that cross or adjoin SSSIs in Schedule 6 of the CRoW Act. Defra consulted on the commencement and implementation of this procedure in August – November 2005 and the regulations to enable such orders are likely to be put in place in Autumn 2006 (Defra *pers. comm.*). The diversion would be implemented by the highway authority, at the request of Natural England. Defra describe this as a last resort power (Defra 2005). The grounds for making such an order would be that the public use of the highway is causing, or that continued use of the highway is likely to cause, significant damage to the flora, fauna, or geological or physiographical features by reason of which the SSSI is of special interest, and that the diversion is expedient for the purpose of preventing such damage. (Defra 2005).

10.4 Conclusions

- 10.4.1 Public access to heathlands can be managed by voluntary or restrictive statutory means. There has been a tradition by public bodies in England of applying the least restrictive means possible, primarily voluntary encouragement and only using restrictions as a last resort.
- 10.4.2 There is a wide variety of positive means that could be, and are being, used on the Thames Basin Heaths to manage public access. In line with existing public policy these should be encouraged and tested. It will require additional resources. The application of negative, statutory measures is problematical on heathland and especially registered Common Land for both cultural (the assertion of a right by historic use) and legal reasons.
- 10.4.3 It is considered that there may be a gap in the statutory measures available and that Defra should review the legal mechanisms it has to manage access to those heathlands falling outside the CRoW Act provisions by virtue of specific or general acts that gave a right of access through the status of the land as a common (the “Section 15 land”). If it has no legal mechanism then to consult on what form of ‘last resort’ regulation would be needed to protect the conservation interest of SPAs and SACs in such circumstances.