

Public Rights of Way

An A to Z of problems, policy and procedures.



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1.0 INTRODUCTION

As part of the review into the management of the Rights of Way in Tyne and Wear it has been resolved to provide a guide to the authorities protocol regarding various problems associated with the Rights of Way network that commonly occur. It is hoped that it will assist members of the public, landowners, path users and other interested parties to understand more easily some of the legislation, which applies to Public Rights of Way and the way Gateshead, Newcastle City, North Tyneside, South Tyneside and Sunderland City Councils will apply the legislation to the various issues. The completion of this guide is the first step along the way to ensuring a consistent and practical approach to the management of Rights of Way across the five authorities.

The primary function of central and local government enforcement work is to protect the public and the environment. This applies specifically to Public Rights of Way as well as to a wide range of other functions. Furthermore the effectiveness of legislation in protecting the Public Rights of Way network and the rights of the public depends crucially on the compliance of those regulated and available resources.

Included in the term "enforcement" are advisory visits and information. We will provide information and advice in plain language on the rules we apply and we will be open about how we go about our work. We will always be keen to discuss general issues or specific problems with anyone experiencing difficulties and endeavour to undertake any enforcement action or other powers bestowed upon us subject to available resources.

We believe that prevention is better than cure and that our role therefore involves actively working with both landowners and users to advise on and assist with compliance.

This guide and the actions contained within will be carefully monitored and periodically updated as changes in policy or legislation arise.

2.0 ACCESS FOR PEOPLE WITH DISABILITIES

A simple stile can often prove to be a major obstacle for many people. The Countryside & Rights of Way Act 2000 (section 69) and the Highways Act 1980 (section 147) requires highway authorities to have regard for the needs of people with mobility and sight problems. Highway Authorities also have a duty to regard the needs of disabled

and blind users when executing any works (Highways Act 1980 section 175A), and where restrictions to people with disabilities may be created (Disability Discrimination Act 1995, as amended by the Disability Discrimination Act 2005).

The Highway Authorities operate a 'minimum barrier' policy, with respect to new and diverted Public Rights of Way. Wherever maintenance issues arise to replace, repair or install new items of furniture on Public Rights of Way the opportunity will be taken to place the least restrictive barrier possible on site. The Rights of Way Officer will individually assess each case and the need for furniture to be installed taking into account:

- the paths status;
- current historical furniture on site;
- topography;
- nature of farming and land use;
- what would be the least restrictive access in that particular location; and
- the landowners / land managers wishes.

Gaps are preferred to stiles, unless farm animals need to be restricted, in which case either a gate, self closing gate, gates with boxes or kissing gates will be installed in preference to stiles.

Stiles will only be installed where it has not been possible for the Highway Authority to negotiate a change in structure or it is not possible to use an alternative barrier. See also "34.0 Stiles and Gates on Footpaths and Bridleways".



3.0 BARBED WIRE ACROSS A PUBLIC RIGHT OF WAY

A barbed wire fence or exposed barbed wire, erected across a Public Right of Way without an adequate means of crossing, is an offence. It is an obstruction to the right of way and a nuisance and a danger to members of the public wishing to use the right of way. The protocol the Highway Authorities have adopted in these matters is firstly to ask the owner of the fence to remove it immediately or, if it is necessary for agriculture, to provide an adequate means of crossing it on the line of the path. The latter will require authorisation by the Highway Authority, as it would constitute a new stile (see 34.0 Stiles and Gates on Footpaths and Bridleways). If the owner fails to agree to either of these courses of action, the Highway Authority will remove the barbed wire where it affects the path, without further notice. If the owner continues to commit further offences of this nature, the Highway Authority will consider prosecution for obstruction (Highways Act 1980 section 137 and 149).

4.0 BARBED WIRE ALONGSIDE A PUBLIC RIGHT OF WAY

Where a barbed wire fence is situated alongside a Public Right of Way it may be a danger and a nuisance to members of the public. If in the opinion of the Highway Authority the barbed wire does represent a danger to the public, then the Highway Authority has a protocol of firstly asking the owner / manager to make the fence safe for members of the public using the path. If the owner / manager refuses or fails to do so the Highway Authority will serve legal notice requiring the owner to remove the source of danger within a specified time (Highways Act 1980 section 164).

5.0 BRIDGES

Responsibility for the provision, repair and maintenance of bridges and culverts is shared between the landowner and the Highway Authority and may be different in each case. The Highway Authority is responsible for most footbridges, but where a public footpath or bridleway crosses a bridge, over which there are private vehicular rights, then maintenance of the bridge to vehicular standard is likely to be the responsibility of the landowner. The rail authority is responsible for the structure of most footbridges over railway lines. The Highway Authority remains responsible for the surfaces of the paths over these bridges (Transport Act 1968). The Highway Authority will normally agree with a landowner, to contributing a share of the costs of maintaining and repairing a private vehicular bridge which carries a Public Footpath or Bridleway. If such a bridge is washed away, or has to be demolished for reasons of safety, then the Highway Authority may agree with the landowner to replace it with a footbridge or bridle bridge, as appropriate if vehicular use is no longer required. The Highway Authority would be wholly responsible for the new structure.

6.0 BRIDGES REQUIRED OVER NEW DITCHES, PONDS AND CHANNELS

It is an offence for a landowner or occupier to wilfully obstruct a Public Right of Way (Highways Act 1980 section 137). The Highway Authority has a duty to protect and assert the rights of the public to the use and enjoyment of the Public Rights of Way network (Highways Act 1980 section 130).

Where a landowner or occupier creates a new ditch, pond or channel etc. that crosses an existing right of way a suitable bridge or structure must be provided which can accommodate all legitimate users safely and without restriction. The absence of a suitable bridge or other structure can be construed as "wilful obstruction" on behalf of the landowner or occupier. Exceptions may include instances where a path is not recorded in the Definitive Map and Statement subsequent to the new feature being created.

This policy is designed to ensure that landowners or occupiers, who intentionally obstruct rights of way, by creating ditches or water features, are required to provide a bridge or other suitable structure on the Definitive line of the Right of Way. Diverting the path retrospectively is not normally an acceptable solution and the feature will normally be considered an obstruction.

7.0 BULLS & DANGEROUS ANIMALS

It is an offence for the occupier of land crossed by a Public Right of Way to allow a bull over 10 months old and on its own and/or any bull of a recognised dairy breed (even if accompanied by cows/heifers) to be at large on the land.

Bulls, which are less than 10 months old, or of a recognised beef breed and at large with cows/heifers are exceptions to this rule.

If any animal, for example a horse, which is known to be dangerous by the keeper of the animal, causes injury to a member of the public using a Public Right of Way, an offence may be committed and the occupier could be sued by the injured party (Wildlife and Countryside Act 1981 section 59).

The Highway Authority will deal with the problem by approaching the landowner and requesting that he / she moves the bull(s) or other dangerous animal(s) from the field through which the Right of Way passes. A failure on the part of the landowner to comply with such a request may result in prosecution.

8.0 COMPETITIONS & SPEED TRIALS

It is an offence (under section 33 of the Road Traffic Act 1988) to hold a motor vehicle race or trial or speed event on a footpath, bridleway or restricted byway unless the event is authorised by the Highway Authority and the consent of the owner is obtained in writing. Even if such an event is authorised and the owner has given consent an offence is still committed if the vehicle is driven dangerously or without due care and attention or without reasonable consideration for others.

9.0 CROPS GROWING ON PUBLIC RIGHTS OF WAY

Where a crop (other than grass) has been planted or sown on land crossed by a Public Right of Way, the occupier has a duty to ensure that the line on the ground of the Public Right of Way is indicated to not less than the minimum width (1m for cross field footpaths, 2m for cross field bridleways, 1.5m + field edge (headland) footpaths and 3m + for field edge (headland) bridleways, restricted byways and byways open to all traffic). Additionally, the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season. Failure to fulfil this duty is a criminal offence (Rights of Way Act 1990 section 137A). See also "30.0 Ploughing and Crop on Public Rights of Ways".

10.0 DANGEROUS LAND ADJOINING A PUBLIC RIGHT OF WAY

From time to time the Highway Authority encounters unfenced dangers on adjoining land, which present hazards to path users. The Highway Authority has a duty to protect path users from such dangers and will in the first instance talk to the owner of the adjacent land and urge him / her to remove or adequately fence the danger. The Highway Authority can require the owner of the dangerous land to carry out the necessary works by service of notice. If the owner does not comply with the notice, the Highway Authority may carry out the work and recover the costs from the owner (Highways Act 1980 section 165).



11.0 DEFINITIVE MAPS

Definitive Maps are legal records of Public Rights of Ways. The Highway Authority is responsible for the Definitive Map. If a way is shown on the Definitive Map then it is conclusive evidence of a public rights along the way unless there has been a legally authorised change.

There may also be additional public rights over land which have not yet been recorded on the map, or there may be rights which have been incorrectly recorded. The Definitive Map can be amended by legal order if evidence of missing rights of way is discovered or to correct errors in previously recorded information. Each of the Tyne and Wear Highway Authorities have agreed a set of priority guidelines to be used for determining the sequence within which a modification order application will be processed relative to other applications. These guidelines will be used to determine the position of an application within the queue.

Because of the different criteria that can be used to determine the priority that should be attributed to an application, for example, landowner interests, public interests, local authority interests and so on, it would be inappropriate and misleading to create a single hierarchical "league table".

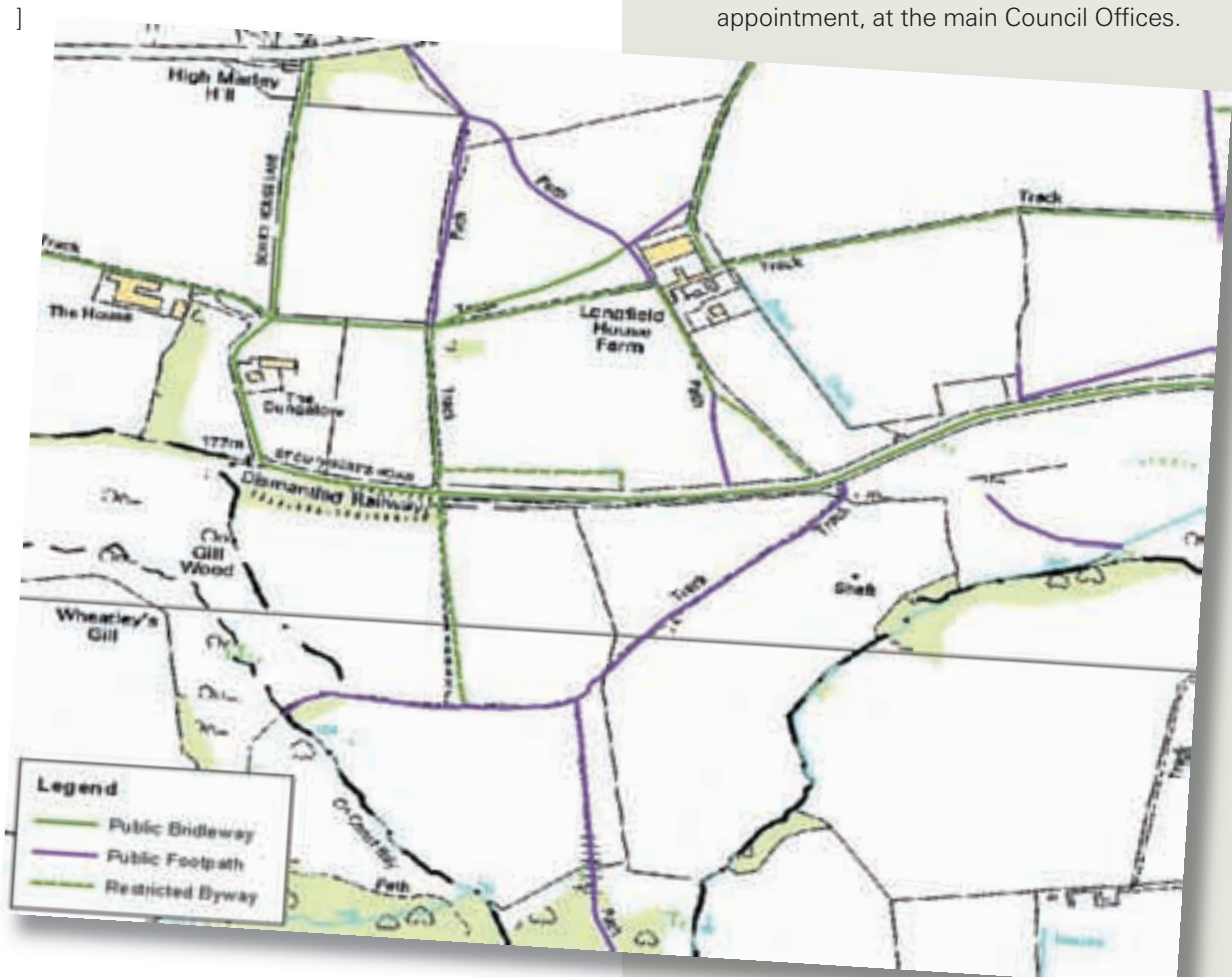
The following priority guidelines should be seen rather as an equation made up of different criteria, all of which need to be taken into account in order to reach a final decision as to the queue position that an application should be accorded. The components of the equation are as follows:

- PART A Landowner Interests
- PART B Public Interests
- PART C Local Authority Interests
- PART D Nature and Level of Usage
- PART E Environment and Sustainability

Based upon the above components, each application will be given a priority of 1, 2 or 3, with 1 the highest and 3 the lowest. Once assigned a priority, the application will be processed in chronological sequence within that priority level. However, if an additional component in the "equation" comes to light during processing of the application, the priority assigned could be subject to change. Further information can be found in the Tyne and Wear Rights of Way Improvement Plan (Appendix D).

For further information, advice or to request a copy of an application pack please contact the relevant authority based Public Rights of Way Officer (contact details on the back page).

The Definitive Map can be inspected, by appointment, at the main Council Offices.



12.0 DIVERSION, CREATION AND EXTINGUISHMENT OF PUBLIC RIGHTS OF WAY

To alter, close or create a new Public Right of Way a legal order is required. All orders are open to public consultation and certain legal criteria have to be met. The Highway Authority therefore cannot guarantee that all orders will be made or completed. Application forms and advice regarding diverting, closing or creating a Public Right of Way are available from the relevant authority based Public Rights of Way Officer (contact details on the back page).

13.0 DOGS ON PUBLIC RIGHTS OF WAY (see also "22.0 Intimidating Dogs")

Dogs are allowed on Public Rights of Way, but they must be kept under close control at all times. There is no requirement in law for a dog to be on a lead. A path user who allows a dog to wander off the Right of Way becomes a trespasser and owners and occupiers have a right to ask them to leave the land. If a dog is likely to wander off the line of the path, or to worry livestock, the owners are advised to keep the dog on a lead.

It is an offence to allow a dog that is not under close control or on a lead to be at large in a field or enclosure with sheep. A farmer may shoot a dog, which is attacking or chasing livestock.

The fouling of a Public Right of Way by a dog may be an offence under an order made under the Dogs (Fouling of Land) Act 1996 where the person in control of the dog fails to remove the fouling. Dog fouling is an accepted hazard to health. The Highway Authority may attach signs to stiles, gates and fingerposts advising owners to keep their dogs on a lead, or under close control where there is a reported problem. The Highway Authority may also choose to use its powers to make an order under section 27 of the Road Traffic Act 1988 requiring dogs to be kept on a lead on specified footpaths and bridleways. Failure to comply is an offence.

14.0 ELECTRIC FENCES ACROSS A PUBLIC RIGHT OF WAY

An electric fence erected across a Public Right of Way without a safe means of crossing is an offence. It is an obstruction to the right of way and a nuisance and a danger to members of the public wishing to use the right of way. The Highway Authority will deal with the problem by asking the owner of the electric fence to remove it immediately or, if it is necessary for agriculture, to provide an adequate means of crossing it on the line of the path. The latter will require authorisation by the Highway Authority, as it would constitute a new stile (see "34.0 Stiles and Gates"). If the owner fails to agree to either of these courses of action, the Highway Authority will remove the electric fence where it affects the path without further notice. If the owner continues to commit further offences of this nature the Highway Authority will consider prosecution for obstruction (Highways Act 1980 section 137, 137Z, and 149).

15.0 ELECTRIC FENCES ALONGSIDE A PUBLIC RIGHT OF WAY

Where an electric fence runs alongside a public path it may be a danger and a nuisance to members of the public. If, in the opinion of the Highway Authority, the fence is a danger or nuisance, then the Highway Authority will ask the owner to make the fence safe for members of the public using the path. If the owner refuses or fails to do so, the Highway Authority will serve legal notice requiring the owner to remove the source of danger within a specified time. Failure to comply with the notice will result in the Highway Authority removing the fence and recovering costs from the owner (Highways Act 1980 section 165).

16.0 ENCROACHMENT

Encroachment is an unlawful obstruction of the highway. When an encroachment has occurred, or alleged to have occurred, the Highway Authority is duty bound to investigate.

Consideration will be given to whether the encroachment has actually occurred and is materially affecting the way, or may do so in the future. This may require considerable research, including historical research to establish the legitimate width of the highway (see "39.0 Widths of Public Rights of Way"). If it is demonstrated to the Highway Authority's satisfaction that encroachment has occurred, but it is not materially affecting the path or the rights of users, the Highway Authority may regard it as "de minimis". In these circumstances the Highway Authority will inform the person responsible that their actions are unlawful and any additional encroachment will result in enforcement action to remove all the encroachment.

If the encroachment has been found to the Highway Authority's satisfaction to be materially affecting the right of way and the rights of users, the following approach will be taken to have it removed. Firstly the circumstances will be brought to the attention of the person responsible and they will be asked to remove the encroachment, within a reasonable time-scale to be determined by the Highway Authority. If they fail to do so, the Highway Authority will begin enforcement action in respect of the obstruction (see "28.0 Obstruction").

17.0 ENFORCEMENT OF PLOUGHING AND CROPPING PROTOCOL

The ploughing and cropping of cross-field Public Rights of Way can create problems if not properly reinstated in accordance with statutory time scales for doing so (within 14 days for the first process in cropping, and 24 hours for any subsequent process that interrupts route accessibility). The Highway Authority will endeavour to undertake the following protocol to deal with it.

For a first offence, the Highway Authority will explain the law to the offender and advise that the route will be inspected again within 14 days. Upon expiry of that period if the path has not been reinstated to a satisfactory standard the Authority has the power to serve formal legal notice upon the offender, requiring him or her to re-instate the path within a further 14 days. If the path is still not reinstated satisfactorily, the Authority can carry out the necessary work with contractors and recover costs from the offender.

On occasions where an occupier has responded to the first informal request, but repeats the offence in subsequent years, the Highway Authority can immediately serve formal legal notice requiring the reinstatement of the path within 7 days, as set out above.

On occasions where an occupier re-offends after service of formal legal notice, the Highway Authority can again serve legal notice and additionally could consider prosecuting the offender. Where sufficient resources allow, all recipients of enforcement notices in any one-year maybe sent letters setting out the law and reminding them of their obligations before the next cropping season commences.

18.0 EROSION

Erosion will be addressed by preventative maintenance wherever possible.

Sites, which are identified as suffering from erosion, will be prioritised for action according to public safety and budget restraints.

19.0 FIREARMS ON PUBLIC RIGHTS OF WAY

It is not an offence to shoot across a Public Right of Way, although to do so may amount to a common law nuisance or intimidation, wilful obstruction of the Highway under the Highways Act 1980 (section 137), a breach of Health and Safety at Work Act 1974 or intimidation, depending on the circumstances.

It is, however, an offence to discharge a firearm within 50 feet of the centre of a byway (carriageway carrying public vehicular rights) if it injures, interrupts or endangers any user of the byway (Highways Act 1980 section 161)

Section 19 of the Firearms Act 1968 also makes it an offence for a person to have a loaded air-weapon, or any other firearm whether loaded or not, together with ammunition in a public place, including any Public Right of Way, unless the person has lawful authority or a reasonable excuse, such as a landowner or tenant shooting vermin on his own land.

Where the Highway Authority receives a complaint regarding firearms and is concerned for the safety of the public using the Right of Way, then the matter will be referred to the police (see also "23.0 Intimidating and Threatening Behaviour").

20.0 GATES (see “34.0 Stiles and Gates”)

21.0 HEDGES AND TREES ADJACENT TO PUBLIC RIGHTS OF WAY

(see also “36.0 Tree Branches and Limbs Across Public Rights of Way”)

In most circumstances, the responsibilities of the Highway Authority do not extend to the maintenance of hedges and trees at the side of Public Rights of Way. The landowner is responsible for ensuring that a hedge does not overhang a Public Right of Way so as to obstruct it.

Where a hedge overhangs or obstructs a Public Right of Way the Highway Authority has a right to remove so much of the overgrowth to prevent obstruction to pedestrians and equestrians. Additionally, the Authority has a power to require that the owners of overhanging hedges lop or cut back the hedge within a period of 14 days (Highways Act 1980 section 154).

If a byway open to all traffic or restricted byway is being damaged by the exclusion of light and air, due to adjacent hedges or trees, the Highway Authority has a power to seek an order at a Magistrates Court, to require the owner to cut back sufficient to prevent such damage. However, before using this power, the Highway Authority will discuss the matter with adjacent landowners and request that the hedges or trees be cut back, or agree to carry out the work in conjunction with the owner as part of a larger project (Highways Act section 136).

22.0 INTIMIDATING DOGS

It is an offence to keep a dangerous or intimidating dog on a Public Right of Way. It may also be considered a ‘public nuisance’.

In the above circumstances the Highway Authority will request the landowner to take action so that the dog no longer deters members of the public from using the right of way. The Highway Authority may also inform the police and will advise complainants to notify the police directly.

23.0 INTIMIDATION OR THREATENING BEHAVIOUR INTENDED TO DETER USE OF A PUBLIC RIGHT OF WAY (see also “Firearms on Public Rights of Way”)

The use of intimidating behaviour with the intention of deterring the use of a Public Right of Way is possibly an offence and may amount to obstruction of the path.

In these circumstances the Highway Authority will seek to address any underlying issues, which have led to the situation arising. The Highway Authority may then issue a warning to the offender and involve the police as appropriate (Public Order Act 1986 section 4).

24.0 LIABILITY OF LANDOWNERS TO PATH USERS

Owners and occupiers of land crossed by Public Rights of Way can be liable for injuries caused to path users by their negligence. For example, if a stile were to collapse under a walker, or if a path user were to be injured by an electric fence placed across a path, then the injured party may pursue a claim against the occupier of the land (Occupiers Liability Act 1957).

25.0 LIABILITY OF THE HIGHWAY AUTHORITY TO PATH USERS

As Highway Authority, each of the Local Authorities is responsible for the surface of most Public Rights of Way. In certain circumstances, the Highway Authority will be liable for injury caused to persons using a Public Right of Way, if the injury is due to a negligent act with regard to the surface of the path.

26.0 LITTER AND FLY-TIPPING

The Highway Authority is responsible for keeping Rights of Way in their area, which are publicly maintainable, clean and clear of litter and refuse, so far as is practicable (Environmental Protection Act 1990 sub sections 86(9) & 89 (1) & (2))

If there is sufficient litter to amount to an obstruction, then the Highway Authority also has a duty to take appropriate action. (see “28.0 Obstruction”).

27.0 MISLEADING SIGNS AND NOTICES ON PUBLIC RIGHTS OF WAY

Misleading and unlawful signs can deter people from lawfully exercising their right to use paths, and the Highway Authority has a duty to prevent such occurrences. The Highway Authority can remove such signs erected on a Public Right of Way.

Signs erected affecting a Public Right of Way but on adjacent land can be dealt with on application to the Magistrates Court. The Magistrates may impose a fine, or order the offender to remove the sign on pain of a continuing fine for each day it remains. (Highways Act 1980 section 132. National Parks and Access to the Countryside Act 1949 section 57).



28.0 OBSTRUCTIONS (see "28.1" and "28.2")

28.1 OBSTRUCTIONS AND ENCROACHMENTS THAT CAN BE READILY REMOVED

The Highway Authority has a statutory duty to remove all obstructions and encroachments to Public Rights of Way (The Highways Act 1980 section 130). The Highway Authority also has a common law right to remove anything that it believes constitutes an obstruction, danger or encroachment without consultation with any other party.

Each Highway Authority has a protocol of dealing with obstructions firstly by consultation and dialogue, requesting the offender to remove the obstruction. The circumstances and nature of the offence will have a bearing on the period within which an offender will be asked to comply. This informal request will be confirmed in writing. If after that period the offender has failed to comply, formal legal notice will be served requiring the offender to remove the obstruction within a specified time. Upon expiry of that time the Highway Authority will remove the obstruction and may seek to recover costs from the offender.

The Highway Authority may, where it considers it appropriate and in the public interest, prosecute offenders for obstruction, as well as taking the direct action outlined above, in particular where offences are repeated by the same individuals. (Highways Act 1980 section 143).



28.2 OBSTRUCTIONS AND ENCROACHMENTS THAT ARE MORE PERMANENT

From time to time obstructions of a more permanent character arise on Public Rights of Way. Often structures are erected on a Public Right of Way and an unofficial diversion put in place by the landowner or occupier. The Highway Authority has a duty to assert and protect the rights of the public to use the definitive line of all Public Rights of Way (Highways Act 1980 section 130).

Each Highway Authority has a protocol of dealing with obstructions firstly by consultation and dialogue with the landowner/occupier, who may be given the opportunity to apply for a diversion of the path. If after a specified period of time no application is forthcoming, enforcement proceedings will be commenced against the offender. These may be through application to the Magistrates Court, which can make an Order requiring the offender to remove the obstruction within a specified time period and impose an ongoing fine if the offender fails to remove the obstruction (Highways Act 1980 section 137 and 137Z).

29.0 PESTICIDES AND HERBICIDES

The Health and Safety Executive advises that Rights of Way should not be over sprayed and that if the product label advises that people and animals should stay out of a crop, which has been sprayed, the need for warning notices where rights of way join or cross the treated area should be considered (Health & Safety at Work Act 1974 section 3, Highways Act 1980 section 161)

30.0 PLOUGHING AND CROPS ON PUBLIC RIGHTS OF WAY

In some circumstances occupiers of land are entitled to plough Public Rights of Way, if it is not reasonably convenient to avoid them. This only applies to cross-field footpaths and bridleways. All Field edge (or "headland") footpaths and bridleways should never be ploughed. 'Restricted byways' and 'byways open to all traffic' should never be ploughed, whatever their location - field edge or cross-field.

Where a cross-field footpath or bridleway is ploughed, it must be reinstated within the "statutory time limit" otherwise a criminal offence is committed. Reinstatement means indicating it on the ground and making the surface reasonably convenient for public use, to not less than the statutory minimum width. In respect of footpaths the minimum width is 1m, and 2m for bridleways. The "statutory time limit" is 14 days for the first disturbance of the cropping cycle and 24 hours for any further disturbance such as harrowing and drilling (Rights of Way Act 1990 section 134). See "17.0 Enforcement of Ploughing and Cropping Protocol".

31.0 PUBLIC RIGHTS OF WAY

There are currently four categories of Public Rights of Way

Public Footpaths have the most restrictive rights, and provide users with the right to walk with any 'normal accompaniment' (e.g. dog, pram or a wheelchair).

Public Bridleways allow you the right to walk, ride or lead a horse. Cyclists may use bridleways, and must give way to other users. You do not have the right to take a horse drawn vehicle along a bridleway.

Restricted Byways are a new category of Right of Way that replaced Roads used as Public Paths (RUPPs), introduced by Sections 47 to 51 of the CROW Act, on 2nd May 2006. Restricted Byways carry rights for pedestrians, cyclists, horse riders and horse drawn carriage vehicles but not mechanically propelled vehicles.

BOATs (Byways Open to All Traffic) provide rights to walk, ride a horse, cycle and drive any vehicle (motorised or horse drawn). While legal rights are similar to those of unclassified roads, byways are maintained principally for the use of riders and pedestrians. Management seeks to follow the principles enunciated in 'Making the Best of Byways' published by DEFRA in 1997.

Notwithstanding the Definitive Map, unregistered public rights may exist over any route, either through historic status or through the accrual of rights through use. Private Rights may coexist over a route, which has public access rights, but these are not subject to Public Rights of Way Law.

As public highways Public Rights of Way enjoy the same protection, provided by the Highways Act as wider adopted public highway network of carriageways and footways. They also enjoy additional protection provided by other legislation including the National Parks and Access to the Countryside Act 1949, Countryside Act 1968, Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000.

32.0 ROPE ACROSS A PUBLIC RIGHT OF WAY

It is an offence to stretch a rope or similar object across a Public Right of Way. In some circumstances, a temporary rope or wire to restrain farm animals may be authorised across a public footpath (but no other class of right of way), provided that it is readily visible and can be easily and safely removed and replaced by path users.

The Highway Authority will request that any unauthorised rope be permanently removed. If this is not done, the Highway Authority will remove the rope and prosecution will be considered (Highways Act 1980 section 162).

33.0 SIGNING OF PUBLIC RIGHTS OF WAY

The Highway Authority is required to erect a sign at the point that each public footpath, bridleway or byway leaves a metalled road (Countryside Act 1968). This is usually in the form of a wooden or metal fingerpost sometimes bearing the distance to a named destination along the path. The fingerpost will always indicate the status of the path (see also "38.0 Waymarking"). Some sealed surface paths in urban areas will not be signed.

All signposts used in association with Public Rights of Way will conform to:

- Either the Traffic Signs Regulations and General Directions 2002 or subsequent amendments;
- Or, designs approved in special circumstances, by Rights of Way Officers, to allow local distinctiveness and to aid improvements on promoted "access for all routes".



34.0 STILES AND GATES ON FOOTPATHS AND BRIDLEWAYS

It is the duty of the landowner / occupier to ensure that any stiles and gates are kept in a good state of repair. The Highway Authority's duty only extends to ensuring that the landowner complies with this obligation and to provide a grant of 25% towards repairing or replacing such structures.

The Highway Authority has a discretionary power to extend this grant and will, in normal circumstances provide a 100% grant by arranging to carry out all the work at no cost to the landowner. This discretionary grant will be withdrawn if landowners fail to co-operate, or are obstructing other Rights of Way (Highways Act 1980 section 146).

If an occupier of land wishes to install additional stiles or gates on footpaths or bridleways, they must apply in writing to the Highway Authority for authority to do so. To erect stiles or gates without this authority is an unlawful obstruction and is a criminal offence (see "28.0 Obstructions"). The only circumstance for which the Highway Authority can provide authorisation for the erection of new stiles/ gates is that the structures are required for stock control purposes or forestry (Highways Act 1980 section 147).

Stiles and gates cannot be erected for security or other purposes (except by the Highway Authority to safeguard path users in accordance with Section 66 of the Highways Act 1980 Act), and may be regarded as obstructions to the highway (see "28.0 Obstructions").

It is the landowners / occupiers duty to ensure that livestock do not escape enclosure onto highways and cause an accident. Highway Authorities have in the past taken a sympathetic approach to farmers who padlock their gates to prevent livestock from getting on to main highways by installing stiles and kissing gates alongside the field gate through which the right of way passes. This approach will continue only where there is the possibility of livestock getting onto main roads if the public leaves the farmers gate open. However it should be noted that farmers field gates must remain unobstructed and available for public use, so that the public can open and shut a gate easily on footpaths where;

- Such a field gate is not the last restrictive barrier to livestock;
- The livestock are permanently removed;
- It is not possible to erect a stile, self closing gate or kissing gate next to the existing farm gate; and
- Complaints are received from the public.

Highway Authorities may provide signs reminding the public to shut the gate. It should also be remembered that to lock a gate through which a Public Right of Way runs is an offence and the Highway Authority may have no choice but to deal with the matter as an obstruction if complaints from the public are received.

Stiles and new additional gates cannot be erected on 'restricted byways' or 'byways open to all traffic'.

In line with the outcomes of the Tyne and Wear Rights of Way Improvement Plan each Highway Authority operates an "Access for All" policy where the least restrictive option of furniture will be used (see "2.0 Access for All").

35.0 SURFACES OF PUBLIC RIGHTS OF WAY

As Highway Authority, each of the Local Authorities, owns the surface of all Public Rights of Way that are publicly maintainable; the landowner's / occupier's interest only extends to the sub soil. It is an offence to interfere with the surface of a Public Right of Way to the detriment of users and the Highway Authority has a duty to protect the interests of users and the Public Right of Way. The Highway Authority will take enforcement action to ensure the surface of Public Rights of Way unlawfully disturbed are reinstated (see also "17.0 Enforcement of Ploughing and Cropping Protocol").

Occupiers of land can disturb the surface of a right of way by special licence if they first apply to the Highway Authority to do so and by statutory licence in respect of ploughing (see "30.0 Ploughing and Crops on Public Rights of Way").

Where there are public footpath or bridleway rights on a route, which also has private vehicular rights, the Highway Authority may consider making a contribution towards the costs of maintenance of the surface to the extent required for the level of public rights.

Landowners and occupiers who wish to upgrade the surface of the footpath, bridleway or restricted byway on which there are also private vehicular rights, must apply in writing to the Highway Authority. Full details of the works to be undertaken and proof of the landowners agreement will be required before permissions to alter the surface of the Right of Way can be considered or agreed. Where upgrading a surface of a path is agreed this will normally be on the basis that the applicant will pay the costs involved and continue to maintain and repair the surface of the path and any necessary drains to the new standard. In considering such applications the Highway Authority will also consider the impact on the public's enjoyment of the route, safety, environmental and landscape issues.

36.0 TREES AND BRANCHES FALLEN ACROSS PUBLIC RIGHTS OF WAY

If a tree or large branch falls across a Public Right of Way, such that the way is obstructed the Highway Authorities have adopted the following protocol. It will contact the owner of the tree and request that the tree or branch is removed within a specified time. If the owner fails to comply with this request, the Highway Authority will serve notice on the owner of its intention to remove the branch and may recover from the person the costs incurred (Highways Act 1980 section 150 (4) (c). See also "21.0 Hedges and Trees adjacent to Public Rights of Way".

37.0 UNDERGROWTH

The Highway Authority is responsible for ensuring that vegetation growing in the surface of the Public Right of Way is kept under control and does not make the route difficult to use. Overgrowth i.e. plants growing across the path from beside it, is the responsibility of the landowner (see "21.0 Hedges and Trees adjacent to Public Rights of Way").

The Highway Authority undertakes, as required, one, two or three cuts on all of those paths that appear on a database, which it maintains, and updates each year. Rights of Way found to be in need of cutting will be incorporated into the maintenance list for attention on an annual, or possible bi annual basis, according to resource availability. Popular and publicised routes will have the highest priority in the maintenance programme.

38.0 WAYMARKING

The Highway Authority has no duty to waymark. However, it is recognised that it is important for land management and to identify the alignment of routes. Therefore Public Rights of Way should be waymarked where necessary along their length to provide signs, where users unfamiliar with the area may need guidance, usually in accordance with the agreed national colour scheme; yellow arrows for public footpaths, blue arrows for bridleways, purple for restricted byways and red arrows for byways open to all traffic (Countryside Act 1968 section 27) and following consultation with landowners and/or occupiers. Moreover, if agreement can be reached to use existing structures, this will be preferable to erecting new waymark posts.

Waymarks should not be placed on trees or in hedges except in very exceptional circumstances where it is not possible for a waymark post or other structure to be provided.

39.0 WIDTH OF PUBLIC RIGHTS OF WAY

There is no general rule applying to the width of Public Rights of Way and the width is a matter of fact to be determined on each occasion, based upon the following. The width may be set out in

1. The Definitive Statement,
2. an historical document, or
3. it may be the width of the way between boundaries such as hedges or fences.
4. Alternatively, the width may be that which the public have customarily enjoyed.

In the absence of the foregoing the Highway Authority will require a reasonable width to be made available which would be sufficient for two users to pass and be convenient for cutting machinery. In the case of a new footpath, this will be regarded as 2 metres. In the case of a bridleway 3 metres and in the case of a byway 5 metres.

An encroachment into the width of a Public Right of Way is an obstruction and a criminal offence. See "28.1 and 28.2 Obstructions and Enforcements" for details of how the Highway Authority deals with these issues.

Statutory default minimum widths apply to all rights of way, but only in relation to ploughing and reinstatement following ploughing (see also "30.0 Ploughing and Crops on Public Rights of Way"). These are as follows.

	Headland path (field edge)	Cross-field paths
Footpath	1.5 metres	1.0 metre
Bridleway	3.0 metres	2.0 metres
Restricted Byways should never be ploughed, historic width applies. Byways Open to All Traffic should never be ploughed, historic width applies.		

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